

EXHIBIT “A”

In The Matter Of:
PEOPLE OF THE STATE OF NY v.
DONALD J. TRUMP, et al

October 2, 2023

SUPREME COURT - NY COUNTY

Original File 10.2.23PEOPLEvTRUMP.txt

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1 SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF NEW YORK - CIVIL TERM - PART 37
 2 -----X
 3 PEOPLE OF THE STATE OF NEW YORK, BY LETITIA Index No.
 JAMES, ATTORNEY GENERAL OF THE STATE OF NEW 452564/22
 4 YORK,
 5 Plaintiff,
 6 -against-
 7
 8 DONALD J. TRUMP; DONALD TRUMP, JR.; ERIC
 TRUMP; IVANKA TRUMP; ALLEN WEISSELBERG;
 9 JEFFREY McCONNERY; THE DONALD J. TRUMP
 REVOCABLE TRUST; THE TRUMP ORGANIZATION, INC.;
 TRUMP ORGANIZATION, LLC; DJT HOLDINGS, LLC;
 10 DJT HOLDINGS MANAGING MEMBER; TRUMP ENDEAVOR
 12, LLC; 401 NORTH WABASH VENTURE, LLC; TRUMP
 11 OLD POST OFFICE, LLC; 40 WALL STREET, LLC; AND
 SEVEN SPRINGS, LLC;
 12
 13 Defendants.
 14 -----X
 15 BENCH TRIAL 60 Centre Street
 New York, New York
 October 2, 2023
 16
 17 B E F O R E:
 HONORABLE ARTHUR S. ENGORON
 18
 19 A P P E A R A N C E S:
 20 OFFICE OF THE ATTORNEY GENERAL
 OF THE STATE OF NEW YORK - LETITIA JAMES
 21 ATTORNEYS FOR THE PLAINTIFF
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 22 BY: KEVIN WALLACE, ESQ.
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 ANDREW AMER, ESQ.
 24 ERIC HAREN, ESQ.
 LOUIS M. SOLOMON, ESQ.
 25 SHERIEF GABER, ESQ.

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1 THE COURT: Good morning, everyone. I'm Judge
 2 Arthur Engoron, and that is the correct pronunciation of
 3 my surname. En-gor-on, not Eng-o-ron or even worse
 4 En-gu-ron.
 5 Before we start the actual trial in this matter,
 6 I'll hear from the attorney from the various news
 7 organizations, who, last Friday, filed an application for
 8 certain forms of press access.
 9 MR. BALIN: Good morning, your Honor.
 10 THE COURT: Good morning.
 11 MR. BALIN: Robert Balin of Davis Wright
 12 Tremaine, LLP for 18 news organizations that made a press
 13 application for access on Friday.
 14 Your Honor, I start by saying I want to thank
 15 the Court. I note the Administrative Judge of this
 16 section is here, as well as the Director of Public
 17 Information for the Court System; and, I'd like to thank
 18 you because you've granted, already, many of the requests
 19 that were in our Friday letter.
 20 I have only two requests to make of your Honor
 21 this morning. First, is to permit a pool television
 22 camera person to televise the opening and closing
 23 statements of the defense counsel and the Attorney
 24 General.
 25 I'd start by saying I've asked both sides their

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 23 LISA M. DE CRESCENZO,
 LISA CASEY,
 24 OFFICIAL COURT REPORTERS
 25

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1 positions. The New York Attorney General does not
 2 oppose. Defense counsel does not take any position and
 3 leaves it to your Honor. Your Honor, I believe if ever
 4 there was a case that justified the public understanding
 5 what their legal arguments are -- it's not about
 6 witnesses. What the legal arguments are in this case is
 7 of such great significance, this is that case.
 8 We have a pool TV cameraman outside. His name
 9 is Tracey Reede. He's from NBC. He has a Whitehouse
 10 press pass, a State Department press pas and a Defense
 11 Department press pass. I would note, your Honor, that
 12 televising of opening and closing arguments was allowed
 13 by a Judge in Westchester County in People v. Olivo in
 14 2008, three years after the Courtroom Television Network
 15 case.
 16 We believe it is permitted, and, it is up to
 17 your Honor. It's within your discretion. There are
 18 various factors. One, is the positions of the parties.
 19 Two, is would it disturb the proceedings. Your Honor, I
 20 can bring the cameraman and his camera in, if you'd like.
 21 Three, is the type of case. I can hardly
 22 overstate the significance of this case. Four, safety.
 23 Five is. Maintaining decorum. I believe all of those
 24 factors are met here.
 25 So, your Honor, that is our first request. I

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1 know you have other things to do and I don't want to take
 2 your time.
 3 THE COURT: Give me a second.
 4 (Brief pause.)
 5 THE COURT: That's more difficult, a more
 6 fraught request than you might expect or other people
 7 would expect. I'm afraid I'm constrained to deny it.
 8 MR. BALIN: Thank you, your Honor, for your time
 9 on it.
 10 The second request-- I thank the Court. You've
 11 permitted laptop use, which, I believe, is surely
 12 necessary in the courtroom for this type of proceeding.
 13 The concern expressed to me by a number of members of the
 14 press is that with so many members of the press using the
 15 Wi-Fi in this courthouse, that it may either crash or it
 16 may slow down.
 17 The request that I have for the Court is to
 18 allow what are called remote hotspots. A number of the
 19 members of the press have them and to use cell phones
 20 solely for the ability to get to the Internet and get to
 21 their news rooms. That was the second request I have for
 22 your Honor.
 23 THE COURT: Granted.
 24 MR. BALIN: All right. Your Honor, thank you
 25 very much.

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1 THE COURT: You're welcome. I'm allowing five
 2 or so pool photographers. Are they waiting to come in
 3 now?
 4 (Photographs taken.)
 5 THE COURT: The name of the case that brings us
 6 here today is People of the State of New York by Letitia
 7 James, Attorney General of the State of New York, versus
 8 Donald J. Trump, et al., meaning, and others.
 9 The index number, which is how we keep track of
 10 cases around here, and might help you to follow it on the
 11 New York State Court's electronic filing system,
 12 affectionately known by its acronym as NYSCEF is
 13 452564/2022.
 14 Early this morning, I received an application
 15 from plaintiff seeking to discuss some housekeeping
 16 matters. I will address those matters after opening
 17 statements. The trial is scheduled to last from today
 18 until December 22, 2023, the Friday before Christmas.
 19 I intend to speak now for approximately five
 20 minutes. Call it my opening statement. Soon after
 21 which, counsel for each side will make their, no doubt,
 22 longer opening statements.
 23 For the next three months after that, I hope
 24 that the only words I will utter are sustained,
 25 overruled, and let's take a ten-minute break and even as

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1 to those, the less often the better.
 2 The basic schedule to which we'll adhere is
 3 Monday through Thursday, 10 a.m. to 1 p.m. then a
 4 one-hour-and-15-minute lunch break, then 2:15 through
 5 4:30 p.m.. on Fridays, we'll only have the morning
 6 session, 10:00 to 1:00.
 7 Months ago, I declared that the trial would
 8 commence today, October 2, 2023, come hell or high water.
 9 Meteorologically speaking, we've had the high water but
 10 we're ready to go. I commend all counsel for adhering to
 11 my tight schedule and for their Herculean efforts to get
 12 us where we are today.
 13 This case has esteemed counsel. On one side, we
 14 have an Attorney General. On the other side, we have a
 15 former Solicitor General. In the middle, we have me, a
 16 generalist, meaning that I know a little about a lot.
 17 One thing I know a lot about is the legal
 18 definition of fraud. Common law, meaning law before we
 19 all came of age. Fraud, also known as misrepresentation,
 20 has five elements.
 21 First, a material statement. Second, falsity of
 22 that statement. Third, scienter, lawyer talk meaning
 23 that the defendant knew that this statement was false.
 24 Four, the plaintiff's justifiable reliance, and five,
 25 damages.

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1 Common-law fraud is not an easy case to prove.
 2 Material, according to whom? How do we know what the
 3 defendant knew? What reliance is justifiable? Then
 4 along came Jacob Javitz. Nowadays, he's best known for
 5 the convention center and for the federal office building
 6 directly across the street from us, which you can
 7 actually see out our windows, both named for him.
 8 Before that, he was best known as the long-term
 9 United States Senator from New York. Before that, he was
 10 the Attorney General of the State of New York, the
 11 position that Ms. James now occupies.
 12 In 1956, he convinced New York State to adopt
 13 what is now codified as Executive Law Section 63(12)
 14 which gives the Attorney General the authority to
 15 investigate and bring actions against any entities that
 16 allegedly engage in "repeated fraudulent or illegal acts
 17 or otherwise demonstrate persistent fraud or illegality
 18 the carrying on, conducting a transaction of business."
 19 Subsequent case law has construed that to mean,
 20 or at least to include, false statements used in
 21 business. Incidentally, Javitz was a savvy politician.
 22 He was born on the lower eastside, so very near here.
 23 When he campaigned on his home turf, he called himself
 24 Jacob Javitz. When he campaigned on the posh upper
 25 eastside, he called himself John Javitz, and, when he

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1 campaigned upstate, he called himself Jake Javitz. I
 2 want to make sure Mr. Kise returns to Florida with some
 3 New York history and political street smarts.
 4 The complaint in this case consists of seven
 5 causes of action. There are no counterclaims, at least
 6 not in court. The first is known as the standard on
 7 Section 63(12) claim. The other six are claims that
 8 defendants violated Section 63(12) by violating various
 9 sections of New York's Penal Law.
 10 As all, or most, of you know, six days ago, on
 11 Tuesday September 26th, I granted plaintiff summary
 12 judgment only on liability and only on the first cause of
 13 action. What's left to be tried and decided are, first,
 14 either liability or exoneration on the other six causes
 15 of action and, second, monetary damages or other relief.
 16 Plaintiff is seeking disgorgement of alleged
 17 ill-gotten gains and to limit defendant's ability to
 18 conduct business in New York.
 19 You have probably noticed or already read that
 20 this case has no jury. Neither side asked for one and,
 21 in any event, the remedies sought are all equitable in
 22 nature, mandating that the trial be a bench trial, one
 23 that a Judge alone decides. I promise to do my best,
 24 despite my lame attempts at humor.
 25 As I said in an earlier phase of this

Opening Statement - Plaintiff/Wallace Page 11

1 Statements of Financial Condition for Donald J. Trump
 2 were false and misleading in each year from 2011 to 2021.
 3 We have already proven that those statements
 4 were then repeatedly and persistently used in the conduct
 5 of business after July 13, 2014. We have also proven
 6 that each of the defendant's entities and individuals
 7 alike participated in that fraud. So, what remains for
 8 us to prove at trial?
 9 First, the People will establish that each of
 10 these defendants further violated Executive Law 63(12) by
 11 engaging in repeated and persistent illegal acts in the
 12 conduct of business.
 13 The second thing we will show is that those
 14 illegal acts, together with the fraud we've already
 15 established, entitles the People to all of the equitable
 16 relief that we're seeking, including a bar on new
 17 commercial real estate transactions, a bar on borrowing
 18 on New York banks, an industry bar for each of the
 19 individual defendants, removal of trustees, and an
 20 accurate GAAP compliance Statement of Financial Condition
 21 for Donald J. Trump.
 22 Finally, the People will demonstrate that the
 23 Court should disgorge the financial benefits each of
 24 these defendants obtained from their illegal conduct.
 25 Now, what illegal acts do we intend to prove?

Opening Statement - Plaintiff/Wallace Page 10

1 litigation, I take my job very seriously, and, I know
 2 that counsel and the parties do, likewise. The acoustics
 3 in this room are not too bad, as you can hear, I hope,
 4 but I'm sure everybody will be hanging on to every word
 5 you say. So, I beseech counsel to speak slowly, loudly,
 6 clearly, and, as I'm doing, directly into the microphones
 7 so that everyone in the bleacher seats may hear you.
 8 Now, let's listen to plaintiff's opening
 9 statement.
 10 MR. WALLACE: Thank you, your Honor. Kevin
 11 Wallace for the Office of the Attorney General.
 12 Some of what I heard, I'm just going to double
 13 up on what you just talked about. The first of which is
 14 that, obviously, the case today --
 15 THE COURT: I hear feedback.
 16 MR. WALLACE: Okay.
 17 (Brief pause)
 18 THE COURT: Please continue and we'll see how it
 19 sounds.
 20 MR. WALLACE: Thank you, again, your Honor. As
 21 I mentioned, I may cover some of the ground that you
 22 already did.
 23 First of all, the case today is, obviously,
 24 significantly different than it was just a week ago. At
 25 this point, the People have already proven that the

Opening Statement - Plaintiff/Wallace Page 12

1 First, we will prove defendants illegally
 2 falsified business records in violation of New York
 3 Criminal Law. We will show the defendants committed this
 4 illegal act by making false entries in the records of
 5 Trump Organization and, by extension, the records of
 6 their accountants, the banks, and other counterparties
 7 that received the fraudulent Statements of Financial
 8 Condition.
 9 We will show the defendants made these false
 10 entries with the intent to defraud. We'll also show that
 11 the defendants conspired to make these false entries in a
 12 separate criminal violation.
 13 The next crime we will establish is issuing
 14 false financial statements. We will show that with
 15 intent to fraud, each defendant participated in, or have
 16 knowledge of the creation of a written instrument, here
 17 the Statement of Financial Condition that described
 18 Donald J. Trump's financial condition in a manner that
 19 was inaccurate in a material way.
 20 We will further prove that the defendants also
 21 violated this law by representing, in writing, that the
 22 statements were true while knowing that they were
 23 materially inaccurate and, once again, we'll show the
 24 defendants conspired to create and use these false
 25 statements, a separate criminal violation.

Opening Statement - Plaintiff/Wallace Page 13

1 Next, we'll prove that the defendants committed
 2 insurance fraud in violation of New York Criminal Law.
 3 We will establish this illegal act by showing that the
 4 defendants, acting with intent to defraud presented the
 5 materially false financial statements to insurers in
 6 connection with the application to renew their insurance.
 7 Again, we will show the defendants conspired to commit
 8 this insurance fraud.
 9 Now, for each of these claims, the fact the
 10 Statements of Financial Condition were false and
 11 misleading has already been established. That's been
 12 decided. Insurance fraud and false financial statement
 13 counts both require the misstatements be true and while
 14 the evidence we present of the coming weeks and months
 15 will certainly show the materiality of defendant's lies,
 16 this issue has also already been decided.
 17 The Court has already found that the People
 18 submitted conclusive evidence that between 2014 and 2021,
 19 the defendants overvalued the assets in the statements
 20 between \$812 million and \$2.2 billion per year. There's
 21 no world in which that, an overstatement of that size is
 22 not material.
 23 So, the two parts to this trial that are new
 24 from the summary judgment proceeding are intent and
 25 conspiracy. Let me start by talking about intent. The

Opening Statement - Plaintiff/Wallace Page 14

1 intent to fraud here on the part of the individual
 2 defendants and entities they owned and operated is
 3 self-evident.
 4 The defendants knew that the statements were
 5 false. They then used them to obtain and maintain
 6 benefits they were not entitled to. That is the
 7 definition of intent. Now, most of the individual
 8 defendants have argued that they lack the requisite
 9 intent because they didn't know the statements were
 10 false.
 11 With the exception of Mr. McConney, they claim
 12 they weren't involved in the valuation process and had
 13 nothing do with the preparation of statements. The Court
 14 will be able to judge for itself the credibility of those
 15 denials when defendants appear on the stand and offer
 16 them, but, if those denials are true, the defendants were
 17 lying year after year after year to Mazars, to the banks,
 18 to any reader of the statements, and, that's because the
 19 defendants made the exact opposite representation for
 20 years.
 21 From 2011 to 2015, the Statement of Financial
 22 Condition represented that every estimate of current
 23 value was determined by Mr. Trump. That included
 24 individual properties like Trump Tower and 40 Wall
 25 Street.

Opening Statement - Plaintiff/Wallace Page 15

1 From 2016 to 2021 the Statement of Financial
 2 Condition stated that it was Donald Trump, Jr. and Allen
 3 Weisselberg, the trustees from Mr. Trump's trust, who
 4 determined the estimates of current values; and, again,
 5 that included individual properties like Trump Tower and
 6 40 Wall Street.
 7 What about Eric Trump? For years, he served as
 8 a source of valuations for properties like Seven Springs
 9 shown here in 2012 and, again, 2014 and 2015. In 2021,
 10 Eric Trump personally oversaw the intention of Whitley
 11 Penn and their work on the statement.
 12 What's more? Each of the defendants certified
 13 the banks, time and again, that statements were true and
 14 correct. Donald Trump, from 2011 through 2015, he
 15 certified the Deutsche Bank and statements presented of
 16 financial condition fairly in all material respects.
 17 From 2016 to 2020 Donald Trump, Jr. certified
 18 the Deutsche Bank with the statements presented of his
 19 father's financial condition fairly in all material
 20 respects.
 21 In 2021, Eric Trump certified the Deutsche Bank
 22 that the statements presented his father's financial
 23 condition fairly in all material respects. In multiple
 24 years, Allen Weisselberg certified to Ladder Capital that
 25 Donald Trump's net worth was true, correct, and complete,

Opening Statement - Plaintiff/Wallace Page 16

1 and fairly presented his financial condition.
 2 Even Jeff McConney got into the act of passing
 3 these statements off to lenders, including the lender on
 4 Seven Springs. When it came time to testify under oath,
 5 the defendants wanted nothing to do with these
 6 statements. They refuted each of these representations.
 7 Eric Trump denied he had any knowledge of the
 8 statements whatsoever.
 9 (Video played.)
 10 Let's move on to the critical question of who's
 11 responsible for making sure that the statements complied
 12 with GAAP. None of the defendants would take
 13 responsibility. Let's start with Donald Trump, Jr., as
 14 trustee. He, together with Weisselberg, was responsible
 15 for GAAP presentation of the statements from 2016 until
 16 2021. What did he say at his deposition?
 17 (Video played.)
 18 MR. ROBERT: Your Honor, objection.
 19 THE COURT: Hold on. Okay, go ahead.
 20 MR. ROBERT: The examinations under oath are not
 21 part of this case. That's not from Mr. Trump's
 22 deposition. It's from his examination under oath. The
 23 Attorney General did not take his deposition in the
 24 instant case. This goes to the motions in limine we
 25 discussed last week.

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1 I object to the use of this EUO as part of the
 2 Attorney General's opening statement and ask that it be
 3 stricken.
 4 THE COURT: Denied. I don't believe that's a
 5 correct statement.
 6 MR. WALLACE: Thank you, your Honor. Moving on.
 7 What about the other trustee, Allen Weisselberg, the
 8 Chief Financial Officer of the company? What did he know
 9 about the GAAP?
 10 (Video played.)
 11
 12 (Continued on the following page..)
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1 None of that was true. Defendants never ordered
 2 appraisals from Newmark, or Cushman, or anyone else when
 3 they were preparing the Statement of Financial Condition,
 4 and your Honor has heard defendants tell you that they were
 5 not obligated to use appraisals, even if they had them.
 6 So, not only was it a lie that they were ordering
 7 appraisals for the statements, they were ignoring the ones
 8 they had, and any claim of innocence or mistake may be most
 9 clearly refuted by the inflation of the triplex apartment,
 10 Donald Trump's personal residence, from 11,000 square feet
 11 to 30,000 square feet, nearly tripling the value.
 12 Your Honor is well acquainted with this story.
 13 In March of 2017, while the 2016 Statement of Financial
 14 Conditions was being prepared, the defendants received an
 15 email inquiry from a reporter at Forbes. Alan Garten,
 16 general counsel of the Trump Organization, then forwarded
 17 that email to Eric Trump, Alan Weisselberg, and Donald
 18 Trump, Jr. Among the questions, President Trump has told
 19 Forbes in the past that his penthouse occupies 33,000
 20 square feet. If the 1994 declaration is accurate and
 21 up-to-date, it shows President Trump's apartment is
 22 10,996.39 square feet.
 23 Now, the answer to that question is yes, it was
 24 accurate and up-to-date. It shows the size of the
 25 apartment at 10,996.39 square feet, signed by Donald J.

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1 MR. WALLACE: What about Donald Trump? Who did
 2 he rely upon to make sure that statements were prepared
 3 according to G.A.A.P?
 4 (Video played.)
 5 MR. WALLACE: Now, all of these denials put the
 6 defendants in an impossible bind. The Court has already
 7 found that statement to be false, based on the inflated
 8 violations, and while the defendants may hope that these
 9 denials will help them to avoid liability for the
 10 inflation, the denials, we believe, that defendants lied
 11 about their involvement, certified the statements to banks
 12 as insurers; lied about the oversight they provided; lied
 13 about conforming with G.A.A.P.; and the defendants are left
 14 to answer the classic question: Were you lying then, or
 15 are you lying now?
 16 But, even beyond these corrections and
 17 implausible denials, there's ample evidence of intent,
 18 based on the defendant's knowing and intentional lies.
 19 Alan Weisselberg told an insurance underwriter that the
 20 fair value for the properties is appraised annually by a
 21 professional firm. This year, it was done by Newmark
 22 Group, and it's previously been done by Cushman &
 23 Wakefield. The reason for the change is the individual at
 24 Cushman & Wakefield with whom the organization had a
 25 long-standing relationship with, moved to work at Newmark.

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1 Trump.
 2 What happens next? After working over the
 3 weekend on Monday, March 6th, Alan Garten writes to Amanda
 4 Miller, in the press office of the Trump Organization, "I
 5 handled everything except Trump World Tower and Trump
 6 Tower." She responds, "Thank you, Alan. I spoke to Alan
 7 W.," Alan Weisselberg, "re: TWT and TT," Trump Tower. "We
 8 are going to leave those alone." They weren't going to
 9 touch the value of the penthouse.
 10 And what happens next? On March 10th, 2017, Alan
 11 Weisselberg and Donald Trump, Jr. certify the accuracy of
 12 the Statement of Financial Condition to Mazars, just four
 13 days later. That Statement of Financial Condition included
 14 a valuation of Mr. Trump's apartment that was 30,000 square
 15 feet. This is direct evidence that the inflated penthouse
 16 valuation was not an innocent mistake, but an intentional
 17 lie.
 18 It's further aided by the fact that a few months
 19 later, on May 3rd, 2017, Forbes publishes its article.
 20 Donald Trump has been lying about the size of his
 21 penthouse. This marks the end of the inflation of the
 22 penthouse on the Statement of Financial Condition. The
 23 inflation had been publicly disclosed, and they stopped
 24 using it in their valuations.
 25 Let's talk a little bit about conspiracy, now.

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Opening Statement by Mr. Wallace Page 21

1 Courts recognize that, because conspiracies are secretive
 2 endeavors, they often have to be inferred from
 3 circumstantial evidence, and confirmed by overt acts.
 4 Well, that kind of evidence certainly exists in this case,
 5 but we also have direct evidence of the scheme to inflate
 6 Mr. Trump's net worth.
 7 Michael Cohen testified to this, when he was
 8 deposed by defendants. Let's take a look at one portion of
 9 that testimony.
 10 (Video played.)
 11 MR. WALLACE: Now, the defendants may argue that
 12 you can't believe Mr. Cohen, but his testimony is
 13 corroborated by the other evidence in this case, and his
 14 testimony is consistent with that of a current Trump
 15 organization employee, Patrick Birney. Mr. Birney played a
 16 central role in preparing the Statements of Financial
 17 Condition starting in 2017. And what did he say?
 18 "Alan Weisselberg told me, Donald like to see it
 19 go up."
 20 He likes it to go up, and, "It," I don't think
 21 referred to assets. I think it refers to net worth.
 22 So, we have direct testimony from the people
 23 involved in the scheme to inflate Donald Trump's net worth,
 24 but I would like to talk a little bit about the overt acts
 25 that prove this conspiracy, the evidence that demonstrates

Opening Statement by Mr. Wallace Page 22

1 that these are not just innocent differences of opinion, or
 2 mistakes. To do that, let's take a look at how this
 3 valuation plays out, in practice. As the witnesses have
 4 explained, these are not just independent valuations, they
 5 are part of a scheme to keep Donald Trump's net worth as
 6 high as possible.
 7 So, let's take a look at what happened in 2015.
 8 Three properties made big swings in that year. Seven
 9 Springs, 40 Wall, and the triplex penthouse. Those swings
 10 were connected, designed to prop up Donald Trump's net
 11 worth, and hit the target that Mr. Trump wanted to hit.
 12 The defendants engaged in a shell game.
 13 The value of Seven Springs dropped by
 14 \$235 million, because of an appraisal done in connection
 15 with the conservation easement. To prop up Mr. Trump's
 16 overall net worth, Jeff McConney and Alan Weisselberg
 17 removed the individual disclosure of value from Seven
 18 Springs in the statement, and lumped it into a category
 19 with the triplex apartment. They then inflated the
 20 apartment by \$127 million. Separately, McConney and
 21 Mr. Weisselberg added \$75 million to the value of 40 Wall,
 22 reducing the gap to just 33 million, but each of these
 23 valuations was independently deceptive, and I'll walk you
 24 through some of the examples.
 25 Now, the process for preparing the Statement of

Opening Statement by Mr. Wallace Page 23

1 Financial Condition, again, with Seven Springs valued at
 2 291 million, the triplex valued at 200 million, and Wall
 3 Street, 40 Wall Street, valued at 660 million. The process
 4 kicks off with Jeff McConney and Donald Bender, at Mazars.
 5 This is the first of a number of emails with spreadsheets
 6 for back-up for DJT's SOFC.
 7 "This one has been marked up, the 6/30/2014 SOFC,
 8 before Alan's comments. I should be talking to him
 9 tomorrow morning."
 10 Attached to this email we see Mr. McConney's
 11 hand-marked-up valuations; his indications of what the
 12 values will be, in 2015. He also marks up the text in the
 13 draft SOFC. So, let's see what he writes for Seven
 14 Springs.
 15 The mansion at Seven Springs, you can see the
 16 value is set at \$291 million. You can see Mr. McConney's
 17 handwritten notation, "Okay." The value is going to stay
 18 at \$291 million, but by the time the statement is finalized
 19 in March of 2016, that valuation is no longer what they are
 20 going to use. Why? Because of that easement donation. In
 21 order to get the tax deduction from that donation,
 22 Mr. Trump had to obtain an appraisal from Cushman &
 23 Wakefield. Cushman & Wakefield valued the entire economic
 24 value of Seven Springs at \$56 million, even before placing
 25 the easement. That includes all the development rights the

Opening Statement by Mr. Wallace Page 24

1 defendants held on that property.
 2 So, what happens? Seven Springs is no longer
 3 \$291 million. Instead, it gets crossed off as an
 4 independent valuation. It then gets buried in the Other
 5 Assets category. You can see it right here, \$557 million.
 6 How do we know that Seven Springs got included in that
 7 category? We have the final supporting data spreadsheet.
 8 As you can see, Seven Springs, per easement, \$56 million.
 9 So where does the statement end? In 2014, Seven
 10 Springs is broken out as a separate property with its own
 11 valuation of \$291 million. In 2015, after the value was
 12 dropped, they removed the independent valuation. They move
 13 it into a new category, and lump it together with other
 14 assets. No one reading the statement would know that it
 15 dropped, year over year.
 16 So, how do they cover it up? Well, the first
 17 step involves Mr. Trump's triplex apartment. The triplex
 18 begins the year valued at \$200 million. This is where it's
 19 been, for many years. You can already see it has the
 20 inflated 300,000 [sic] square feet, and it's priced at
 21 \$6,700 per square foot. To get the number for the
 22 penthouse up, the defendants find a new comp., and value it
 23 at \$10,900 per square foot, for a total value of \$327,000,
 24 a rise of \$127 million.
 25 Now, we already know that that 30,000 square foot

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1 number is inflated. The 10,900 number is also inflated.
 2 Part of it is because there was a record-breaking sale at
 3 157 that was in no way comparable to Mr. Trump's
 4 40-year-old apartment. But, even the 10,900 number is
 5 wrong. That's not what an apartment sold for, at 157.
 6 That's the square footage of the apartment that got sold.
 7 The actual price was below \$10,000, so about a thousand
 8 dollars less, meaning another 30,000 of this is just from
 9 not using the actual sales price of the square footage
 10 number. Again, inflating the overall value, and putting it
 11 in a category to hide the drop in Seven Springs.
 12 So, on the statement, they eventually need to
 13 make up more of the difference with 40 Wall Street.
 14 40 Wall Street starts the 2015 process valued at \$660
 15 million. We can see, right here. It's handwritten in by
 16 Mr. McConney. Now, how did they get to that \$660 million?
 17 You can see. They actually disclose that there's a Cushman
 18 & Wakefield appraisal done June 2015 for loan refinancing
 19 with Ladder Capital at \$540 million. This is the initial
 20 spreadsheet that goes to Mazars.
 21 Mr. McConney, however, adds value. There's been
 22 additional rental activity in vacant spaces, including a
 23 retail space that gets leased to Dean & Deluca that
 24 generates another \$1.4 million in a given year, and is part
 25 of the \$120 million evaluation they want to add to 40 Wall.

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1 Well, what's the problem with adding
 2 Dean & Deluca? It's already included in the appraisal that
 3 had been done by Cushman & Wakefield, but the defendants
 4 and Mr. McConney only send Mazars an excerpt of that
 5 appraisal, the first 15 pages, so he does not see that
 6 includes a Dean & Deluca lease, and it does not include the
 7 fact that they had a different cap rate, as compared to
 8 what Mr. McConney is using.
 9 So, by the end, they use a different technique to
 10 inflate the value of 40 Wall Street, and add another
 11 \$75 million. They say that they have done their own
 12 analysis, and it's based on information provided by Douglas
 13 Larson of Cushman & Wakefield in November of 2015, and
 14 February of 2016. Now, you can see, these are just general
 15 questions that they have asked him about various market
 16 activity. Now, who is Doug Larson? Doug Larson is the
 17 same appraiser who did the valuation of 40 Wall Street, and
 18 valued it at \$540 million. He never gave them grounds to
 19 increase the value like that.
 20 So, where does this leave us, in the end? Seven
 21 Springs goes down. It gets combined with the triplex,
 22 which goes up, and 40 Wall goes up, as well. So, from
 23 December 2015 to March 2016, the defendants increase the
 24 value of the triplex and 40 Wall by 202 million, and that's
 25 on top of the 120 million they had already added to 40

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1 Wall, to the 40 Wall appraisal in the first draft. Through
 2 this process, Mr. McConney and Mr. Weisselberg take a \$235
 3 million drop in the value of the Seven Springs, and turn it
 4 into a \$77 million increase in Mr. Trump's net worth.
 5 This was their process. This was their
 6 conspiracy.
 7 So, why did defendants do this? Beyond just a
 8 place on the Forbes billionaires list, what does a net
 9 worth of over \$6 billion gain Donald Trump? The simple
 10 answer is, the defendant knew that a high-net-worth was
 11 necessary to obtain and maintain certain financial
 12 benefits. When he was first looking for financing on
 13 Doral, Donald and Ivanka Trump had a meeting with the CEO
 14 of Deutsche Bank. After the meeting, Donald sent a letter
 15 with his financial statement attached.
 16 "I'm pleased to enclose the recently completed
 17 financial statement of Donald J. Trump. Hopefully, you
 18 will be impressed. I'm also including a letter that
 19 establishes my grant value, which is not included in my net
 20 worth statement."
 21 Donald Trump knew exactly how the statement was
 22 prepared, and he was using it in search of a loan with a
 23 lower rate. Later that year, after negotiating with the
 24 commercial real estate group at Deutsche Bank, the Trump
 25 Organization began speaking to the private wealth

Opening Statement by Mr. Wallace Page 28

1 management group at Deutsche Bank, and the group offered
 2 significantly lower interest rates, but required the loan
 3 to be on recourse with a personal guarantee, and proof of
 4 guarantors' net worth, but those rates were worth it.
 5 When the Trump Organization first got the offer
 6 from the private wealth group, Ivanka Trump told Alan
 7 Weisselberg and others, "It doesn't get any better than
 8 this." She didn't even want to negotiate on it. But their
 9 in-house lawyer, Jason Greenblatt, immediately saw a
 10 problem: The net worth requirement.
 11 Now, the net worth requirement, the proposal from
 12 Deutsche Bank was \$3 billion. It may be surprising that a
 13 \$3 billion net worth covenant would be a problem for
 14 Mr. Trump, who claimed a fortune well north of that every
 15 year from 2011 to 2021, but nevertheless, Ivanka Trump
 16 tried to negotiate the number down to 2 billion, before
 17 agreeing to 2.5 billion.
 18 So, year after year, on loan after loan, the
 19 defendants misrepresented Mr. Trump's net worth to obtain
 20 and maintain those favorable interest rates. In fact, the
 21 value of those low interest rates was so profound, they
 22 formed the primary basis for our disgorgement claims. As
 23 our banking expert, Michael McCarty, will demonstrate, the
 24 use of the false Statements of Financial Condition saved
 25 defendants tens of millions of dollars, and those savings

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1 came in every year after the July 2014 statute of
 2 limitations date, set by the First Department.
 3 That benefit is measured by the difference
 4 between the interest rates the Trump Organization could
 5 have obtained, if their loans were treated as regular
 6 commercial real estate loans, and the interest rates they
 7 actually obtained, using the false financial statements
 8 with the private wealth management groups, the spread was
 9 vast, and it lasted for years.
 10 On Doral, after July 2014, the difference in the
 11 interest rates was often more than 8 percent, including
 12 8.2 percent in 2022. On Chicago, the delta after July 2014
 13 ranged from 3 to 5 percent, with the broadest spread in
 14 2022, when it reached 5.45 percent. On OPO, the spread was
 15 off around 5 or 6 percent, and was at its widest in 2021.
 16 When combined with the other loans and
 17 transactions entered into by defendants, the direct
 18 financial benefit was well north of \$100 million. With
 19 prejudgment interest, the total disgorgement amount is well
 20 north of \$250 million. We'll ask the Court to recoup that
 21 entire amount.
 22 So, these are the nuts and the bolts of our case;
 23 the how, what, why, and where of the defendants' fraud.
 24 The defendants' challenge this proceeding is to question
 25 why the case even exists at all; to complain about the

Opening Statement by Mr. Wallace Page 30

1 Attorney General reaching in private transactions; that the
 2 transactions were profitable; and that the banks and
 3 insurers, that those financial institutions were
 4 sophisticated parties.
 5 But, this isn't business as usual, and this isn't
 6 how sophisticated parties deal with each other, and even if
 7 it was, there's a reason the legislature gave the Attorney
 8 General the authority, under Executive Law 6312, to step in
 9 and police fraud and illegality in the conduct of business
 10 in New York, because these are not victimless crimes. By
 11 hiding their true resources, defendants hid their
 12 weaknesses. They convinced they banks to take on hidden
 13 risk, risk to the tune of hundreds of millions of dollars.
 14 Our financial system, both in this state and in
 15 this country, depend on honesty to ensure their safety and
 16 soundness. We have already seen the impacts to the banking
 17 system when financial institutions take on hidden risk in
 18 2008, and again, just this past year. The defendant's
 19 claim they never missed a payment and never defaulted on a
 20 loan, but they looked to escape those deals. They sold the
 21 Old Post Office Hotel, a property they said they would hold
 22 for decades. They refinanced their Doral loan with a small
 23 lender in California, at a higher interest rate. Those are
 24 not the actions of a market participant who plays by the
 25 rules. The defendants got caught lying, and while it may

Opening Statement by Mr. Wallace Page 31

1 be one thing to exaggerate for Forbes magazine or a
 2 television audience, they cannot do it while conducting
 3 business in the State of New York.
 4 For that reason, your Honor should bar them from
 5 further business in the State of New York, and reclaim
 6 their ill-gotten gains.
 7 Thank you.
 8 THE COURT: When Mr. Robert objected before, I
 9 said that I don't believe that's a correct statement.
 10 Something like that. I just want to make clear, I'm not
 11 doubting your facts. I assume these are completely
 12 correct. I just doubt the legal conclusion you reached.
 13 Would defendants like to make an opening
 14 statement?
 15 MR. KISE: Yes, your Honor.
 16 THE COURT: Please.
 17 (Whereupon, there was a pause in the
 18 proceedings.)
 19 MR. KISE: Can you here me now?
 20 THE COURT: Yes. I hope every else can. As long
 21 as there's no feedback. I'm already getting enough
 22 feedback about this case.
 23 MR. KISE: Certainly, your Honor. You can hear
 24 me your Honor, now?
 25 THE COURT: Very well.

Opening Statement by Mr. Kise Page 32

1 MR. KISE: Okay. Thank you. Sorry about that.
 2 As you know I'm not, technologically, the wizard.
 3 So, I'm going to make an opening statement on
 4 behalf of most of the defendants. As we have done in the
 5 past, Mr. Robert is going to add a few comments on behalf
 6 of his clients.
 7 So, you heard an interesting story from the
 8 government. Needless to say, we have a very different
 9 picture of the evidence. We think that the evidence is
 10 going to establish many things, and often we are looking at
 11 the same evidence, and often we are looking at different
 12 evidence, but in sum, we think it's going to establish many
 13 things very different than what the government has laid
 14 out.
 15 At the outset, I also -- at the outset of the
 16 trial, your Honor, I do want to renew our objection on the
 17 limitations issues, and the disgorgement. That is, the
 18 introduction of evidence prior to the July 13, 2014 cutoff
 19 date. I think the 2011 loan discussions that Mr. Wallace
 20 just referenced would fall within ambit of that. I realize
 21 that opening statements are not evidentiary, but I want to
 22 just make sure it's clear, on the record. I don't mean to
 23 burden the Court with the objection, but I will, on that.
 24 Same with disgorgement. We just renew our objection with
 25 regard to the disgorgement evidence.

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Opening Statement by Mr. Kise Page 33

1 What we think the evidence is going to establish,
 2 and we think it will be very clear, a few things. First,
 3 that President Trump has made billions of dollars building
 4 one of the most successful real estate empires in the
 5 world. It is one of the most highly-successful brands in
 6 the world, and he has made a fortune, literally, being
 7 right about real estate investments. That consists of
 8 trophy properties that have very little debt, and an
 9 exceptional operating track record.

10 The claims here, just to place them in context,
 11 they involve a handful of loan transactions. They were all
 12 successful and profitable loan transactions. That's what
 13 the evidence is going to show this Court. There were no
 14 late payments. There were no missed payments. The loans
 15 were all paid back, timely, and the banks made well over
 16 \$100 million in interest.

17 The statements that you have heard so much about,
 18 the statements and certifications, were submitted in
 19 connection with those loan transactions. They represent a
 20 fraction of the overall business operations and business
 21 empire, but they were submitted specifically in connection
 22 with those loan transactions. Only the specific parties to
 23 those transactions made any submissions. The evidence is
 24 going to demonstrate that this is a very compartmentalized
 25 process. The certifications, when they were made, were

Opening Statement by Mr. Kise Page 35

1 evidence that the government really points to is the
 2 evidence from a serial liar. A serial liar, an individual
 3 who has lied to everyone he has ever come in contact with,
 4 and he has lied to the courts; he has lied to congress; he
 5 has lied to anyone and everyone he has come in contact
 6 with, but the government hinges its proof on conspiracy, of
 7 agreement to conduct a conspiracy, on a serial liar. We
 8 think the evidence will ultimately demonstrate, that's a
 9 fallacy.

10 In sum, the evidence is going to demonstrate that
 11 there was no intent to defraud; there was no illegality;
 12 there was no default; there was no breach; there was no
 13 reliance by the banks; there were no unjust profits; and
 14 there were no victims.

15 So first, just to place this in context, I'm not
 16 going to go through every loan agreement, but as I
 17 mentioned, we are talking about specific transactions. We
 18 are talking about specific loan agreements that fall within
 19 the appropriate statute of limitations period, and as you
 20 can see just from this cover example, this is a specific
 21 agreement between specific parties. Here, it's Trump Old
 22 Post Office, LLC and Deutsche Bank Trust Company America.
 23 It's one of the most sophisticated international banks in
 24 the world.

25 Their agreement, the evidence is going to show,

Opening Statement by Mr. Kise Page 34

1 true and accurate. The loan covenants were not violated.
 2 The statements were true and accurate in all material
 3 respects, a point that your Honor made, that materiality is
 4 a key component of what we are going to prove.

5 There were no false entries in records.
 6 Materiality has not been decided, so I would disagree with
 7 the government, that anything has been decided with respect
 8 to materiality. Materiality is going to be proven at
 9 trial, and they are going to be held to that proof. There
 10 were no false entries, because if they are not materially
 11 false, they are not false.

12 The statements complied with G.A.A.P, and the
 13 valuations were derived under what you heard so much about,
 14 and we are going to talk about, briefly, ASC 274. The
 15 statements had valid and obvious disclaimers negating
 16 intent. This goes to intent, materiality and reliance. I
 17 understand the judge's -- your ruling on summary judgment,
 18 but now we are talking about intent, we are talking about
 19 materiality, and we are talking about reliance, and those
 20 valid and obvious disclaimers, the evidence is going to
 21 establish, negate these elements.

22 The banks themselves conducted their own
 23 independent valuation analysis. The evidence is going to
 24 show that, as well. There's no credible evidence of
 25 agreement, a necessary element of conspiracy. The only

Opening Statement by Mr. Kise Page 36

1 was negotiated by top tier counsel. It provided protection
 2 and remedies for the banks. It provided the banks certain
 3 rights. It also made certain representations on behalf of
 4 the borrower. But this document, and a similar document,
 5 the loan agreement between Ladder Capital Finance and
 6 40 Wall Street, LLC -- again, a complex private agreement
 7 between very specific parties, another sophisticated
 8 lending institution, negotiated by top tier counsel --
 9 these agreements are what have and should, as the evidence
 10 will show, govern the relationship between the parties.

11 There are specific representations that were made
 12 by specific parties, and they relate to, as you can see
 13 from the example -- this is an example from the May 2016
 14 Statement of Financial Condition, the certification to
 15 Deutsche Bank.

16 (Continued on the next page.)

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1 MR. KISE: Importantly, it points out, as Mr.
 2 Wallace noted, it represents fairly, in all material
 3 respects, the financial condition of the guarantor at the
 4 time period presented.
 5 This is important because if the statements were
 6 not materially false then this certification does not
 7 constitute any evidence of any violations, of either
 8 63(12) or the underlying criminal statutes, that are
 9 being presented, and, I don't think, again, that that has
 10 been decided.
 11 Materiality is an important question that needs
 12 to be decided by this Court in this proceeding. The
 13 statements were materially accurate. First, the evidence
 14 is going to show that all the statement values comply
 15 with GAAP and ASC 274. That is a very important point
 16 with respect to intent and materiality, that all the
 17 valuations were derived in compliance with ASC 274.
 18 Importantly, that all of the statements and the
 19 associated Independent Accountant's Compilation Board
 20 incorporated unequivocal disclaimers placing the user on
 21 notice as to reliance. This evidence will go directly to
 22 intent. This evidence will go directly to materiality
 23 and directly to reliance.
 24 So, the governing standard is, as I've been
 25 saying, Accounting Standards Codification 274, ASC 274.

Opening Statement - Defendant/Kise Page 39

1 about. You went between 2015 and 2016 from a period
 2 active development -- that's the plain course of action
 3 for the property -- to a different approach, which is a
 4 conservation easement. Those are fundamentally different
 5 ways to look at property.
 6 One is active valuation for active development.
 7 The other is for purpose of conservation. There's all
 8 sorts of rules that govern how you calculate the value of
 9 the property for conservation easement versus how you
 10 value for active development.
 11 So, while the government intends to introduce
 12 evidence, clearly from their opening, that that change
 13 was somehow sinister, that there was some nefarious
 14 intent, there was no nefarious intent. It simply
 15 reflects the change in a complex, sophisticated real
 16 estate development organization where you move from
 17 active development to a conservation easement approach.
 18 All acceptable under ASC 274, the evidence will show.
 19 The ASC 274 approved methods do not hinge
 20 substantially on current market conditions but focus on a
 21 long-term perspective. That is current value. It is not
 22 intended to be a market value model. Importantly,
 23 appraisals are simply not the only appropriation
 24 valuation method.
 25 The 40 Wall Street example you heard Mr. Wallace

Opening Statement - Defendant/Kise Page 38

1 The evidence is going to show that personal financial
 2 statements shall present assets and their estimated
 3 current values and that ECV, estimated current value, is
 4 not the same as fair value or market value, that there is
 5 great latitude in valuation methodology. There is no one
 6 generally accepted procedure in determining the estimated
 7 current value. It does not require a specific method to
 8 be used and there are many ways to value assets and all
 9 are accurate and acceptable, even if they yield different
 10 results.
 11 So, the statements fit within ASC 274. Now,
 12 we're talking about intent materiality, reliance. Those
 13 statements fit within ASC 274. There may be wide
 14 variations between different valuations, but, if comport
 15 with ASC 274 that alone we believe the evidence
 16 demonstrates intent. It certainly negates materiality.
 17 In accordance with this wide latitude,
 18 specifically, the provision that I have up there ASC
 19 274-10-556 provides one of the myriad available bases for
 20 determining the value of property and, as you can see,
 21 the evidence is going to show us that one of those ways
 22 is the net realizable value of the property placed on
 23 planned courses of action.
 24 This evidence is going to speak directly to the
 25 Seven Springs example that Mr. Wallace spoke so much

Opening Statement - Defendant/Kise Page 40

1 speak about, again, back to an appraisal. The government
 2 continues to try and convince the Court that that's the
 3 only appropriate methodology. ASC 274 simply does not
 4 provide that, that we don't have to rely necessarily on
 5 appraisals, and, it's not dispositive. There are many
 6 ways and, as long as, again, the valuations fit within
 7 the confines of GAAP and ASC 274, there can be no intent.
 8 There can be no material departure.
 9 We believe that the evidence will show both of
 10 those things. The compliance with ASC 274 will
 11 demonstrate no intent to defraud, and compliance with ASC
 12 274 will demonstrate no material inaccuracies.
 13 The Court will hear, finally, from Professor Eli
 14 Bartov, at the NYU Stern School of Business. Professor
 15 Bartov, among other things, will present evidence
 16 relating to these points on ASC 274, that there is no
 17 such thing as objective valuation in GAAP.
 18 That valuation is an opinion about price and is
 19 subjective, and, which valuation methodology to choose
 20 and which assumptions to apply, depends on many, many
 21 factors. So, estimated current value under ASC 274,
 22 you'll hear him testify, places very little weight on
 23 current market conditions.
 24 That evidence is important, irrespective of the
 25 Court's decision on summary judgment, because it goes to

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1 intent. It goes to materiality and, ultimately, we say
 2 all of it goes to reliance. Again, compliance with ASC
 3 274 and GAAP negates essential elements and, the evidence
 4 will show, negates essential elements of the People's
 5 case.
 6 The Court will also hear from Professor Laposa,
 7 who will testify about the fact that disagreements,
 8 essentially, as to SOFC valuations does not establish any
 9 fraud. There are disparate but legitimate valuations of
 10 specific property that co-exist. The mere existence of
 11 these disparate valuations for a given property does not,
 12 in itself, establish any specific valuations as
 13 inaccurate, inflated or, as we would say, intentionally
 14 fraudulent.
 15 This is the essence of the commercial real
 16 estate market place. Buyers have a view. Sellers have a
 17 view. Banks have a view. None of them are wrong.
 18 They're just different. When a seller or owner of a
 19 property takes the position and presents his or her
 20 opinion of the value of that property and discloses the
 21 nature of that valuation and presents that, in accordance
 22 with Generally Accepted Accounting Principles and ASC
 23 274, there can be no intentional fraud. There can be no
 24 material departure, and, there certainly is no reliance.
 25 The statements, as you will hear Professor

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1 read out of the certificate.
 2 The guarantor made that representation. The
 3 guarantor did not say this is absolutely, positively
 4 inaccurate. This is in accordance with a specific
 5 appraiser's view of the property. This is in accordance
 6 with a specific objective for the property.
 7 What the guarantor said in that certification is
 8 that the foregoing presents fairly, in all material
 9 respects, the financial position of the guarantor of the
 10 period presented, and that is a holistic concept. That
 11 is not an asset-by-asset concept. GAAP also incorporates
 12 materiality and does apply material items.
 13 You'll hear from Professor Bartov. None of the
 14 items on the statement identified by the Attorney General
 15 as statements or omissions were departures from GAAP.
 16 Any such items were, therefore, immaterial from the
 17 viewpoint of the sophisticated bank and underwriters who
 18 received the statements.
 19 The Independent Accountant's Compilation Report
 20 and the statement notes are a unified presentation. This
 21 is the disclaimers that you've heard so much about.
 22 Here, again, they are fundamental to our concept of
 23 intent, materiality, and reliance.
 24 Mr. Flemmons, a former SEC chief accountant will
 25 testify that AICPA standards dictate that the Independent

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1 Bartov testify, are the beginning, not the end, of a
 2 complex and highly subjective valuation process that
 3 users, like banks, sophisticated banks, and insurance
 4 companies, engage in as they perform their own due
 5 diligence.
 6 Banks and insurers know that the statements are
 7 estimates. They're not designed to be absolutes, and,
 8 again, when the statements comply with GAAP, when they
 9 comply with ASC 274, that negates fully any claim of
 10 intentional fraud.
 11 Materiality is an essential element, as the
 12 Court has recognized and the statutes make clear. Two
 13 examples of the statutes that are at issue here. The
 14 issuance of a false financial statement occurs when
 15 something is inaccurate in a material respect.
 16 Insurance fraud occurs when there's some -- any
 17 statement containing the materially false information. We
 18 believe the evidence will show, based on what I've said,
 19 and beyond, that there is no material inaccuracy. There
 20 is no materially false statement.
 21 The Compliance Certificate, as I observed
 22 earlier, using that example, also demonstrates the
 23 importance and significant centrality of materiality.
 24 The foregoing presents fairly, in all material respects.
 25 That material inaccuracy is the standard. That cannot be

Opening Statement - Defendant/Kise Page 44

1 Accountant's Report and Statement of Financial Condition
 2 are issued together and mutually dependent. Those
 3 statements are not relied upon in a vacuum. They must be
 4 reviewed in concert with the Accountant's Report, that
 5 the two are issued together, cross-reference each other
 6 and, therefore, could not reasonably have been viewed by
 7 users as separate documents that were not dependent on
 8 each other.
 9 So, taking just the statement notes, setting
 10 aside the Independent Accountant's Compilation Report,
 11 just taking the statement notes. The evidence will show,
 12 among other disclaimers, there were clear, bright lines
 13 presented to the users, in this case, the sophisticated
 14 banks and insurance companies.
 15 Considerable judgment is necessary to interpret
 16 market data and develop the related estimates of current
 17 value. Accordingly, the estimates presented herein are
 18 not necessarily indicative of the amount that could be
 19 realized upon the disposition of the assets or payment of
 20 the related liabilities. I'm going to come back to that
 21 in a minute.
 22 The use of different market assumptions and/or
 23 estimation methodologies may have a material effect on
 24 the estimated current values that you heard so much
 25 about. So, right here, in the statements, the statements

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1 themselves, not even the Mazars compilation report-- I'll
 2 get to that but right here in the statement, the evidence
 3 is going to show the statements prepared by certain of
 4 the defendants place the user, any user, on notice that
 5 the amounts are not necessarily indicative of the amounts
 6 that could be realized upon the disposition of the
 7 assets, that the use of different market assumptions and
 8 estimation methodologies may have a material effect on
 9 estimated current value.

10 The bank will tell you, like in all
 11 transactions, this very standard in sophisticated
 12 commercial real estate transactions. The recipient of
 13 individual financial statements understand there's not an
 14 intentional defrauding. It's simply the opinion of the
 15 owner of the property and they are on notice to do their
 16 own due diligence.

17 The Independent Accountant's Compilation Report
 18 disclaimer-- this was the Mazars' letters that
 19 accompanies the statements which, as I said, the evidence
 20 will show, are read together. Users of this financial
 21 statement recognize that they might reach different
 22 conclusions about the financial condition of Donald J.
 23 Trump.

24 It's not possible to state it any more clearly;
 25 and, we think the evidence will show that the banks

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1 understood it fully. The evidence will show that the
 2 disclaimers alone establish that there was no requisite
 3 intent, that there were no material departures, and there
 4 was no reliance. The disclaimer is important. We told
 5 the banks what was being provided and also, importantly,
 6 what wasn't being provided, meaning, we're not providing
 7 you with absolutes. We're not providing you with audited
 8 financial statements.

9 We're telling you these are our estimates of
 10 current value in accordance with ASC 274 but that you
 11 might reach different conclusions, that the assumptions
 12 we made may not be assumptions you make. So, they notify
 13 users of the statements like Deutsche Bank, like Zurich,
 14 that they need to conduct their own analysis.

15 As Professor Bartov will testify, the
 16 disclaimers put sophisticated users of the statements,
 17 like Deutsche Bank, on complete notice to perform their
 18 own due diligence which, as you will observe and the
 19 banks themselves will, a sophisticated user like Deutsche
 20 Bank would have performed anyhow in the absence of those
 21 disclaimers.

22 The evidence will show that the banks are
 23 required to conduct their own independent underwriting
 24 analysis, and, the evidence will show they, in fact, did
 25 perform that analysis. One example, if you look just as

Opening Statement - Defendant/Kise Page 47

1 the 2014 credit memo. This credit memo relates to the
 2 OPO loan that-- the Old Post Office loan from the
 3 original slide that I pointed out, the transaction that
 4 closed in August of 2014.

5 The evidence is going to show, clearly, and
 6 there are a number of these credit memos, but I'm using
 7 this as an example. The evidence will show, clearly, the
 8 level of detail that the bank conducted in its own
 9 underwriting analysis, that they took the numbers
 10 provided by the borrower and, as you can see clearly,
 11 they dissected those numbers and came up with their own
 12 estimates.

13 So, in the 2012 year, the client reported number
 14 was 4.5 billion as net worth. The bank adjusted number
 15 was 2.4 billion. In 2013, similar result. The client
 16 reported, the borrower reported was 4.9 billion net worth
 17 and the bank adjusted number was 2.6 billion, yet the
 18 bank proceeded with these loans. They conducted this
 19 sophisticated underwriting analysis. They determined
 20 there was a \$2 billion delta, \$2 billion difference
 21 between what the borrower was reporting and what their
 22 own valuation experts determined. Yet, they proceeded
 23 anyway. They conducted their own risk analysis.

24 As I said, this is the heart and sole of
 25 commercial real estate lending. This is what happens

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1 every day in the city, and, these numbers that are
 2 provided by the owner in accordance with GAAP and in
 3 accordance with ASC 274 are presented as their evidence.

4 The bank did an even deeper dive on certain
 5 properties. As this page reflects, the bank conducted a
 6 much more in-depth analysis of what it described as four
 7 trophy properties. Again, others, other than the
 8 defendants, believe their properties are trophy
 9 properties. They are Trump Tower, Niketown, 40 Wall
 10 Street, and Trump Park Avenue.

11 As you can see, the bank conducted -- this is a
 12 summary of the analysis the bank conducted but the bank
 13 did its own detailed number analysis and right there on
 14 line four: The valuations for each of these properties
 15 were discussed with Deutsche Bank's Valuation Services
 16 Group.

17 The evidence will show that's the valuation
 18 group within Deutsche Bank that's responsible for
 19 conducting independent analyses of collateral,
 20 independent analyses of properties.

21 They advised on adjustments for each property.
 22 As the evidence will reflect, they conducted their own
 23 analysis. For example, on 40 Wall Street, the borrower
 24 had a valuation of \$530 million. Deutsche Bank's own
 25 independent underwriting analysis estimated the value at

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1 \$500 million. Both of those numbers, the evidence will
 2 show, will differ from other appraisals and other
 3 valuations. That doesn't make the bank's number
 4 fraudulent any more than it makes the defendant's number
 5 fraudulent.
 6 Everyone has a different opinion as to value.
 7 That is the sum and substance of the evidence; and, as
 8 long as those opinions are formulated in a way that
 9 comply with ASC 274 and GAAP and they're presented
 10 appropriately, there can be no intent. There can be no
 11 materiality; and, here, particularly with the disclaimers
 12 and with the evidence that will be-- the record will be
 13 replete with, of independent analyses done by the user,
 14 by Deutsche Bank, there can be no reliance; but, the
 15 Court not need take the defendant's word for this.
 16 The evidence will include testimony from actual
 17 individuals involved in the loan decisions, the very
 18 decisions that the Attorney General is disputing, the
 19 very transactions that the Attorney General is focusing
 20 on.
 21 These individuals are Thomas Sullivan, David
 22 Williams, Emily Pereless and Rosemary Vrablic, all of
 23 them were involved in the loan decisions. All of them
 24 were involved, in some shape or fashion, in the process
 25 by which Deutsche Bank engaged in conducting its own

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1 analysis and in reaching conclusions.
 2 They will testify that Deutsche Bank conducted,
 3 as they're required to, their own independent risk
 4 analysis, that they did not rely on the statements. They
 5 will testify that the valuation disparities are not
 6 falsity or fraud, not evidence of any intent to defraud.
 7 Indeed, their own independent analysis, as I
 8 noted, demonstrated a \$2 billion difference between the
 9 client reported and their own numbers, \$2 billion
 10 difference. Yet, they proceeded with the transaction.
 11 They were eager to proceed with the transaction, wisely
 12 so, because they made well over \$100 million in interest.
 13 They made a good risk/benefit calculation.
 14 The evidence will show that is exactly why they
 15 did, what they did, and that is how they proceeded. They
 16 fully anticipated that the statements provided by the
 17 borrower were going to be different than their values,
 18 and, their testimony will demonstrate and reflect their
 19 view that the statements were not misleading.
 20 The bank officers will also testify that
 21 President Trump was overqualified for the sub-loans, that
 22 his net worth far exceeded the minimum required to be a
 23 private wealth customer. The Attorney General presents,
 24 as evidence that they intend to present, as evidence of
 25 motive, that somehow the defendants were seeking access

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1 to loan terms that they couldn't otherwise obtain; but,
 2 the testimony of the bank officers, themselves, involved
 3 in the transaction, will demonstrate that President Trump
 4 was overqualified for these loans, by far.
 5 Their testimony also will reflect that President
 6 Trump didn't violate the loan agreements by making the
 7 certifications that President Trump did not default, that
 8 President Trump did not make any false statements, and,
 9 that the alleged valuation disparities in the statements
 10 did not impact the loan approval or pricing; and, the
 11 testimony of the Attorney General's expert is beyond
 12 speculative in that regard.
 13 There's no actual connectivity between what the
 14 bank's independent sophisticated risk analysis was and
 15 the basis for the disgorgement. They're fundamentally
 16 disconnected, and, we believe the evidence will
 17 demonstrate there is a fundamental lack of proof on any
 18 of the disgorgement claims, particularly the evidence of
 19 their purported expert.
 20 So, the summation of what the evidence will
 21 establish is, as you've heard me say repeatedly, the
 22 statements were materially accurate. They complied with
 23 GAAP, ASC 274. There's, therefore, no evidence of intent
 24 to defraud. The compliance with the acceptable governing
 25 standards and the adherence to those standards

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1 demonstrates that-- will demonstrate that the defendants
 2 had no intent to defraud.
 3 There's also no evidence of any agreement, an
 4 essential element of conspiracy claim, other than, as I
 5 mentioned, from the serial liar, Mr. Cohen. The evidence
 6 will establish there was no breach, no late payments, no
 7 defaults. The banks profited minorly from their
 8 sophisticated risk-benefit analysis, that those
 9 sophisticated banks and insurers were never mislead about
 10 anything. Importantly, that the disclaimers notified the
 11 users to conduct their own independent underwriting
 12 analysis in clear terms, fully negating intent.
 13 Anyone intending to defraud does not say to the
 14 other side, please conduct your own analysis. No, we put
 15 them on notice, fully on notice through those
 16 disclaimers. The language is unequivocal. The evidence
 17 will suggest there is no unjust benefits or profits of
 18 the defendants. They were fully overqualified for the
 19 loan.
 20 The bank's independent underwriting analysis is
 21 what created the pricing and loan terms, not the
 22 Statements of Financial Condition and certainly not the
 23 certifications, which came long after, in most cases, the
 24 loans that the Attorney General seeks to render at issue
 25 here, despite the clear bar of the Statute of

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1 Limitations.
 2 In sum, there was no illegality. There was no
 3 fraud. There are no victims; and, we believe the
 4 evidence will demonstrate the Attorney General has no
 5 case.
 6 Thank you.
 7 THE COURT: I just want to ask you two things.
 8 You said, I think twice, that the banks were required to
 9 do due diligence. Required by who or what?
 10 MR. KISE: You'll hear from their experts. Mr.
 11 Unell will come in to testify about the applicable OCC
 12 regulations. That's testimony we think, frankly, should
 13 have been incorporated in the summary judgment process.
 14 Respectfully, I understand it wasn't but, certainly, that
 15 testimony is going to be very poignant and very
 16 significant here.
 17 THE COURT: I think you suggested that under
 18 Executive Law Section 63(12) disgorgement is not
 19 available as a remedy.
 20 Is that your position?
 21 MR. KISE: I preserve that as an objection. I
 22 understand your Honor's ruling fully. I just didn't
 23 preserve that as an objection but yes. Given your
 24 Honor's ruling, we'll certainly speak to that evidence
 25 that the Attorney General intends to present. We'll

Opening Statement by Ms. Habba Page 55

1 THE COURT: Tommy's announcements are probably
 2 pretty loud for you. If you are standing right next to
 3 him, it's deafening.
 4 Can I see just the attorneys for 60 seconds?
 5 Come on up to the bench.
 6 (Whereupon, an off-the-record discussion took
 7 place at the bench.)
 8 THE COURT: Do defendants have other opening
 9 statements from other clients?
 10 (Whereupon, there was a pause in the
 11 proceedings.)
 12 MS. HABBA: No feedback?
 13 THE COURT: No feedback.
 14 MS. HABBA: I have a feeling my voice will boom
 15 anyway.
 16 How are you, your Honor?
 17 THE COURT: I'm good. How are you?
 18 MS. HABBA: Well, we have been doing this for
 19 three years. I first want to say that I incorporate
 20 everything my colleague said, and Cliff Robert will speak
 21 after me, on behalf of the children. As you know, I
 22 represent other individuals in this case, Alan Weisselberg
 23 Jeff McConney, the President, and certain entities of the
 24 Trump Organization.
 25 I will start by saying that I wasn't planning to

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1 rebut that evidence directly.
 2 THE COURT: I'm not talking about evidence. I'm
 3 talking about point of law and it's not a question as to
 4 what I ruled on. It's a question of what the First
 5 Department, maybe the Court of Appeals, has been saying.
 6 There's case law that says disgorgement is an
 7 available remedy in a 63(12) case. Isn't that what the
 8 law says?
 9 MR. KISE: We respectfully disagree with your
 10 Honor. We'll take that up with the Appellate Court. I'm
 11 not belaboring the point, and, I'm just making note that
 12 we had that legal objection, and, when the time comes,
 13 we'll make minor objections that we need to to preserve
 14 our Appellate record and we will move on.
 15 THE COURT: Thank you.
 16 MR. KISE: Thank you.
 17 THE COURT: We've been going for an hour and
 18 40 minutes. I believe a lot of you have been sitting
 19 here for a lot longer than that. I said one of the few
 20 things I'd say is, let's take a ten-minute break.
 21 (Recess taken.)
 22
 23 (Continued on the following page..)
 24
 25

Opening Statement by Ms. Habba Page 56

1 speak today until I saw what the attorney general said
 2 outside, and when I saw the presentation that was just put
 3 on by Mr. Wallace.
 4 First, I want to say that this case was brought
 5 prior to the Attorney General sitting in office, as we
 6 know. That is part of this case, unfortunately, because it
 7 is a public case, as your Honor has astutely said. That's
 8 why we have press here. That's why we are all sitting
 9 here, right now, three years later. This case could have
 10 been brought before.
 11 I would like to start with some -- I'm going to
 12 go through Mr. Wallace's testimony first, but before I do
 13 that, I just want to remind everyone that Ms. James said
 14 that she was going to come into the Attorney General's
 15 office, and she was going to get Trump. She was going to
 16 go to work, get Trump, and then go home. This is a case
 17 brought by the Attorney General, so it is part of this
 18 case.
 19 Michael Cohen's testimony was played by
 20 Mr. Wallace.
 21 Thank you for playing that, actually.
 22 I look forward to having Mr. Cohen take the
 23 stand, because when he takes the stand, I'll play the rest
 24 of the testimony where Michael Cohen, who is a convicted
 25 felon, who is a liar, by the Southern District of New York,

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1 said that the Statement of Financial Condition took three
 2 days, from start to finish. He said that the Statement of
 3 Financial Condition, he did with Alan Weisselberg alone,
 4 and that will be played, as well.
 5 So, thank you for your part, but I will be
 6 putting on mine.
 7 The Attorney General's office would like you to
 8 believe that Donald Trump and his family had a conspiracy.
 9 When they put in their Statement of Financial Condition,
 10 there were -- let's talk about their worth. If Donald
 11 Trump and his family wanted to put in a conspiracy, wanted
 12 to defraud banks, as the Attorney General's Office would
 13 have you believe, then there would have been brand. There
 14 would have been the rights to The Apprentice. There would
 15 have been the same brand that got that man elected for
 16 president.
 17 Now, there's lot of people in this room that
 18 probably don't like that, and I believe that's why we are
 19 here. But, it's a fact. We are attacking a sitting
 20 president, and two of his children, and his employees, for
 21 a Statement of Financial Condition which is, frankly, worth
 22 less than what they are worth.
 23 These are sophisticated lenders, your Honor. To
 24 prove their case, they have to show that there was intent
 25 to defraud lenders. These lenders are Deutsche Bank. They

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1 to hear about this: When you have a home, and you ask for
 2 your tax assessment, no one is giving that top dollar.
 3 That's not accurate. The value is the value, and the value
 4 of anything -- and they teach this, actually, at HBS, and
 5 at many other schools. They say, the value is what someone
 6 is willing to pay.
 7 The Trump properties are Mona Lisa properties,
 8 your Honor. So, I'll submit that while you want to look at
 9 a tax document, we have experts, renowned experts, who have
 10 said that properties like Mar-A-Lago are worth over a
 11 billion dollars, \$1.5 billion, and I assure you that there
 12 is a person out there that would buy that property, that
 13 spectacular property, for way over a billion dollars. That
 14 is not fraud. That is real estate.
 15 Further, I would like to talk about the one thing
 16 that the AG conveniently didn't bring up: WeiserMazars.
 17 Let's discuss Weiser. WeiserMazars is a very well-known
 18 accounting firm in the State of New York. WeiserMazars, in
 19 their own, in their own agreement with the Trump
 20 Organization stated, and I'm going to read it in, "Our
 21 record will include the following," I quote, "Because the
 22 significance and pervasiveness of the matters discussed
 23 above make it difficult to assess their impact on the
 24 Statement of Financial Condition, users of this personal
 25 financial statement should recognize that they may reach

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1 are major. We have other lenders we will go through, and
 2 I'll let my colleague go through it in excruciating detail,
 3 but let me be clear: These lenders made money. They made
 4 money. They were not defrauded, and there is no American
 5 in this country that has ever given a value of their
 6 property to a bank for a loan, and had it be taken at face
 7 value. And frankly, if that ever is the case, then those
 8 banks should be investigated, not the individuals that
 9 valued their great companies, frankly, at less than what
 10 they are worth.
 11 Let me give you a few examples, your Honor. You
 12 pointed out, in your summary judgment order, that
 13 Mar-A-Lago was worth \$18 million. How? How is that
 14 possible?
 15 Now, I know Ms. Greenfield is probably writing
 16 you a note right now to say that that is a tax assessed
 17 value, so let me just get right to that. A tax assessment
 18 is different than the market value of the property, and I
 19 want the press to understand that, your Honor, and I
 20 want -- I hope that by the end of this hearing, I truly
 21 hope that you can have an open mind and hear that that is
 22 the case.
 23 They are conflating issues. They are saying that
 24 when you go for a tax assessment -- and I ask your Honor,
 25 and I ask all the American people that are, frankly, going

Opening Statement by Ms. Habba Page 60

1 different conclusions about the financial condition of
 2 Donald J. Trump if they had access to a revised Statement
 3 of Financial Condition prepared in conformity with
 4 accounting principles generally accepted in the United
 5 States of America."
 6 I know what everyone is thinking. That's the
 7 retainer with Trump; okay? Let's talk about what was given
 8 to the banks. What was -- like, this Statement of
 9 Financial Condition. What was given? Here is the cover
 10 page. Page one after the cover page is one page with a
 11 disclaimer stating, "Because the significance and
 12 pervasiveness of the matters discussed above make it
 13 difficult to assess their impact on the Statement of
 14 Financial Conditions, users of this personal financial
 15 statement should recognize that they might reach different
 16 conclusions about the financial condition of Donald J.
 17 Trump if they had access to a revised Statement of
 18 Financial Condition prepared in conformity with accounting
 19 principles generally accepted in the United States of
 20 America."
 21 So, what happened? There was an investigation of
 22 Mazars, or the AG reaches out to Mazars and puts them under
 23 pressure, and we get a statement saying that they no longer
 24 can represent the Trump Organization. But that same
 25 statement that we received -- and I was there the day we

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1 received it -- stated that they could not articulate any
 2 flaws that the Trump organization had done. And why is
 3 that? Because Donald Bender, who will take the stand as
 4 their first, first representative, their strongest guy,
 5 Donald Bender will have you believe that, as the accountant
 6 who acted effectively as the in-house accountant for this
 7 organization, his hands are clean.
 8 He had unfettered access, your Honor. We'll ask
 9 him what he did, and we'll prove that he had unfettered
 10 access to the Trump organization. He could come in, he
 11 could go out. He could get on the computers. We didn't
 12 even monitor when he was on, looking through the records.
 13 And your Honor, you and I went through, as you recall, back
 14 in the special proceeding, when I gave over thousands of
 15 documents, thousands, when we opened up the Trump
 16 organization, when we opened up his homes and we were
 17 willing to cooperate, and did, and there was nothing that
 18 turned up that was in direct conflict of what I'm saying
 19 now.
 20 So, the Attorney General is going after kids, and
 21 I'll let Cliff, who represents the kids, go to that, but I
 22 will also say that their representation that a phone call
 23 with an accounting department asking for status of zoning,
 24 is not a conspiracy. It's doing business. Anybody with
 25 real estate understanding -- and I personally come from a

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1 believe -- well, first, before I do that, I do want to
 2 thank you, your Honor, for one thing you said when you
 3 opened up, which was explaining to the press, the jury
 4 issue, because I personally have been dealing with that
 5 myself, and 6312, and the fact that we don't have a jury,
 6 and I know my client did want a jury. I want to say that.
 7 But we have addressed that, and I appreciate that you
 8 clarified, for the Court. So thank you, for that, from me.
 9 THE COURT: You're welcome.
 10 MS. HABBA: Well, these are sophisticated banks.
 11 These are sophisticated lenders. They made over \$100
 12 million, and there was no intent to defraud. Period, the
 13 end. The disgorgement only came, which is what the
 14 Attorney General is asking for, after the Trumps sold the
 15 property that they undervalued for 250 more than was
 16 valued. That's when this case was brought, not two years
 17 ago. After the sale, and that's the number they picked.
 18 Why? Because if you look at the president and
 19 his family's worth, if you look at the Trump Organization
 20 and all the 850-plus people that work for that beautiful
 21 company, you will see that they have never overvalued. The
 22 Statement of Financial Condition was disclaimed. It was
 23 undervalued, in my opinion, and we'll prove that, through
 24 our experts, and the AG is setting a very dangerous
 25 precedent for all business owners in the State of New York.

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1 family of real estate, so I get this, but to the American
 2 people, to the people, maybe at the Attorney General's
 3 office, that aren't aware of how real estate companies
 4 operate, this is normal practice. The banks are aware, and
 5 the banks do their own values, and do their own
 6 investigations, and frankly, if they don't, then they are
 7 in violation themselves.
 8 More examples of properties that were
 9 undervalued. Doral. It was stated on the Statement of
 10 Financial Condition for \$350 million, your Honor. Anyone
 11 who follows golf knows that Doral has one of the best golf
 12 courses in the country. I've had the pleasure of visiting
 13 these properties, sir. They are not normal properties.
 14 Doral would sell for at least a billion dollars.
 15 Mar-A-Lago, at least a billion dollars. Look at OPO. OPO
 16 did sell for 100 million more than what was stated on the
 17 Statement of Financial Condition. Very point. Very point,
 18 sir. Ten times the value that was stated on the Statement
 19 of Financial Condition. Doral has 1500 units that have
 20 never been developed.
 21 The list could go on and on, because real estate
 22 is malleable, your Honor. Real estate changes. The values
 23 change, but there was absolutely no fraud, no intent to
 24 defraud, no conspiracy.
 25 I would just like to close by saying that I

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1 The State of New York, they would have you
 2 believe, if you believe your property is worth a million
 3 dollars and you list it on Trulia for \$1 million, but it
 4 sells for 800,000, then you, sir, should be here, and you
 5 should be disgorged of your profits, and that is a very
 6 dangerous time for our country, and this state.
 7 Thank you, your Honor.
 8 THE COURT: Ms. Habba, as you referenced, we have
 9 been dealing with, to use a slang term, each other for
 10 years, and if it's okay with you, and because we don't have
 11 a jury, or at least a formal jury, I would like to just go
 12 over a few of the things that you said. Is that okay?
 13 MS. HABBA: Of course, your Honor.
 14 THE COURT: One, this is not a question, you
 15 referred to Mr. Wallace's presentation as testimony.
 16 Opening statements are not testimony.
 17 MS. HABBA: Opening statement. Yes.
 18 THE COURT: It's just what you intend to prove.
 19 MS. HABBA: Yes. Well, I think part of it, your
 20 Honor, to be clear, was testimony. He played testimony
 21 from some of the witnesses.
 22 THE COURT: You are right.
 23 Next, you brought up the Attorney General's
 24 history, motivations, statements.
 25 MS. HABBA: Yes.

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1 THE COURT: You had moved to have the entire case
 2 dismissed because it's a, quote, witch hunt, which is what
 3 the press tends to call it, and I denied that, and I was
 4 affirmed by the First Department. So Ms. James'
 5 motivations are not an issue in this case any more; are
 6 they?
 7 MS. HABBA: Well, your Honor, actually I brought
 8 a case that was separate from this case against Ms. James
 9 for what I believe is constitutionally improper, improper
 10 by her office, and I do believe her statements out of court
 11 prior to having office, and claiming that she knows what
 12 goes on in the Trump Organization, are very important to
 13 this case. Unfortunately, it's become the fabric of this
 14 country, right now, that these out-of-court statements are
 15 part of the case.
 16 Ms. James sat on the court steps before coming in
 17 here. I didn't know she was going to do that, but that's
 18 part of the schtick, evidently, so I have to address it,
 19 and I do believe that that was improper on many levels. I
 20 withdrew that case. It was not dismissed.
 21 THE COURT: All right. We can go back and forth.
 22 MS. HABBA: Sure. Of course, your Honor.
 23 THE COURT: We have a few more points to discuss.
 24 The valuation of Mar-A-Lago, there were very significant
 25 easements on the ability to turn it into -- subdivide it

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1 THE COURT: I held one of the defendants in
 2 contempt. I fined him \$10,000 a day. It was vacated after
 3 11 days, and I was upheld on that, both the contempt
 4 finding, and the amount of the fine. So, I don't know why
 5 we are --
 6 MS. HABBA: Well, I just wanted to bring up the
 7 point, your Honor, that after these ten days, despite the
 8 fine, which, we obviously went through our procedure, you
 9 did recall that after those days, and after my diligent
 10 searches and my certifications, we never did find anything
 11 that was not previously revealed.
 12 THE COURT: Yes, that's right.
 13 MS. HABBA: So my point is, that goes to the good
 14 faith and the intent, your Honor.
 15 THE COURT: You never did find anything, but the
 16 contempt was because you didn't submit an affidavit that
 17 said who looked for what, when, where.
 18 MS. HABBA: And then I did, many times.
 19 THE COURT: And then you did. Well, but the
 20 defendant didn't. You did, I think. But, I don't think
 21 the defendant did.
 22 MS. HABBA: He did, actually, your Honor.
 23 THE COURT: I don't think he submitted an
 24 affidavit saying what he did, when, where, et cetera.
 25 MS. HABBA: Right.

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1 into residences, et cetera, and more importantly, I
 2 specifically said, in the summary judgment decision, I'm
 3 not valuing or evaluating properties. I believe that there
 4 was --
 5 Well, I wouldn't telegraph that, but please,
 6 Press, stop saying that I valued it at \$18 million. That
 7 was a tax assessment. Or, something in that range.
 8 There would have been issues of fact as to what
 9 the value was.
 10 MS. HABBA: Well, I think, your Honor -- if I may
 11 respond?
 12 THE COURT: Yes.
 13 MS. HABBA: I think that is an issue of fact, and
 14 the fact -- and I'll preserve, as my colleague said,
 15 everything on the Appellate Division, but the fact that you
 16 drafted a summary judgment motion saying that that was not
 17 an issue of fact is exactly what we are appealing, and
 18 we'll handle that on the Appellate Division.
 19 THE COURT: Okay. I didn't draft a motion. I
 20 drafted a decision.
 21 MS. HABBA: Yes, your Honor.
 22 THE COURT: You referred, perhaps obliquely, or
 23 maybe more directly, to the million pages of documents that
 24 were turned over.
 25 MS. HABBA: Yes.

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1 THE COURT: You said that at one point, just
 2 recently, values change. That's one of the big points in
 3 this case. You can't look at property ten years later and
 4 say, Well, now look what it's worth. These Statements of
 5 Financial Condition were current, current market value, so
 6 yes, values change, but the point of the Statements of
 7 Financial Condition is what were they worth then? What
 8 would a willing seller and willing buyer agree to?
 9 MS. HABBA: And if I may respond?
 10 THE COURT: Sure.
 11 MS. HABBA: Saying that the value of Mar-A-Lago,
 12 then or now, would be worth that -- and I obviously, again,
 13 on appeal, so I'm not going to litigate our case between
 14 you and me, and give my adversaries the benefit of hearing
 15 all of my arguments, but I think that we'll prove that,
 16 through our experts. We'll prove that at that time, they
 17 were undervalued, in many instances. As I noted, some of
 18 these properties are heavy undervalued, and we are
 19 forgetting the disclaimer, and also the fact that the Trump
 20 brand is worth something.
 21 And, I know that you addressed it in your summary
 22 judgment motion, and I'm not going to get into it now, but
 23 we cannot -- look, my point is this, your Honor, and I
 24 think that our case will show this: If this was a
 25 conspiracy, if we were trying to inflate his value, which

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1 is worth billions and billions and billions of dollars more
 2 than anything he ever took the loan out, and frankly, he
 3 was underleveraged, but if you were -- if they are trying
 4 to prove that, your Honor, that case falls flat on its
 5 face, just by looking at certain things that were not
 6 included.
 7 If that was the intent for Forbes magazine, then
 8 why wouldn't President Trump say, Put in the brand, put in
 9 The Apprentice rights, put in the Miss America, or whatever
 10 it was, Universe. Put all that in. Let's inflate it.
 11 That didn't happen, your Honor.
 12 THE COURT: The brand value, at least some of the
 13 Statements of Financial Condition specifically, expressly
 14 said, We are not including brand value. Is that the case?
 15 Right?
 16 MS. HABBA: And my point is it was not included,
 17 and if he had wanted to inflate, why wouldn't we?
 18 Never mind any of that, your Honor. Everything
 19 falls on its face when you look at the WeiserMazars
 20 disclaimer, and the sophisticated banks we are dealing with
 21 that did their own due diligence.
 22 And I just submit, your Honor, I don't want to
 23 litigate my case with you, only because of the prejudice
 24 that that could cause to my client.
 25 THE COURT: My final point is, the disclaimers,

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1 which understandably, the defendants make a big deal about,
 2 first of all, I believe that was part of both the motion to
 3 dismiss, and the motion for preliminary injunction. I
 4 ruled against that, as a defense. I was upheld both times,
 5 but I would just like to explain, basically, what the
 6 disclaimers, which were separate from the worth statements,
 7 but just talking about the disclaimers, the Mazars
 8 disclaimers basically said, We are not sure about all this,
 9 look to the Trump Organization, that's where we are getting
 10 these figures. So, they were anything but, you know,
 11 disclaimers, and you can't even make a disclaimer on behalf
 12 of someone else, so I just don't see it.
 13 MS. HABBA: Your Honor, I'm actually glad you
 14 brought that up. Did I may?
 15 THE COURT: Sure.
 16 MS. HABBA: Again, my experts, my colleagues, who
 17 are incredibly bright, they will go into excruciating
 18 detail with every witness, and we will bore everyone in
 19 this room at length for three months, but if I can just
 20 give you the high level of where I disagree with you on
 21 that, sir?
 22 THE COURT: Sure.
 23 MS. HABBA: It's that, these are compilations.
 24 We did not present the Statement of Financial Condition as
 25 an audited financial. Period, the end. They are

Opening Statement by Ms. Habba Page 71

1 compilations. And again, I go back to my Trulia example.
 2 No bank, no lender, takes somebody's value at a
 3 compilation, the lowest level. It's not audited. It
 4 doesn't proclaim to be. It doesn't proclaim to have been.
 5 It never did.
 6 But, on top of the fact that it's a compilation,
 7 they put the waiver on the front. On top of that, these
 8 banks came in and did their own due diligence. It was not
 9 us that did it.
 10 And, for what its worth, your Honor, we could go
 11 all day, I'm sure, and it would be great, but that is the
 12 crux of where I disagree with you.
 13 THE COURT: All right. Is it not the case that,
 14 in a layperson's terms -- and we have a lot of lay people
 15 out there -- the Mazars disclaimer was basically, We are
 16 relying on the Trump Organization?
 17 MS. HABBA: No, your Honor.
 18 THE COURT: That's how I read it.
 19 MS. HABBA: Well, frankly, the Trump Organization
 20 relied on Mazars to come in and do what they did, and they
 21 came in. Regardless, they are the accountants. They are
 22 the accountants, sir.
 23 THE COURT: Thank you.
 24 MS. HABBA: Thank you, your Honor.
 25 THE COURT: And we have at least one more opening

Opening Statement by Mr. Robert Page 72

1 statement by the defendants.
 2 (Whereupon, there was a pause in the
 3 proceedings.)
 4 MR. ROBERT: Can you hear me, Judge?
 5 THE COURT: Yes. That's pretty good, but keep
 6 your voice up.
 7 MR. ROBERT: Okay. Good afternoon, sir. I'll be
 8 very brief.
 9 First of all, I want to just say that I echo the
 10 statements of Mr. Kise, on behalf of my clients, Eric Trump
 11 and Donald Trump, Jr. We reserve all the rights and the
 12 objections that Mr. Kise has referenced, but what I want to
 13 spend my few moments here talking to you about, your Honor,
 14 is what I will respectfully submit that the evidence will
 15 show that my clients did in this case, but I actually
 16 think, more importantly, what the evidence will show that
 17 my clients did not do, in this case.
 18 I don't think it's going to come as a surprise to
 19 anyone in this courtroom that I vigorously, on behalf of my
 20 clients, disagree with just about everything Mr. Wallace
 21 said this morning, but there are two things that I actually
 22 do agree with him on, and I actually flagged them, and I
 23 put them in red on my pad, because I was shocked that I
 24 actually agreed with him about something, and what I agreed
 25 with him on were two concepts.

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Opening Statement by Mr. Robert Page 73

1 One, that in order for the Attorney General to
 2 win her case, she has to show repeated, persistent, illegal
 3 acts, and I respectfully submit to this Court, she will not
 4 be able to sustain that burden, especially as to Eric Trump
 5 and Donald Trump, Jr., and more importantly, what
 6 Mr. Wallace said is that you need to judge credibility.
 7 Mr. Wallace put it in the context of credibility of denial.
 8 Well, your Honor, it's credibility, in and of
 9 itself. You will be the finder of fact. You will hear
 10 testimony from Eric Trump. You will hear testimony from
 11 Donald Trump, Jr. You will hear them be cross examined by
 12 able counsel for the Attorney General, and you will then
 13 make a decision as to their veracity.
 14 In addition, you will hear testimony, as Mr. Kise
 15 set forth, from the witnesses of Deutsche Bank, and
 16 Deutsche Bank's testimony is going to be consistent in that
 17 there was never a material misrepresentation made by Eric
 18 Trump or Donald Trump, Jr. So, it's not going to just be
 19 the credibility of my clients. It's not just going to be
 20 the credibility of the president, when he testifies. It's
 21 going to be the credibility of people who were actually
 22 involved in the transactions, and I don't think that can be
 23 overstated.
 24 It's interesting. You know, when we do an
 25 opening statement, I think the first rule we learn is, you

Opening Statement by Mr. Robert Page 75

1 the 45th President of the United States in 2017, Eric and
 2 Don then continued to grow the business, Eric in an
 3 operational standpoint; Don expanding what the company was
 4 doing.
 5 But, as you are going to hear, and as the
 6 testimony from Eric Trump's deposition -- and I'll read
 7 from it, page 32, lines 17 and 18:
 8 "I was focused on pouring concrete, not
 9 accounting."
 10 Now, let's be clear. Eric Trump and Donald
 11 Trump, Jr. are not walking away from the Statements of
 12 Financial Condition. Let's be clear. There were no
 13 material inaccuracies. All of the statements and
 14 certifications signed by Donald Trump, Jr. and Eric Trump
 15 are clear that it talked about no material
 16 misrepresentations. This is not a situation where someone
 17 signs an affidavit, and they're attesting that every single
 18 fact in there is true.
 19 I would ask your Honor to think about it in terms
 20 of, it's no different from an affidavit where the affiant
 21 says, I believe the following to be true, in all material
 22 respects.
 23 That's what they did here, and it is clear, and
 24 our evidence will show, our experts will show, Mr. Kise
 25 went through, in painstaking detail, that they were not

Opening Statement by Mr. Robert Page 74

1 want to show the best part of your case because, you know,
 2 especially if there was a jury here -- which again, I agree
 3 with Ms. Habba, we were entitled to under 6312 -- but very
 4 often I'll tell a jury, it's kind of like a road map. I
 5 want to tell you where I'm going, and what I think the
 6 evidence is going to prove.
 7 Well, I think it's fascinating that in the
 8 Attorney General's opening, their major linchpin is Michael
 9 Cohen. Now, as the Court will hear, he is actually on
 10 their first -- I think the first six witnesses, maybe the
 11 first seven. So, when you talk about credibility, you are
 12 going to have a guy who lies to everyone; who is a
 13 convicted felon; who allocuted, very specifically in Judge
 14 Pauley's courtroom, which we can probably see if we look
 15 out the window, and he is a fixture of what their case is
 16 about.
 17 Now, they played you a snippet of Eric Trump,
 18 which quite frankly I thought was in incredibly poor taste,
 19 and really misleading. That snippet has to do with
 20 Mr. Trump honestly asking if he recalls a 2021
 21 conversation. What they didn't show is the rest of his
 22 testimony, where he goes through what exactly it is he does
 23 at the Trump Organization, and the fact that he and Donald
 24 Trump, Jr. spent their life working for their dad, learning
 25 from their dad. When their dad assumed the office of being

Opening Statement by Mr. Robert Page 76

1 materially -- there was nothing materially wrong with them.
 2 And again, you are not taking my word. You will
 3 take the word of an NYU Stern School of Business professor.
 4 You will take the word of a senior person who used to work
 5 at the SEC.
 6 (Continued on the next page.)
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Opening Statement - Defendant/Robert Page 77

1 MR. ROBERT: But even though we're not running
 2 away from these statements of financial condition, as I
 3 started my opening, I want to submit to you what the
 4 evidence will show my clients didn't do and there's no
 5 refuting it. There's not any amount of snippets Mr.
 6 Wallace can play, even taken out of context, that will
 7 disprove, one, they were not involved in the creation and
 8 preparation of the SOFC.
 9 Two, they did not assemble the backup for the
 10 SOFC. Three, they did not review the SOFC supporting
 11 data. Four, they did not perform the calculations used
 12 in the SOFC; and, five, they did not review those
 13 calculations after they were done. Others created and
 14 prepared the SOFC; and, for those years, when they signed
 15 documents dealing with financial matters, they relied on
 16 the work product of others, which is not anything that
 17 should come as a surprise to anyone, especially the
 18 People, when you're of a level of a company that
 19 Mr. Trump were, they weren't the ones with the green
 20 accounting hat ongoing through the mountain of documents
 21 in the backup.
 22 So, to suggest there is liability that can be
 23 attached to them, first of all, from the first
 24 foundational issue that there's nothing materially wrong
 25 with the statements and, second, the fact that they acted

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1 MR. KISE: I think this is-- your hypothetical
 2 represents the fundamental problem we have, respectfully,
 3 with the summary judgment order. You haven't heard the
 4 evidence. You haven't heard from Professor Bartov in
 5 person. You haven't heard from Mr. Unell. You haven't
 6 heard from Mr. Flemmons and I think you owe it to the
 7 defendants to listen to this evidence and understand
 8 exactly what I was saying. ASC 274 --
 9 THE COURT: The evidence, that would be
 10 argument. Mr. Bartov has evidence?
 11 MR. KISE: He does have evidence. His opinion
 12 on what the governing accounting standards are. I'm not
 13 an expert on governing accounting standards. I don't
 14 think the Court is. Respectfully, I don't think you're
 15 an expert on governing accounting standards.
 16 So, if you have an expert that comes in and
 17 tells you this is what the estimated current value is and
 18 that is how it's calculated. This is what is material or
 19 not, you can agree or disagree but at least give us an
 20 opportunity to have a trial where you hear this evidence
 21 and make those determinations, because, right now, we
 22 haven't gotten there and I would caution your Honor
 23 vigorously to -- I understand your hypothetical but I
 24 think under these circumstances there's a lot more to the
 25 story. There is a lot more layers to this.

Opening Statement - Defendant/Robert Page 78

1 as appropriately as they should, both in their capacity
 2 as executive and in Donald Trump, Jr. as trustee.
 3 Therefore, I respectfully submit that the claims
 4 brought by the New York State Attorney General against my
 5 client should be dismissed.
 6 I thank you for your time.
 7 THE COURT: Is it the position of all three
 8 defendant lawyers that there were no material--
 9 withdrawn. That there were no misstatements in any
 10 Statements of Financial Condition?
 11 Is that your position?
 12 MR. ROBERT: You made a ruling in your summary
 13 judgment motion. My position was there were no material
 14 misstatements because that is what the People must prove
 15 and, at least as it relates to my clients, those were the
 16 certifications they signed. The words in every single
 17 document they signed say the words "material
 18 representation."
 19 I'll defer to Mr. Kise as to the others.
 20 THE COURT: Let's talk about, very briefly, that
 21 word "material." Let's say there's a statement that \$100
 22 million. At what point would you consider something
 23 material? Would \$20,000 be material?
 24 MR. KISE: Your Honor --
 25 THE COURT: Yes.

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1 The Attorney General wants to make it simple.
 2 There is an error here and it's material because we say
 3 so. I think we have to at least give these witnesses an
 4 opportunity to take the stand and understand what this
 5 case is about. If you want to disagree later, that's
 6 fine, but, I would say that we've got testimony from
 7 folks that understand fully valuations. They understand
 8 fully accounting standards, and, it is relevant to
 9 intent. It is relevant to materiality.
 10 If I prepare a statement and that statement is
 11 in accordance with the Governing Accounting Standards, I
 12 cannot see how, possibly, someone can say, even if they
 13 disagree with my valuations, that I had intended to
 14 defraud. So, maybe you disagree with my valuation but
 15 that is an entirely different question.
 16 So, I'd ask the Court to allow us to present the
 17 evidence. For example, the differentiation in values, I
 18 mean, we have experts that you haven't heard from, and, I
 19 don't know we're going to hear from them now based on the
 20 way the case is structured.
 21 I mean, the Attorney General has certainly
 22 opened the door, in my mind, to valuation issues, but, we
 23 don't have to decide that today. I think we need to make
 24 sure that the evidence comes into the courtroom in a
 25 fulsome way and you hear from witnesses who tell you no,

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1 that is not material. This value is not 18-- back to the
 2 hypothetical. This value is not \$18 million, it's a
 3 billion dollars, whatever the case may be, but, the Court
 4 really needs-- and, frankly, I think from the
 5 constitutional perspective, owes it to the defendants to
 6 at least hear this evidence and allow them to defend
 7 themselves.
 8 You're talking about a trial, by the Attorney
 9 General's own press conference, is designed to strip them
 10 of their New York assets and drive them out of business
 11 in New York State. That is a pretty serious thing. That
 12 is a pretty serious charge to level against a business
 13 that's been one of the most successful employers and one
 14 of the most successful real estate developers in New York
 15 City.
 16 The message that sends is staggering to the real
 17 estate community. That is my opinion, but, I know we're
 18 not here to get into my opinions. The record will
 19 demonstrate, what we say will demonstrate, and, I ask the
 20 Court listen to all that evidence before making that
 21 determination.
 22 THE COURT: I intend to be very patient and
 23 liberal listening to things. I think the specific
 24 disagreement we seem to have is if Professor Bartov reads
 25 a document and has a professional opinion about it, to

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1 me, that's not evidence. That's testimony or expert
 2 opinion but it's not bringing in new facts. Right?
 3 MR. KISE: Respectfully, your Honor, expert
 4 opinion in testimony is evidence. That's what evidence
 5 is. It's not a document, but, their opinion is relevant.
 6 Again, unless the Court is going to be satisfied that it
 7 is an expert on accounting regulations, it is an expert
 8 on accounting principles and an expert on OCC
 9 regulations --
 10 THE COURT: I think what-- is it stacking a dead
 11 horse? I intend to listen to all of this. Whether
 12 expert opinion is evidence, again, I just consider it
 13 opinion and testimony, but, I wouldn't call it evidence,
 14 but, there may be different demonstrations.
 15 MR. KISE: Again, I don't know how to say it any
 16 more clearly. We, respectfully, disagree. We think an
 17 expert, for example, a valuation expert comes in and says
 18 Mar-A-Lago is worth a billion dollars and you have taken
 19 a position that the tax assessor, without a trial, taken
 20 a position that the tax assessor's valuation is more
 21 credible but --
 22 THE COURT: I did not judge credibility. You
 23 can't do that.
 24 MR. KISE: That is the whole point, your Honor.
 25 That is why --

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1 THE COURT: That's why I didn't do it.
 2 MR. KISE: You need to certainly hear when we're
 3 talking about criminal standards. We're talking about
 4 standards under criminal predicates. Those things must
 5 and should be adjudicated with the benefit of expert
 6 testimony. There's no way to do it otherwise. It's just
 7 not possible. We're all lay people when it comes to some
 8 of these things.
 9 I am a lay person. I have an accounting degree
 10 but I wouldn't call myself an expert on AICPA standards.
 11 THE COURT: Thank you. We have to break in
 12 about 15 minutes but let's hear the housekeeping issues
 13 that were raised this morning.
 14 MR. AMER: Good afternoon. Andrew Amer on behalf
 15 of the People. We did send a letter this morning raising
 16 a couple of issues. I'll set it pretty quickly.
 17 The first issue concerns trial subpoenas that
 18 were served literally on the eve of trial on Mazars and
 19 Ladder Capital. We think the Court should just quash
 20 these subpoenas.
 21 First, they were never served on us, as they're
 22 required to be under 2303(a) CPLR 2303(a) but,
 23 importantly, as the cases we cite to in our letter
 24 demonstrate, you can't use the trial subpoena to reopen
 25 discovery.

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1 We've had a note of issue. Discovery is over
 2 and these trial subpoenas, in large measure, seek
 3 documents that they already tried to obtain through
 4 subpoenas during fact discovery and, in any event, you
 5 just can't use a trial subpoena on an eve of trial to
 6 reopen discovery.
 7 We shouldn't be dealing with these type of issue
 8 as we're trying to prepare each day to present evidence
 9 to the Court. So, we would ask that we not have to deal
 10 with these subpoenas because we'd ask that the Court
 11 quash them.
 12 THE COURT: I believe the basic rule is in
 13 discovery you find out what there is and subpoenas are
 14 for, hey, bring it to court.
 15 MR. AMER: Exactly. The second issue concerns
 16 Nicholas Haigh.
 17 MR. KISE: Are we going to take these one at a
 18 time or is he going to do it --
 19 THE COURT: I gather you'd like to speak now to
 20 number one?
 21 MR. KISE: It may just get jumbled if we don't.
 22 THE COURT: I understand. I don't know that I'm
 23 making a ruling now.
 24 MR. KISE: I understand. I want to make some
 25 points and Mr. Robert may also have some points on the

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1 first issue. Just for convenience, because we have the
 2 remote microphone over there, which is challenging, I'll
 3 just stand here, if that's all right with your Honor.
 4 Thank you.

5 The trial subpoena asks-- Mr. Robert will speak
 6 to this. I don't think they were served improperly but
 7 to the extent that is a valid argument, we can just
 8 reserve them today. That's easy enough.

9 With respect to the substance, though, this is
 10 not information we sought in discovery. As you pointed
 11 out, there's things we identified during discovery and,
 12 for the trial, we asked for specific records. These are
 13 very narrow. They're specific records. They may not
 14 think they're narrow because they cover a broad time
 15 period but they're very specific records that speak,
 16 specifically, to particular witnesses that we now know
 17 are going to appear at trial and they go, potentially, to
 18 cross-examination of those witnesses.

19 We're certainly-- it's not discovery. We're
 20 entitled to, I want to see those records. It's up to us
 21 to go through them but it is not discovery. It's
 22 information we need for the trial. We didn't seek it in
 23 discovery. We identified it, perhaps, in discovery but,
 24 at this point, I don't see that they even have a basis to
 25 object to what it is that we want to go through in terms

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1 of using other -- locating impeachment material we think
 2 is relevant. If it exists, give it to us. That's it.
 3 It's pretty simple.

4 THE COURT: The point was raised just a few
 5 hours ago. I'll have to look at the subpoenas.

6 MR. ROBERT: Your Honor, if I may, the section
 7 of the CPLR Mr. Armen references were to properly notify
 8 them before the return date.

9 It's my understanding, you referenced, when we
 10 started today, about the rains of Thursday and Friday.
 11 My understanding is the subpoenas were served throughout
 12 the course of Thursday and Friday in due course. If they
 13 don't have it already, we probably already e-mailed it to
 14 them this morning. That's a nonissue.

15 I also note the people who were served are not
 16 moving to quash. Usually, you have a meet and confer
 17 with the person that received the subpoena. You discuss
 18 whether or not it was too broad, what the relevance of it
 19 is, why we needed it, and, it could be worked out. The
 20 Attorney General is sending the letter, as a nonparty, to
 21 the subpoena objecting to it. I think it's also
 22 procedurally improper.

23 THE COURT: Let's go on to the second issue.

24 MR. AMER: The second concerns our need to take
 25 a deposition of Mr. Haigh. Let me give you background of

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1 Mr. Haigh, who was at Deutsche Bank. We understood, and
 2 have understood for quite sometime, that Mr. Haigh would
 3 be leaving the country starting on October 13th and would
 4 be unavailable.

5 It was our intent to call Mr. Haigh live on our
 6 case in chief before he left the country but then on
 7 September 26th, your Honor issued a ruling that changed
 8 the nature of our case. We actually read the ruling and
 9 we understood the ruling to mean that what the banks
 10 thought and did just didn't matter.

11 I don't know how more clearly your Honor could
 12 have stated it and how many times you could have stated
 13 it, and, I think this is a direct quote. "You can't lie
 14 on financial statement period." And so, as a result of
 15 your Honor's ruling, which we are taking heed of, we are
 16 not calling bank representatives because they're not part
 17 of our case anymore. We don't need to put on testimony
 18 from banks.

19 So, the issue we have, and, I think it's
 20 absolutely clear from the openings here, is that the
 21 defendants haven't changed the case that they intend to
 22 put on to incorporate many of the Court's rulings and
 23 they still intend to provide you with testimony from
 24 their experts, which we'll talk about at a later point in
 25 time, and, they still intend to provide testimony from

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1 bank employees, even though your Honor has said what the
 2 bank thought didn't matter.

3 THE COURT: Well, remember, I said that about
 4 the first cause of action. I'm not sure about the other
 5 six.

6 MR. AMER: That's why we may have a dispute of
 7 whether the bank employees can testify and what the scope
 8 of their testimony will be. We need to account for the
 9 fact that we may need to call Mr. Haigh in our rebuttal
 10 case; and, it's perfectly clear from his schedule that he
 11 will not be available to be called at trial on our
 12 rebuttal case.

13 So, we've asked to take his deposition to
 14 preserve his testimony for rebuttal and we have
 15 scheduled, with his counsel, to do that next week, and,
 16 the defendants are refusing to allow us to take his
 17 testimony to preserve it for rebuttal, and, we think we
 18 should certainly be allowed that right.

19 We didn't understand until September 26th that
 20 we were not going to call him in our case in chief; and,
 21 I think our decision not to call him in our case in chief
 22 is an appropriate decision, given your Honor's ruling,
 23 and, we would like the opportunity to take his deposition
 24 next week, and, I would note that your Honor has
 25 accommodated the defendants' request the other day to

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1 take depositions of witnesses who we're going to put on
 2 and we've made no objection to that. We're working with
 3 them to schedule it.
 4 So, we think Mr. Haigh's deposition should go
 5 forward on the date Mr. Haigh's counsel agreed to make
 6 him available next week.
 7 THE COURT: Defendant, any quick reply?
 8 MR. KISE: Your Honor, yes. First of all,
 9 there's no need to take a deposition. If they want to
 10 call a witness, they can call a witness and bring that
 11 witness in the courtroom. Your Honor pointed out exactly
 12 the key elements here. You determined in your ruling
 13 that what the bank said or did or thought was irrelevant
 14 to liability, to the decision you made but not to the
 15 remainder of the case. That's the whole point.
 16 So, we think it's highly relevant to
 17 disgorgement, again, the extent I won't belabor but we
 18 think it's highly relevant for disgorgement and, so, if
 19 this witness is going to testify, if they're going to
 20 establish their case then, he's here. We can take him
 21 out of order and put him on the stand. There's no
 22 problem with that. I just don't see any bases --
 23 Mr. Robert will speak again.
 24 As you know, he's the CPLR expert, not me, but
 25 what the banks thought and did does matter and, frankly,

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1 if they want Mr. Haigh to testify, then he needs to come,
 2 and, we're prepared to confront him in an open forum, not
 3 at some deposition.
 4 The deposition Mr. Amer is referencing are new
 5 witnesses, people that no one knew about before. They
 6 disclosed it the first time on a witness list less than a
 7 week before the trial started. They never disclosed him
 8 in interrogatories or on a witness list until now.
 9 We had a right to depose them because we don't
 10 know anything about their presence but Mr. Haigh, they
 11 interviewed Mr. Haigh for three days or more during the
 12 investigative process. They know full well what the
 13 impact truly is, what he is, why he is.
 14 We deposed Mr. Haigh during the course of
 15 discovery. They didn't ask any questions. So, now, they
 16 want to come along and insert a deposition of what will,
 17 no doubt, be some key witness for them; and, in the
 18 middle of a trial, it's wholly improper. There's no
 19 procedure for it.
 20 If Mr. Haigh is available, he is available until
 21 October 13th, he can certainly come and present his
 22 testimony.
 23 THE COURT: Mr. Robert.
 24 MR. ROBERT: You issued an order and there was a
 25 lot of back and forth over the last year about the

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1 compressed nature of it but, regardless of that, your
 2 order of June 9th said "trial depositions for all
 3 nonparty witnesses who are unavailable for trial, as set
 4 forth in CPLR 3117 shall be held by July 28, 2023."
 5 We opposed it beforehand. If the Attorney
 6 General had any issues prior to that point, they needed
 7 to make an application. On July 31st they then filed a
 8 note of issue certifying "discovery known to be necessary
 9 was completed." Again, because this is a bench trial,
 10 because you have tremendous discretion as a result of it,
 11 if they're intent-- he may be a rebuttal witness, going
 12 back to what I said I agree with Mr. Wallace about,
 13 credibility is everything.
 14 Let him come here. Let him take the stand. Let
 15 him be subject to the Attorney General's direct, our
 16 cross-examination, and this Court can hold that in
 17 abeyance, if they then want to use that for purposes of
 18 rebuttal, but, in the middle of the trial, you will allow
 19 him to take a deposition, not in open court, and not
 20 before you, I think is incredibly problematic.
 21 MR. KISE: One other thing I'll add, Your Honor,
 22 not to be too pejorative here but it appears there may be
 23 a little slight of hand. I note on the Attorney
 24 General's initial witnesses on September 8th, just a few
 25 weeks ago, the trial was still going to start on

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1 October 2nd. Mr. Haigh was listed as the 37th witness.
 2 So, I doubt that they intended for Mr. Haigh to be called
 3 before the 13th on their initial list.
 4 So, I don't know what's even changed between
 5 then and now. I don't think Mr. Haigh decided to leave
 6 the country for three or four weeks on a whim. So, I
 7 think they had their opportunity to raise to depose Mr.
 8 Haigh. They could have asked questions during our
 9 deposition, as Mr. Robert pointed out. Your order gave a
 10 specific time period and there's no basis for that.
 11 We're entitled to confront these witnesses in an
 12 open courtroom where everyone can see and hear what they
 13 have to say.
 14 THE COURT: Quickly.
 15 MR. AMER: Certainly, there is no slight of
 16 hand. We didn't appreciate the full schedule of Mr.
 17 Haigh's travel and we were perfectly prepared to call him
 18 out of turn.
 19 THE COURT: For reasons of time.
 20 MR. AMER: Sure.
 21 THE COURT: I'm going to allow the deposition.
 22 What's sauce for the goose is sauce for the gander. No
 23 prejudice. You have a right to confront him in court.
 24 If he testifies, you'll have a right to confront him in
 25 court. I don't think this is close.

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1 What's the third issue? You can work out the
 2 schedule.
 3 MR. AMER: Thank you. The third issue concerns
 4 a proposal we made. We just haven't gotten a response
 5 but I think it's one that will greatly aid the efficiency
 6 of the proceedings. We requested that all documents that
 7 were produced by any party during the investigative phase
 8 in response to our subpoenas be considered authentic to
 9 avoid the need to bring in --
 10 MR. KISE: I think we agreed on this already on
 11 authenticity. I think we had an agreement on the phone
 12 last week on Friday. So, we haven't gotten back. We can
 13 work that out. Authenticity.
 14 THE COURT: Authenticity, not necessarily
 15 admissibility.
 16 MR. KISE: That's right. That is what we worked
 17 out.
 18 THE COURT: I knew this would become a love fest
 19 eventually.
 20 MR. AMER: One more procedural issue.
 21 THE COURT: Quick.
 22 MR. AMER: We now have a designated and
 23 counter-designated deposition transcript for a witness we
 24 are going to call by video, play her video deposition,
 25 and there are some objections that were lodged to certain

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1 I'll have a ruling on the first issue by then. See you
 2 all then.
 3 (Luncheon recess taken.)
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 5 (Continued on the following page..)
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1 designations and we can't cut the video to play in court
 2 without knowing how your Honor wants to work out ruling
 3 on the objections and what process you want us to follow
 4 to submit the designations and the objections, get your
 5 ruling, and then we can cut the video and make sure, if
 6 you sustain any objections, we leave those portions out.
 7 THE COURT: Submit it with a statement of
 8 objections in camera and I'll go over the whole thing.
 9 Mr. Kise.
 10 MR. KISE: Let us look at the specifics.
 11 Mr. Amer is correct. How we intend to proceed is key to
 12 how we go about resolving the issue. If I'm
 13 understanding, you want us to separately -- first we have
 14 to try and work out any objections. To the extent we
 15 can't, separately submit those, and we'll do that off
 16 trial time.
 17 THE COURT: I mean, we'll do that separate. Of
 18 course.
 19 MR. KISE: Prior to the time that the witness's
 20 testimony is going to be played?
 21 THE COURT: Of course.
 22 MR. AMER: You want a paper copy of the
 23 transcript highlighted or you want a video?
 24 THE COURT: Paper copy will do. I'm old school.
 25 Have a great lunch. We'll resume at 2:15 and

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1 THE COURT: First things first. I would like to
 2 have a quick sidebar, or you might call it a front bar,
 3 with counsel. This will only take minute or two.
 4 (Whereupon, an off-the-record discussion took
 5 place at bench.)
 6 THE COURT: I said I would address the first
 7 issue that the Attorney General raised, very recently. I'm
 8 quashing those subpoenas. It seems clear to me that they
 9 are being used as a discovery device. Let's see what we
 10 can find out; not, We want you to bring the report of
 11 April 1965, or whatever. So, that's that.
 12 MR. AMER: Along these lines, your Honor, we did
 13 learn that Deutsche Bank was served with a trial subpoena
 14 this morning, so I think it makes sense to extend your
 15 order to that subpoena, as well.
 16 THE COURT: Well, I would have to see the
 17 subpoena and the argument, so, without prejudice,
 18 withdrawn.
 19 Okay. Are we ready for our first witness?
 20 MR. WALLACE: Your Honor, the People had one
 21 issue relating to the first witness, we just wanted to
 22 raise. The People's first witness is going to be Donald
 23 Bender, from the accounting firm Mazars. One of the
 24 primary reasons to have Mr. Bender come in is to bring in
 25 the various documents that relate to the Statement of

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1 Financial Condition. There's four primary documents.
 2 There's the Statement of Financial Condition; there is the
 3 supporting data spreadsheet; there's the engagement letter;
 4 and there's the representation letter. So, there's those
 5 four documents, for every single year.
 6 Many of them are not objected to, by both
 7 parties, and so we would propose that documents that are
 8 not subject to objection be entered into evidence, without
 9 necessarily having the witness go through each and every
 10 single document. For the ones that there are objections
 11 to, we'll go through them with the witness.
 12 MR. KISE: I think, your Honor, the best
 13 approach -- I mean, again, as we said, we agree as to
 14 authenticity, but as to admissibility, I think we need to
 15 go document-by-document, because as you know, we have a
 16 different view of the timeline here, and it's important for
 17 our record to make sure that we preserve those objections.
 18 MR. WALLACE: Let me be clear. We are talking
 19 about documents which are listed as, No objection, on the
 20 exhibit list.
 21 MR. KISE: If we take it document-by-document,
 22 your Honor, it's not going to take very long. I mean, it's
 23 pretty simple. So, if we just -- I'm not even sure which
 24 four documents he is talking about right now. I'm not
 25 saying he is right or wrong. I just think it's much

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1 easier, and a much better flow, for us to just take it
 2 document-by-document, and if we waive objection, we waive
 3 objection.
 4 MR. WALLACE: The objections have been waived
 5 already, so my request is that documents with no objection
 6 be moved into evidence.
 7 THE COURT: I don't think we can do that, en
 8 masse, without seeing. I think Mr. Kise is correct.
 9 One-by-one, hopefully, if they have waived their
 10 objections. If they object, you will say, But you waived
 11 it, and they will say, Well, we did, or we didn't.
 12 MR. WALLACE: Well, that's fine, but we'll go
 13 through each document for every one year, and we'll do that
 14 with Mr. Bender.
 15 So, the people call Donald Bender.
 16 Your Honor, I would also -- per our discussion at
 17 the pretrial conference, we prepared binders. Three copies
 18 for court, and staff, if Ms. Faherty can bring them up.
 19 THE COURT: Sure. You can approach. Bring it
 20 up.
 21 MR. WALLACE: Your Honor, I'll say we have
 22 prepared, actually, two sets of binders for today. One
 23 would be for the Court to have a set of these Statements of
 24 Financial Condition, so we prepared a set of binders for
 25 that. We'll go through them. We are going to go through

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1 every single document.
 2 We are also presenting an electronic copy of the
 3 supporting data spreadsheet, because it's an Excel
 4 spreadsheet.
 5 (Whereupon, documents were handed to the Court.)
 6 MR. WALLACE: If we have a moment, Chris, I think
 7 we might raise one more issue.
 8 Mr. Kise and I both made presentations, as part
 9 of our openings. Does your Honor want us to provide you
 10 with copies of those, or should we file it on the docket?
 11 MR. KISE: We can provide copies, but as I'm sure
 12 the Court is aware, opening statements are not evidentiary.
 13 They have no --
 14 THE COURT: I said that, earlier.
 15 MR. KISE: Right.
 16 MR. WALLACE: Understood.
 17 THE COURT: But I'll take them. Sure. It would
 18 be the same thing as just getting a transcript, so.
 19 (Whereupon, a document was handed to the Court.)
 20 DONALD BENDER, after having first been duly sworn,
 21 was examined and testified as follows:
 22 THE COURT OFFICER: Please have a seat.
 23 Please state your name and either home or
 24 business address, on the record.
 25 THE WITNESS: My name is Donald Bender, and I

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1 live in Woodbury, New York.
 2 THE COURT: I just ask you to keep your voice way
 3 up. Talk right into the microphone.
 4 THE WITNESS: I'll try, your Honor.
 5 MR. KISE: Your Honor, not to delay the
 6 proceedings, but while we are on the subject of objections,
 7 so, with Mr. Bender's testimony, we are going to do the
 8 same thing with each witness, if it's okay with your Honor.
 9 As you know, we won an appellate victory in June
 10 of this year. We believe that it wiped out 80 percent of
 11 the case, based on the statute of limitations. At all
 12 events, we object to any testimony that will come in as to
 13 Statements of Financial Condition that were prepared,
 14 certifications that were made, any questions of this
 15 witness. We are going to do this in a blanket way, so we
 16 don't interrupt question-by-question, but we just want to
 17 state on the record, now, that the witness has been sworn;
 18 that we object to testimony coming in that is outside of
 19 the claims that should be addressed.
 20 As you know, we have argued that, and we believe
 21 that, the Appellate Division ruling supports the fact that
 22 eight of the ten transactions, the loan transactions, are
 23 not at issue. Only two are, the two that were mentioned at
 24 the beginning, but we make a blanket objection to testimony
 25 in that regard. We won't interrupt the proceeding.

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1 As to documents, and this is why I was a bit
 2 pedantic about document-by-document. We will object, on
 3 that basis, document-by-document. To the extent documents
 4 come in, because from the Appellate cases that we have
 5 reviewed, we have to do that, to preserve the record.
 6 We'll make the objection. We'll try and move the case
 7 along, but we have to make that objection.
 8 And then, lastly, if we have agreement, as we
 9 have done throughout this case in the depositions, if we
 10 have agreement, an objection for one is an objection for
 11 all, so that you don't have people popping up, popping up
 12 and down, if that's all right with the People. If one of
 13 us objects to a document coming in, then we don't all have
 14 to stand up and object, to make that record.
 15 THE COURT: Birds of a feather flock together.
 16 MR. KISE: Indeed.
 17 THE COURT: Well, let's not get into a whole
 18 discussion about statute of limitations, et cetera. It's
 19 my position, and I hope it was clear from the summary
 20 judgment decision and order, that it's one thing if your
 21 client makes a statement, gets a loan, and the money is
 22 transferred, and that's it. It's another thing if the deal
 23 is, We'll loan you the money; we want to read your
 24 Statement of Financial Condition, and every year you are
 25 going to have to send us another Statement of Financial

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1 course of conduct between the parties during a
 2 long-standing relationship can have relevance. The statute
 3 of limitations is a bar on claims, not on a bar on
 4 evidence. If it's too far gone, understood, it could be
 5 not relevant anymore, but I think we do this as we go
 6 through the case, and we may likely see this on the first
 7 document that I show to Mr. Bender.
 8 So, why don't we get started.
 9 THE COURT: Yes.
 10 MR. WALLACE: If that's okay with your Honor.
 11 THE COURT: Please proceed.
 12 DIRECT EXAMINATION
 13 BY MR. WALLACE:
 14 Q Good afternoon, sir.
 15 A Good afternoon.
 16 THE COURT: A little louder.
 17 THE WITNESS: I'll try.
 18 A Good afternoon.
 19 THE COURT: Better.
 20 Q Since there's been some colloquy, could you please
 21 state your name again, for the record?
 22 A Donald Bender.
 23 Q Mr. Bender, are you taking any medication that we
 24 should just be aware of, during the course of your testimony
 25 today?

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1 Condition. If those later statements flow within the
 2 statutory period, I certainly consider them relevant.
 3 MR. KISE: I understand your Honor's position,
 4 and I think you understand ours with respect to the
 5 limitations.
 6 With respect to that latter piece, if we are
 7 talking about just certifications that occurred after 2014,
 8 then that still would exclude any evidence about the
 9 underlying loan transaction that predated the statute of
 10 limitations. That's part of --
 11 THE COURT: I think that's right, but the
 12 pre-statute of limitations dealings may be relevant for
 13 injunctive relief, for their knowledge of things, but we'll
 14 have to deal it with it one-by-one.
 15 MR. KISE: We would object to that as well, your
 16 Honor.
 17 THE COURT: Okay. Objection overruled, but I
 18 will ask the Attorney General to be cognizant of his
 19 points, and if there's something, a discrete transaction,
 20 obviously that occurred before the limitations period
 21 began, then let's not have that in, because I'll exclude
 22 it. I won't consider it, anyway.
 23 MR. WALLACE: Fair enough, your Honor. I think
 24 that -- I'm not going to speak for this witness, and every
 25 witness that's going to come in. We certainly believe that

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1 A I'm just on normal medications for blood pressure,
 2 prostate, aspirins, reflux. Nothing beyond that, today.
 3 Q If you need any breaks, you can --
 4 A Okay. Thank you.
 5 Q -- let Judge Engoron know.
 6 Can you please describe, for me, your educational
 7 background?
 8 A I graduated with a BA from Queens College in 1979.
 9 Q Okay. And do you hold any professional licenses?
 10 A I'm a New York State CPA.
 11 Q And are you currently employed?
 12 A No. I'm retired. I do a few hours of consulting, but
 13 I'm retired.
 14 Q What was your last job, before you retired?
 15 A I was a partner at Mazars USA.
 16 Q And what is Mazars USA?
 17 A It's an accounting and -- an accounting and consulting
 18 firm.
 19 Q At the time of your retirement, how long had you been
 20 working for Mazars?
 21 A With predecessor firms, approximately 41 years.
 22 Q Okay. And at what point did you become a partner in
 23 the firm?
 24 A About 22 years ago.
 25 Q And what work did you perform as a partner at Mazars?

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1 A I considered myself a generalist. I did a little bit
2 of everything. Some test work, some tax work, sales tax. I
3 came from a background of a multi-functional.
4 Q And when you say test work, what is that referring to?
5 A Test work means generally, today, audit review or
6 compilation work.
7 Q Okay. And we'll get to those, in a minute. Was the
8 defendant, Donald J. Trump, a client of yours at Mazars?
9 A Yes. He was a client of Mazars.
10 Q And what work did you do for him, as an individual?
11 A As an individual, I worked on his tax return. I
12 worked on some certain tax exams, and I worked on the
13 compilation of his Statement of Financial Condition for a number
14 of years.
15 Q What is a tax exam?
16 A Some government authority, federal, state or city, or
17 an agency thereof, is auditing him to see if the numbers are
18 correct.
19 Q Okay. And are you familiar with an entity doing
20 business as the Trump Organization?
21 A Well, the Trump Organization, in my time, were two
22 different entities. There were two entities. The first entity
23 was Trump Organization, Inc. The second entity was Trump
24 Organization, LLC. In my point of view, those were basically
25 inactive entities. The name of the Trump Organization, to me,

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1 is like a d/b/a. It's an umbrella entity that reflected all of
2 the entities owned or controlled by Donald J. Trump, or his
3 children. That's how I would think of it, today.
4 Q And did you do any accounting work for corporate
5 entities owned or controlled by Donald Trump and his children?
6 A I did accounting work for those entities, corporate,
7 partnerships, LLCs. Not just corporate.
8 Q And what work did you perform for them?
9 A Like I said, whole spectrum of work, from some audits,
10 reviews, compilations, test work. Some tax returns. You know,
11 a little bit of everything. Whatever needed to be. I was a
12 generalist. I could help out, from time to time.
13 Q Do you have a sense of approximately how much of your
14 time, let's say during the years 2011 through --
15 MR. WALLACE: Strike that question.
16 Q Do you have a sense of how much of your time, from the
17 period of 2011 until your retirement, you were spending on
18 engagements for Donald Trump and the Trump Organization?
19 A I don't have a good sense. If I had to guesstimate
20 today -- it changed over the years -- I would say approximately,
21 anywhere between 45 or 55 percent. But that's just a
22 guesstimate. I don't have the information in front of me,
23 today.
24 Q Do you have a sense of how much of your time?
25 A Let me take that -- that's probably my billable time.

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1 That doesn't include -- I don't have an analysis of non-billable
2 time, so I don't know if that -- I don't think we should rely on
3 those numbers today.
4 Q Okay. So, I understand you may have been doing work
5 that isn't counted in the billable time?
6 A Yes.
7 Q You are describing -- that's what your concern was?
8 A Yes.
9 Q Understood.
10 Do you have a sense of what percentage of your time
11 doing work for the Trump Organization was spent on the
12 compilation of Mr. Trump's Statement of Financial Condition?
13 A Say that again, please?
14 Q Do you have a sense of how much of your time, how much
15 of the work you are performing for the Trump Organization and
16 Mr. Trump, what percentage was the work on the Statement of
17 Financial Condition?
18 A I would say somewhere in the range 2 to 4 percent.
19 Q And do you have a rough sense of how many hours that
20 would be, in a given year?
21 A It changed, over time, depending on who was helping
22 me, not helping me or -- you know, but I would say 50 to 60
23 hours of my time wouldn't be unusual, in a year.
24 Q You were describing -- you mentioned that you did work
25 for entities owned or controlled by Donald Trump and his

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1 children. You said you do an array of work. Could you describe
2 for me what individuals you would work with, in the course of
3 your engagement for the Trump Organization and Mr. Trump?
4 MR. KISE: Objection, your Honor. I've let this
5 go a bit, but can we maybe confine this to year-by-year, or
6 series of years? And are we asking for the entire ten-year
7 period? I'm just -- there's no context, here, for this. I
8 mean, in general terms, he can testify, but the questions
9 need to be more precise. It couldn't be the same people,
10 each year.
11 THE COURT: Well, what if we did this: If you
12 are asking to average, generalize, just make it clear that
13 that's what you are doing, but I'm not going to insist that
14 he go year-by-year.
15 Q So Mr. Bender, generally, during the period of 2011 to
16 the time of your retirement, who were some of the individuals
17 you would deal with at the Trump Organization?
18 A I dealt with a large array of the executives, legal
19 department, accounting department, and a lot of other people in
20 between.
21 Q And who would you interact with the most?
22 A If I had to say who I interacted the most, it would be
23 Jeff McConney.
24 Q And what was Mr. McConney's role?
25 A He was some type of -- I don't remember what type of

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1 vice president he was, but he had a title, and he was Controller
 2 for a number of those years. Before that, he was Assistant
 3 Controller.
 4 Q You mentioned that you were familiar with the entities
 5 of the Trump Organization, Inc. and the Trump Organization, LLC.
 6 I would like to ask if you are familiar with a few other
 7 entities. Are you familiar with an entity called DJT Holdings,
 8 LLC?
 9 A Yes, I am.
 10 Q And what do you understand that entity does?
 11 A That was a holding entity for a number of Mr. Trump's
 12 investments, in the later years.
 13 Q And did you do any accounting work for that entity?
 14 A Mazars did accounting work, yes.
 15 Q And what accounting work did Mazars do?
 16 A We prepared the tax return, and we did certain
 17 accounting work papers.
 18 Q Are you familiar with an entity called DJT Holdings
 19 Managing Member?
 20 A I believe the name is DJT Holdings Managing Member,
 21 LLC, but you will have to confirm that for me. It's been a
 22 while. But yes, I am.
 23 Q And what does that entity do?
 24 A It also held a number of Mr. Trump's investments.
 25 Q And did that entity -- did Mazars do accounting work

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1 for that entity?
 2 A Yes, we did.
 3 Q What accounting work did you do for that entity?
 4 A We did the same kind of work. We filed tax returns
 5 and did certain accounting work papers.
 6 Q Are you familiar with an entity called Trump Endeavor
 7 12, LLC?
 8 A Yes, I am.
 9 Q What does that entity do?
 10 A That is the property that owns the Doral, in Florida.
 11 The Doral Golf Club.
 12 Q Did Mazars do accounting work for that entity?
 13 A Yes. Yes, we did.
 14 Q And what accounting work did Mazars do for that
 15 entity?
 16 A To the best of my recollection today, I believe we did
 17 compilations and we did tax returns, but I would have to check
 18 that.
 19 Q Are you familiar with an entity called 401 North
 20 Wabash Venture, LLC?
 21 A Yes, I am.
 22 Q And what does that entity do?
 23 A That is the sponsor for Trump International Hotel and
 24 Tower in Chicago.
 25 Q And did Mazars do accounting work for that entity?

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1 A Yes, we did.
 2 Q And what accounting work did Mazars do for that
 3 entity?
 4 A We did various levels of test work, depending on what
 5 year it was, and for certain years we did tax returns and we did
 6 accounting, and we did -- let me take that back. 401 North
 7 Wabash. 401 North Wabash doesn't file a tax return. To the
 8 best of my recollection, we did accounting work papers to assist
 9 for the preparation of other entities' tax returns.
 10 Q Are you familiar with an entity called Trump Old Post
 11 Office, LLC?
 12 A Yes, I did.
 13 Q What did that entity do?
 14 A That is the entity that operates the Old Post Office
 15 Hotel in Washington, D.C.
 16 Q Did Mazars do accounting work for that entity?
 17 A We did test work and we did tax returns, to the best
 18 of my recollection.
 19 Q Are you familiar with the entity called 40 Wall
 20 Street, LLC?
 21 A 40 Wall Street. Yes.
 22 Q And what did that entity do?
 23 A That is the property that -- that's the company that
 24 operated the Trump building at 40 Wall Street, in Manhattan.
 25 Q And did Mazars do accounting work for that entity?

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1 A We did various levels of test work, depending on what
 2 year it was, and we did a tax return, amongst other things.
 3 Q And are you familiar with an entity called Seven
 4 Springs, LLC?
 5 A Yes, I am.
 6 Q And what does that entity do?
 7 A That entity, to the best of my recollection, changed
 8 over the years. I think originally, if I recall, it was
 9 supposed to be a golf course, potentially. Later, it was --
 10 became a development project, and in later years it was a
 11 personal asset for Mr. Trump.
 12 Q And did Mazars do accounting work for Seven Springs,
 13 LLC?
 14 A Yes, we did.
 15 Q What accounting work did Mazars do for Seven Springs,
 16 LLC?
 17 A To the best of my recollection today, we did tax
 18 return -- tax returns and accounting work papers.
 19 Q Okay. I would like to go back and focus on the
 20 Statement of Financial Condition you mentioned. Can you
 21 describe for me what that document is?
 22 A Simplistically, I would say that is what people today
 23 would basically call a balance sheet. It's a balance sheet of
 24 Mr. Trump's assets and liabilities as of June 30th of the
 25 individual year we are talking about, prepared, you know, under

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1 accounting principles.
 2 Q When you say you prepared it under accounting
 3 principles --
 4 A If I said prepared, we compiled it. We did not
 5 prepare the statement.
 6 Q So you compile the statement. What does it mean to
 7 compile the statement?
 8 A Compilation is when you take the information, the
 9 accountant compiles information given to us by a client to
 10 present it in a financial statement format. The compilation
 11 has -- the accountant gives no assurance, and gives -- does no
 12 testing on analytics, on that information.
 13 Q And taking the period from 2011 until your retirement,
 14 what was your role in compiling the Statement of Financial
 15 Condition for Mr. Trump?
 16 A Well, I was the partner in charge of it. I think the
 17 last one we did was June '20, 2020. It didn't go till my
 18 retirement. You would have to check that. I think it was
 19 June 30, 2020, was the last one, but I was the partner in
 20 charge, and sometimes I was more involved in the preparation,
 21 and certain years I supervised some staff on it.
 22 Q Okay. Do you recall how many staff you would
 23 supervise?
 24 A One to three. It wasn't, you know --
 25 Q Is it possible for you to describe for me, at a high

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1 started the work.
 2 Q So you would not always immediately begin the work on
 3 the compilation when you received the information from
 4 Mr. McConney?
 5 A Not necessarily. That's true.
 6 Q Okay. And so, if information came in that superseded
 7 what you had already received, you would only look at the most
 8 recent information?
 9 A In most cases, I would say that's fair.
 10 (Continued on the next page.)
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1 level, during that time 2011 to 2020, what the process was for
 2 getting the statement compiled.
 3 A Well, it changed as technology changed, so I don't
 4 know what year exactly technology changed, but in the early
 5 years I would go to Trump Tower, some years, and I would sit
 6 with Jeff McConney, and he will give me paper backup for the
 7 information. He would give it to me in paper. Sometimes he
 8 might give it to -- I think they used DHL or FedEx. It would
 9 sometimes come by messenger. I would literally sit with him,
 10 and he would give me the numbers. He would give me the backup,
 11 or what was available as of that day. I would literally punch
 12 holes in the paper, and put it into a looseleaf binder.
 13 As technology changed, they started emailing me more
 14 and more stuff, and at some point, for the last few years, I
 15 believe they went into a portal.
 16 Q Okay. So let's focus on the years when you were
 17 getting the information by email. What would you do after you
 18 received the information from Mr. McConney?
 19 A Me or a member of my team would insert it into what we
 20 call an engagement binder, whether it be an electronic binder,
 21 and we would put the information in that binder, and we would
 22 leave it in that binder until we were ready to start the
 23 engagement. So, if certain information came in and was
 24 superseded, we just used -- we would take the one that -- the
 25 latest one that came in, at the time we started, physically

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1 Q So, once you start working on it, what does that look
 2 like? What are you doing?
 3 A We would cross-- we would look at. Jeff or a member
 4 of his team. If it wasn't Jeffrey, it was somebody else.
 5 They'd send us a schedule with a control schedule. They
 6 would send us an early draft of the financial statement which
 7 they marked up.
 8 They usually took the previous years's
 9 statement, crossed out and made the changes and, again, that
 10 would be an early draft of the statement, and, they would
 11 send us backup schedules, and, we'd try to cross-reference
 12 the schedules to their supporting control sheet, to make sure
 13 the numbers agreed.
 14 Q So, when you say cross-reference to make sure the
 15 numbers agreed, can you describe what that looks like?
 16 A I tell a story that I used to say it's a full
 17 circle. Their control document was something I believe
 18 called Jeff Supporting Data. So, I would make sure the
 19 numbers, even if they sent me updates, the numbers on the
 20 Jeff Supporting Data available would tie out to the cash
 21 schedule, the accounts payable schedule, whatever schedule we
 22 were looking at.
 23 Q So, you were making sure the numbers on the support
 24 they sent you match the numbers going into the spreadsheet?
 25 A Yes and vice versa.

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1 Q Were you doing any other analysis of the supporting
2 information?
3 A I would look at it at high level. If I saw
4 something that bothered me or something that didn't make
5 sense to me, I'd ask him about it, generally.
6 Q Okay. So, you checked the schedules. You said they
7 would send you a marked-up version of the statement-- of what
8 is necessary to complete the statement?
9 A You know, if -- first of all, we'd have to get an
10 engagement letter. We'd have to get an engagement letter
11 from the client, outline the terms of the engagement. We
12 would, you know, after we would type the statement, sometimes
13 we'd type it in before. We would just type the first draft.
14 After Trump Organization had finalized their
15 numbers and sent to us, you know, we'd send them a final
16 draft. Typically, we'd send them multiple final drafts with
17 red lines sometimes with changes. Red lines, black lines,
18 whatever they call it. I'm not a lawyer. At the point when
19 everybody was-- the Trump Organization was happy with the
20 statement, the compilation, they would send a representation
21 letter.
22 After they signed the representation letter and
23 when the representation letter was signed, Mazars had done
24 all the procedures, all that was required on our end, we
25 would issue the compilation report.

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1 Q Did that process generally remain the same throughout
2 the period of 2011 through your retirement?
3 A To the point we stopped -- not to my retirement.
4 When we stopped compiling the financial statement.
5 Q That was in 2021;
6 A '20 or '21. I don't remember. You have to tell me.
7 Q You said it was the statement as of June 30, 2021?
8 A That's what I thought it was.
9 Q Mr. Bender, you have been handed a document premarked
10 PX-200785. We'll also call it up on the screen here. Do you
11 recognize this document?
12 MR. KISE: Your Honor, this would be one of
13 those documents that we're going to object to on the
14 Statute of Limitations. We don't think it should come
15 in. It's 2011.
16 THE COURT: I agree with you we're trying to do
17 this altogether. Hold on. Mr. Kise, I'm going to
18 overrule you on what I think is going to be a continuing
19 objection, and, I'll recognize the continuing objection.
20 As the Attorney General said earlier, and was in
21 their papers, Statute of Limitations claims are not
22 evidence. These can be relevant to just setting the
23 stage for what happened later. It can be relevant for
24 the equitable relief requested. I'm letting in it in but
25 you can make a statement now.

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1 MR. KISE: We just lodge our objection to the
2 document, and, we're going to do that document by
3 document.
4 THE COURT: Okay. You can make it quick for the
5 other one?
6 MR. KISE: Yes.
7 THE COURT: It's admissible.
8 MR. WALLACE: We offer Plaintiff's Exhibit 75 in
9 evidence, your Honor.
10 THE COURT: It's in evidence.
11 (Whereupon, said exhibit was received in
12 evidence as Plaintiff's Exhibit 75.)
13 Q Mr. Bender, do you recognize this document?
14 A Yes, I do.
15 Q What is it?
16 A It's the engagement letter that compiled the
17 Statement of Financial Condition to Donald J. Trump as of
18 June 30, 2011.
19 Q Okay. If I could direct your attention to the top of
20 the page here. It's addressed to Alan Weisselberg Executive
21 Vice President, Chief Financial Officer of the Trump
22 Organization.
23 Why is this letter being addressed to Mr.
24 Weisselberg?
25 A Mr. Weisselberg signed all the engagement letters.

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1 He was the one who ran the accounting department as Chief
2 Financial Officer for the Trump Organization.
3 Q So, the Trump Organization and their accounting
4 department were responsible for the engagements of you for
5 Donald Trump's personal Statement of Financial Condition?
6 A Yes. Yes, that is fair to say.
7 Q If I can direct your attention to the second and
8 third paragraphs of this letter. I'll just highlight this for
9 you.
10 Let's take a look at paragraphs two and three.
11 "We will perform the following services. We will compile,
12 from information you provide, the Statement of Financial
13 Condition of Donald J. Trump as of June 30, 2011."
14 I think you touched on it when we were talking
15 about high level. What does it mean that you would compile
16 the Statements of Financial Condition?
17 A Compilation is to present, simplistically, to
18 present, in the form of financial statement, the presented
19 compiled information in the form of financial statement given
20 to us by the client. Mazars would do compilation. Mazars
21 would give no assurance on the work and we'd do no testing or
22 analytical review as part of the compilation procedure.
23 Q Your responsibility was for the form of the document?
24 A If I saw something that stuck out at me at high
25 level, I noticed something on that, I would go back to them

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1 and ask them a question but I did not order or review
 2 procedure.
 3 Q Could you just describe for me when you say "audit or
 4 review procedure?"
 5 A Review procedure would include analytical procedure,
 6 analytical procedure and the accountant would give limited
 7 assurance. On order, we'd do analytical procedure and audit
 8 testing and give the assurance that the financial statement,
 9 simplistically -- I don't have the exact in front of me. The
 10 financial statement would be reasonably stated. Sorry.
 11 Q In the context of the audit you're describing, what
 12 kind of analytical procedures were involved?
 13 A Analytical procedure or review would be, you know,
 14 comparison from one year to another to determine what kind of
 15 procedure, what kind of items you would test.
 16 Q Going back to compilation engagement, are you
 17 undertaking any steps to make sure the information you're
 18 looking at is true?
 19 A No, I would just look at something. If something
 20 stuck at high level or came to my attention, I would bring it
 21 to the attention of the client.
 22 Q Okay. Going back to the third sentence here, you
 23 write: "We will compile from information you provide." Speak
 24 clear. Who's the you that will provide information?
 25 A The Trump Organization.

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1 Q Who selected the as-of date of June 30, 2011?
 2 A When I came around, it was already June 30th. I
 3 think, historically, for a number of years, it was June 30th.
 4 Q If we could direct your attention to the top of the
 5 next paragraph. It states: "We will compile the financial
 6 statements and issue an accountant's report thereon in
 7 accordance with statements on Standard For Accounting and
 8 Review Services issued by the American Institute of Certified
 9 Public Accountants."
 10 Can you tell me what is an accountant's report?
 11 A In this case, they're talking about the compilation
 12 report.
 13 Q So, that is something Mazars would be drafting?
 14 A It's a standard. It's, I think it's AICPA
 15 promulgated and we would make certain changes, you know, if
 16 we had to, but it's historical.
 17 Q What's the purpose of the accountant's report?
 18 A To inform the reader that there is a compilation or
 19 any exceptions to whatever standard of accounting the user,
 20 the financial statement being prepared under.
 21 Q Can you tell me, what are the statements on standards
 22 for accounting review services issued by the American
 23 Institute of Certified Public Accountants?
 24 A SSARS is the standard used promulgated to define
 25 what rules would have been for a compilation or review.

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1 Q Do you have an understanding of what the rules were
 2 provided for related to this letter in 2011?
 3 A Yes, I do.
 4 Q What would those rules have provided for?
 5 A As I said, no analytical procedures, no testing and
 6 the numbers in the financial statement on the representation
 7 of management, simplistically.
 8 Q Second sentence in this paragraph states: "The
 9 objective of a compilation is to present, in the form of
 10 financial statements, information that is the representation
 11 of management without undertaking to express any assurance on
 12 the financial statements." I think we've covered some of
 13 this, so I don't want to go through all of it, but, what does
 14 it mean it's the representation of management?
 15 A As I just stated, your last question, the numbers
 16 are the representation of management of the client.
 17 Q If we go down to the next paragraph, it states:
 18 "Compilation differs significantly from a review or an audit
 19 of financial statements."
 20 I want to understand, this is, essentially,
 21 consistent with what you were telling me before about the
 22 difference between review, audit, and compilation?
 23 A Yes, sir.
 24 Q The next sentence states: "A compilation does not
 25 contemplate performing inquiry, analytical procedure, or other

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1 procedure performed in a review."
 2 Is that, in fact, the nature of the engagement
 3 that Mazars had with the Trump Organization in 2011
 4 regarding --
 5 A I want to make sure to clarify that it is a
 6 compilation that did not contemplate inquiry, analytical
 7 reviews, or other procedure.
 8 Q Next sentence states: "Additionally, a compilation
 9 does not contemplate obtaining an understanding of the
 10 entity's internal control, assessing fraud risk, tests of
 11 accounting records by obtaining sufficient appropriate audit
 12 evidence through inspection, observation, confirmation, the
 13 examination of source documents, for example, cancelled checks
 14 or bank images or other procedures ordinarily performed in an
 15 audit."
 16 So, it's a long sentence. Let's take it bit by
 17 bit. Looking at the first part of the sentence, what does it
 18 mean "a compilation does not contemplate obtaining an
 19 understanding of the entity's internal controls?"
 20 A That Mazars would not -- Mazars would not, during
 21 compilation, would not obtain an understanding of the
 22 entity's internal control.
 23 Q What internal control is at issue here?
 24 A Example of internal control is who, the person who
 25 signs the checks person, who signs the checks wouldn't do the

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1 bank reconciliations. You know, it would be some separation
 2 of duties.
 3 Q With respect to this engagement, internal controls
 4 that are being described here relate to how the Statement of
 5 Financial Condition was prepared?
 6 A No.
 7 Q What would they relate to?
 8 A If you do an audit.
 9 Q So, this is saying this is something you're just not
 10 doing?
 11 A Yes.
 12 Q My question is do you have a sense of what internal
 13 controls would be relevant for the preparation of Statement of
 14 Financial Condition within the Trump Organization?
 15 A Yes, I would wouldn't need to consider internal
 16 controls for an audit.
 17 Q Do you recall if, at any point, you actually did
 18 obtain an understanding of Trump Organization's internal
 19 controls regarding the Statements of Financial Condition?
 20 A No, I did not.
 21 Q In some of your other work, did you look at internal
 22 controls the company had in other areas?
 23 A We did some, what we call, walk-throughs, maybe.
 24 Yes. We took one transaction and followed it through to
 25 understand what was being done.

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1 Q Can you just give me an example of what one of those
 2 walk-throughs might have been?
 3 A When an invoice comes in, the person -- somebody
 4 would approve the invoice that they would look and then
 5 another person would write the check and then somebody would
 6 sign off and review that the check was all ready to be done
 7 from start to finish to make sure there was some kind of
 8 control involved.
 9 Q It mentions that in that compilation does not
 10 contemplate assessing fraud risk. Did you ever, in fact,
 11 assess fraud risk at the Trump Organization in connection with
 12 the Statements of Financial Condition?
 13 A No, we did not.
 14 Q Did you assess fraud risk for the Trump Organization
 15 in other contexts in audit engagements?
 16 A Yes, we did.
 17 Q What would it entail to assess fraud risk in those
 18 instances?
 19 A We'd have -- just an example, we'd have, what do you
 20 call -- we would have meetings at the beginning of the audit.
 21 Brain storming sessions. Sorry. It's been a while.
 22 We'd have brainstorming sessions, for example,
 23 and we'd discuss potential fraud risks as part of the audit
 24 engagement.
 25 Q What were fraud risks for some of the entities you

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1 were doing this work for?
 2 A I don't have that. That potentially the CFO or
 3 somebody could override the controls and that would be an
 4 example of fraud risk.
 5 Q Sentence also mentions "a compilation does not
 6 contemplate a test of accounting records," and goes on. What
 7 is a test of accounting records?
 8 A An example of an accounting record would be a
 9 voucher bill to see that the bill on-- the amount on the bill
 10 agreed to the amount in the general ledger and whatever.
 11 We'd look at the bill.
 12 Q Did you ever, in fact, test accounting records in
 13 connection with the preparation of Statements of Financial
 14 Condition?
 15 A No. No, I do not believe so.
 16 Q The top sentence here states: "Our accountant's
 17 compilation report is expected to include references to the
 18 following departures from Generally Accepted Accounting
 19 Principals. First, what are Generally Accepted Accounting
 20 Principles?
 21 A We call that GAAP. We use GAAP as we go forward.
 22 Those are the rules promulgated on how to prepare standards
 23 that are required to prepare financial statements under those
 24 rules.
 25 Q Are there particular rules -- are there particular

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1 rules that apply to the preparation of Statements of Financial
 2 Condition for Donald J. Trump?
 3 A They would be under the normal capital rules.
 4 Q Are you familiar with those rules?
 5 A Some of them. I don't know anymore.
 6 Q Do you know which rules govern preservation of
 7 financial statements?
 8 A Again, Generally Accepted Accounting Principles.
 9 Q I'm asking if there is a particular rule, by number
 10 or section, if you're aware, that covers the preparation of
 11 personal financial statement?
 12 A Not right now, I don't know.
 13 Q If there was a time in 2011 you had a question about
 14 what rules governed the preparation of financial statement,
 15 how would you find that out?
 16 A I was kind of lucky. My managing partner in my
 17 office, he wrote-- he was a big contributor for SSARS, one,
 18 and, two, he was strong on GAAP. His office was directly
 19 next to me or one office away, depending on where our
 20 location was. I also had a quality control person with me
 21 who would be an independent quality control person who would
 22 review the work to make sure it met certain standards.
 23 You know, we would, you know, speak to other
 24 partners if I had a question or I could speak to the director
 25 of quality control, whatever her department was called. The

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1 name changed over the years.

2 Q Were you or Mazars responsible for making sure the

3 statements complied with GAAP?

4 A No, that was the Trump Organization's

5 responsibility.

6 Q It says here the report is expected to include

7 references to following departures from GAAP. What is a

8 departure from GAAP?

9 A Sometimes people want to not follow GAAP and we'd

10 have to disclose it in the financial segment -- in the

11 compilation report.

12 Q When you say "we"?

13 A I'm sorry. We means Mazars, predecessor.

14 Q If there's a departure from the GAAP rules, it needs

15 to be disclosed. Do I understand that correctly?

16 A That's correct.

17 Q Do you know who decided that Mr. Trump would include

18 these departures from GAAP in his Statements of Financial

19 Condition?

20 A Those are determined by the Trump Organization.

21 Q During the period -- we can cover this broadly but

22 during the period of 2011 to 2020, do you recall any

23 instances -- I'll restart the question.

24 During the period of 2011 to 2020, do you recall

25 any instances where you recommended to the Trump Organization

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1 that you needed to add a GAAP departure to Donald J. Trump's

2 Statements of Financial Condition?

3 A I'm not sure of the year. I believe it was this

4 period there was a GAAP exception pertaining to combining

5 cash and not cash and Marketable Securities. That was the

6 GAAP exception that was put in. There was a GAAP exception.

7 They were excluding certain assets, either in Vegas or

8 Chicago, and those were, what do you call it -- I think may

9 have --have been during this period and that was the GAAP

10 exception when Trump Organization decided to exclude those

11 assets.

12 Q Okay. So, let's take those each in order. The first

13 one you mentioned was GAAP exception for cash and Marketable

14 Securities. I understand your recollection is you had to

15 inform the Trump Organization that that practice needed to be

16 identified as a GAAP exception?

17 A Yes.

18 Q But you don't remember what year?

19 A No.

20 Q The other exception you mentioned was Vegas and

21 Chicago properties -- well --

22 A Vegas and/or. I think it changed over the years.

23 Q So, one of those properties was not being included in

24 the Statements of Financial Condition and that was the GAAP

25 exception that needed to be disclosed?

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1 A Yes.

2 Q You informed the Trump Organization that they needed

3 to add that GAAP exception?

4 A We had a discussion. I informed them. There was

5 discussion there were additional GAAP exceptions that had to

6 be added to the Accountant's Compilation Report.

7 Q Do you remember who you had that discussion with?

8 A Not particularly. Either Jeff and/or Allen

9 Weisselberg.

10 Q Jeff McConney and Allen Weisselberg?

11 A Yes. Sorry.

12 Q For the Vegas and Chicago properties, you don't

13 remember what year this would have occurred?

14 A No, I don't.

15 Q During the period of 2011 to 2020, do you recall any

16 instances where you recommended to the Trump Organization that

17 they needed to remove the GAAP departure from the Donald J.

18 Trump Statement of Financial Condition?

19 A Not today. No, I don't remember anything.

20 Q Why don't we walk through each of these departures.

21 .1 states: "Generally Accepted Accounting Principles require

22 that in order to reflect amount to be received in the future

23 at estimated current values, the rights must be

24 nonforfeitable, fixed, and determinable and not require any

25 future services. Several of the values that will be expressed

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1 will be based on future interests that, in some instances, are

2 not for fixed or determinable amounts and, in some instances,

3 are based on performance of future services."

4 Who made the determination to include this GAAP

5 exception in the Statements of Financial Condition?

6 A It was the Trump Organization.

7 Q .2-- actually let me back up. On the first GAAP

8 exception, did anyone from the Trump Organization tell you why

9 they decided not to follow GAAP on this issue?

10 A Not that I recall.

11 Q Did you perform any accounting procedure to determine

12 if this GAAP exception was accurate?

13 A No.

14 Q Let's move on top .2 which states: "Generally

15 Accepted Accounting Principles require that with respect to

16 each closely held business entity summarized information about

17 assets, liabilities, and results of operations for the most

18 current year must be disclosed in the financial statements.

19 In addition, the current estimated value of each closely held

20 business should be recorded as a net investment assets of

21 liabilities. Lastly, the ownership percentages of each

22 closely held business should be disclosed. The Statements of

23 Financial Condition will not include the required summarized

24 disclosures and will report some closely held business

25 entities in a manner that separately states gross assets and

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1 liabilities and states certain cash positions separately from
 2 their related operating entity and will not disclose
 3 Mr. Trump's ownership percentage in certain closely held
 4 businesses."
 5 Who made the determination to include this GAAP
 6 departure?
 7 A The Trump Organization.
 8 Q Did anyone from the Trump Organization tell you why
 9 they decided to not follow GAAP on this issue?
 10 A Not that I recall, no.
 11 Q Did you perform any accounting procedures to
 12 determine if this GAAP was accurate?
 13 A Not that I recall, no.
 14 MR. KISE: Your Honor, just, I'm assuming that
 15 these questions are all confined to 2011, not generally.
 16 He just hasn't asked that.
 17 MR. WALLACE: Yes, we're looking at 2011
 18 statement.
 19 Q Let's move on to point numb three. "Generally
 20 Accepted Accounting Principles require the receipt of
 21 noninterest-bearing deposits in exchange for rights and
 22 privileges of the recorded present value of liability. The
 23 present value of the liability for noninterest-bearing
 24 deposits received as a condition of membership in club
 25 facilities will not be included in the accompanying Statement

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1 Q Did you perform any accounting procedures to determine
 2 if this G.A.A.P. exception was accurate?
 3 A No, I did not.
 4 Q Let's take a look at item number four.
 5 "Generally Accepting Accounting Principles require
 6 that personal financial statements include a provision of
 7 current income taxes, as well as estimated income taxes on the
 8 differences between estimated current values of assets and
 9 estimated current amounts of liabilities and their tax basis.
 10 The Statement of Financial Condition will not include such
 11 provisions."
 12 Who made the determination to include this G.A.A.P.
 13 departure?
 14 A The Trump Organization.
 15 Q And did anybody from the Trump Organization tell you
 16 why they decided not to follow G.A.A.P. on this issue?
 17 A No, sir.
 18 Q Did you perform any accounting procedures to determine
 19 if this G.A.A.P. exception was accurate?
 20 A No, I did not.
 21 Q Last one.
 22 "Generally Accepted Accounting Principles require that
 23 personal financial statements include all assets and liabilities
 24 of the individual whose financial statements are presented. The
 25 accompanying Statement of Financial Condition does not include

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1 of Financial Condition."
 2 Who made the determination not to follow GAAP on
 3 this departure?
 4 A The Trump Organization.
 5 Q Did anyone from the Trump Organization tell you why
 6 they decided not to follow GAAP on this issue?
 7 A Not that I recall today.
 8
 9 (Continued on following page..)
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1 the following for Trump International Hotel and Tower Chicago,
 2 and Trump International Hotel and Tower Las Vegas:
 3 "One. Real property-related assets.
 4 "Two. Mortgages and loans payable.
 5 Three. Guarantees which Donald J. Trump may have
 6 provided."
 7 Is this the exception that we were talking about
 8 earlier, that you recall having?
 9 A Yes.
 10 Q So, who was responsible for including this G.A.A.P.
 11 exception?
 12 A The Trump Organization.
 13 Q Did you ever discuss, with the Trump Organization, why
 14 they didn't want to include Chicago and Las Vegas on the
 15 Statement of Financial Condition?
 16 A That would be subject to a Kovel letter.
 17 Q Just, so I understand, you were retained by tax
 18 counsel for Mr. Trump, and that's how you learned about issues
 19 relating to Chicago and Las Vegas?
 20 A Yes.
 21 Q So, you were providing consulting services to an
 22 attorney. The attorney was representing Mr. Trump; is that
 23 correct?
 24 A Yes.
 25 Q We are fine not going any further on that, then.

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1 If we look at the bottom part of the page, the last
 2 sentence states:
 3 "The effects of the above departures from Generally
 4 Accepted Accounting Principles, as described above, will not be
 5 determined or disclosed in our accountant's compilation report."
 6 What is meant by, The effects of the above departures?
 7 A Simplistically, how these departures might affect the
 8 financial statement that -- you know, the numbers on the
 9 financial statement, or the footnotes.
 10 Q So, if I'm understanding correctly, if G.A.A.P. had
 11 been followed in these instances, you are not going to calculate
 12 what the differences would be?
 13 A Simplistically, yes.
 14 Q I'm very simplistic, so I'm happy to see it that way.
 15 A So am I.
 16 Q Why were the effects not determined or disclosed?
 17 A It was never discussed, but it would have been a
 18 tremendous job to figure it out.
 19 Q And whose determination was it, not to determine or
 20 disclose the amount of those departures.
 21 A Trump Organization.
 22 Q Okay.
 23 MR. WALLACE: If we could turn to the next page.
 24 Q The top of the page it states:
 25 "Further, our report will include the following:

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1 "Because the significance and pervasiveness of the
 2 matters discussed above make it difficult to assess their impact
 3 on the Statement of Financial Condition, users of this financial
 4 statement should recognize that they might reach different
 5 conclusions about the financial condition of Donald J. Trump if
 6 they had access to a revised Statement of Financial Condition,
 7 without the above-referenced exceptions to generally accepted
 8 principles."
 9 First, what is meant by, significance and
 10 pervasiveness?
 11 A To me, simplistically, it would have a big number, or
 12 have an effect on what the reader would perceive, by reading the
 13 financial statement.
 14 Q So the difference between following G.A.A.P. and not
 15 following G.A.A.P. on the above essentials could be significant
 16 and pervasive?
 17 A Yes, sir.
 18 Q And when he says, The matters discussed above, that's
 19 referring to the G.A.A.P. exceptions we were just walking
 20 through; is that correct?
 21 A That is correct.
 22 Q I just want to make sure I understand. This is only
 23 referring to the size and pervasiveness of the G.A.A.P.
 24 exceptions that were actually disclosed in the paragraphs above;
 25 is that correct?

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1 A Discussed above. Yes.
 2 Q Why don't we turn to paragraph four on this page.
 3 The top of this paragraph states:
 4 "Our engagement cannot be relied upon to disclose
 5 errors, fraud, or illegal acts that may exist. However, we will
 6 inform the appropriate level of management of any material
 7 errors, and of any evidence or information that comes to our
 8 attention during the performance of our compilation procedures,
 9 that fraud may have occurred. In addition, we'll report to you
 10 any evidence or information that comes to our attention during
 11 the performance of our compilation procedures regarding illegal
 12 acts that may have occurred, unless they were clearly
 13 inconsequential. We have no responsibility to identify any
 14 communication deficiencies in your internal control, as part of
 15 this engagement."
 16 What does it mean that your engagement cannot be
 17 relied upon to disclose errors, fraud, or illegal acts that may
 18 exist?
 19 A As we discussed earlier, since it's a compilation,
 20 Mazars did not do, for example, any internal control work. The
 21 financial statement is a representation of management, and
 22 Mazars is giving no assurance on the financial statements.
 23 Q When you said you relied on the representation of
 24 management, who was management?
 25 A That would be Donald J. Trump or his trustees, Alan

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1 Weisselberg, or whoever was -- whoever was determined to be the
 2 agent of either Trump -- Mr. Trump, or his trust.
 3 Q Okay. Let me address Mr. Kise's point, from before.
 4 In the year 2011, who would be the management relied upon?
 5 A Mr. Trump, and his representatives.
 6 Q The next sentence states that, "We'll inform the
 7 appropriate level of management of any material errors."
 8 Do you see that section?
 9 A Yes.
 10 Q Do you have an understanding of who the appropriate
 11 level of management was, in 2011?
 12 A It would have been Mr. Trump and Mr. Weisselberg. We
 13 would have communicated with, presumably, Mr. Weisselberg or
 14 Mr. McConney, if we found an error.
 15 Q Do you ever remember bringing an error to Mr. Trump's
 16 attention?
 17 A No, I do not.
 18 Q Do you remember bringing any errors to
 19 Mr. Weisselberg's attention?
 20 A Mr. Weisselberg or Mr. McConney. I can't tell you who
 21 was on the individual items. Mr. Weisselberg or Mr. McConney
 22 did, from time to time, find errors, and we would go over
 23 things.
 24 Q So, not necessarily 2011, but you remember, from time
 25 to time, you would bring errors to Mr. Weisselberg's and

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1 Mr. McConney's attention?
 2 A Yes.
 3 Q Do you have any specific recollection of the errors
 4 you brought to their attention?
 5 A There could have been an error -- one year, this was
 6 many years ago, it was on the cash schedule. They included
 7 Mr. Trump's foundation, and we took that off. A couple of years
 8 there were errors pertaining to -- there were errors pertaining
 9 to -- I'm losing it. Ivanka Trump had an option to buy certain
 10 apartments, or one apartment I knew about, on Trump Park Avenue,
 11 and the value they were using for that apartment on their
 12 schedule, valuing Trump Park Avenue, differed from what Ivanka
 13 was valuing the apartment, Ivanka's option for the apartment,
 14 was.
 15 There were a couple of times pertaining to straight
 16 line receivables. I think they may have gone the wrong way on
 17 the financial statements. We would have to correct, adjust an
 18 asset for a straight line receivable.
 19 There was some times, from time to time, when they
 20 were cross referencing cash on an account's payable schedule, to
 21 the lead sheet for cash or accounts payable. The number would
 22 be a little bit different than we had talked about it.
 23 Sometimes it would be -- we would adjust it. Sometimes it would
 24 be a small amount, and the Trump Organization -- the Trump
 25 Organization would adjust it, or sometimes it would not -- it

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1 was not worth the material -- not material. It was necessarily
 2 to adjust.
 3 Q Any other examples you remember?
 4 A That's it, right now.
 5 Q Okay. I'll just walk through this, a little bit.
 6 On the last one you said there was an issue with cross
 7 referencing cash, or accounts payable. Would the number that
 8 you would see in the supporting spreadsheet, wouldn't match the
 9 number that was actually in the supporting data?
 10 A Sometimes there would be an example in a cash account
 11 on the lead sheet for cash, and then there might be, for
 12 instance, a balance sheet for a golf course in Jeff
 13 Supporting -- in his back up, Jeff Supporting Data, and there
 14 would be a cash number, and it could go either way, but we would
 15 bring it to the Trump Organization's attention, if we came
 16 across it.
 17 Q Go either way, meaning it could be higher?
 18 A Yes. Yes, or lower.
 19 Q And if I'm understanding your testimony correctly,
 20 they would correct it if it was, but sometimes it -- they would
 21 often correct it, but sometimes it wasn't big enough to merit a
 22 correction?
 23 A Or they didn't want to -- it may have been -- that's
 24 fair to say, yes.
 25 Q Do you remember specifically, when you mentioned an

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1 issue with the cash schedule, including money from Mr. Trump's
 2 foundation, do you remember when that occurred?
 3 A Long time ago.
 4 Q Okay. You mentioned the Ivanka Trump option to buy an
 5 apartment at Trump Park Avenue. Do you remember when that
 6 occurred?
 7 A I don't remember the year, but I believe it was two
 8 years, I changed it. At least.
 9 Q So the error was repeated again the following year?
 10 A It may have not been the following year, but it was
 11 more than one year.
 12 Q How did you come to know that Ivanka Trump had an
 13 option on an apartment on Trump Park Avenue?
 14 A I don't recall.
 15 Q Could you describe for me what you meant when you were
 16 talking about straight line receivables, for someone who may not
 17 deal with receivables on a regular basis?
 18 A Oh, my God. You're in trouble, now.
 19 Under G.A.A.P. -- it's more old G.A.A.P. and new
 20 G.A.A.P., but when you are doing Generally Accepted Accounting
 21 Principles, the income stream for a lease, simplistically,
 22 should be picked up pro rata, over the life of the lease. So
 23 for instance, if the first year has free rent, and -- let's say
 24 it's a ten-year lease, and the first year is free, and the next
 25 nine years equal up to a million dollars in total, so for the

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1 total ten years, it's a million dollars. You would pick up a
 2 rent of \$100,000 every year, on that lease.
 3 Q Okay. And you are saying that sometimes it went the
 4 wrong way?
 5 A Certain schedules they would ask us for, and it was --
 6 sometimes, it went the wrong way.
 7 Q And this was in connection with the preparation of the
 8 Statement of Financial Condition?
 9 A The adjustment they were making on the Statement of
 10 Financial Condition did not always go the right way.
 11 Q But you don't remember what year that occurred in?
 12 A No, but again, multiple times. A couple times, I
 13 believe.
 14 Q Why don't we take a look at the next paragraph, which,
 15 the single sentence, it states, "As part of our engagement, we
 16 will also perform other accounting services, as needed."
 17 Do you know if other accounting services were needed,
 18 as part of this engagement in 2011?
 19 A I don't recall.
 20 Q Do you remember ever performing other accounting
 21 services in connection with preparation of a Statement of
 22 Financial Condition?
 23 A Other accounting services might include, for instance,
 24 drafting a few words in a footnote, or helping with a footnote.
 25 Something like that could have occurred, over the years.

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1 Q I'm sorry. Drafting -- I didn't hear.
 2 A A note, changing something on a footnote. For
 3 instance the G.A.A.P. exceptions we talked about before, for
 4 cash, the wording for the -- in the compilation report, I keep
 5 calling them footnotes. The notes would have almost the exact
 6 same wording to the wording that went into the compilation
 7 report. That wording, I believe, would go into those financial
 8 statements.
 9 Q So, if they were using your accounting work product,
 10 that's an additional accounting service, and it might be
 11 included in a report where you are just doing compilation?
 12 A Yes, but that's a sentence I generally put in most of
 13 my engagement letters.
 14 Q Okay. If we look at the next paragraph underneath
 15 that, it says, "You are responsible for making management
 16 decisions and performing management functions, and for
 17 designating an individual with suitable skill, knowledge or
 18 experience to oversee any other services we provide."
 19 What falls into the category of management decisions
 20 and management functions?
 21 A Determine the methodology for how the properties would
 22 be valued.
 23 Q Okay. And so you didn't have any role in the methods
 24 of valuation in the Statement of Financial Condition?
 25 A No, I didn't. No, I did not.

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1 Q For this engagement, do you know, in 2011, do you know
 2 who the individual was who was designated to supervise the
 3 services you provided?
 4 A Alan Weisselberg, with the assistance of Jeff
 5 McConney.
 6 Q And are you familiar with their relevant skill,
 7 knowledge and experience?
 8 A Yes.
 9 Q And could you describe for me, generally, the level of
 10 their skill, knowledge and experience?
 11 A Alan --
 12 MR. KISE: Objection. Is the witness going to
 13 provide his understanding? Is he opining as an expert on
 14 the level of knowledge and experience?
 15 THE COURT: Well, he is not qualified as an
 16 expert. He is a fact witness; right?
 17 MR. WALLACE: Correct. I'm asking what his
 18 understanding was of the -- of the skill, knowledge and
 19 expertise that Mr. Weisselberg and Mr. McConney had, when
 20 they were receiving his service.
 21 MR. KISE: I don't think there's any proper
 22 foundation laid for that. I don't see how he can ask this
 23 witness that question, other than his general guessing as
 24 to what their qualifications were. There hasn't been any
 25 testimony that he is familiar with those individuals, to

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1 the extent he knows their educational background, knowledge
 2 or training.
 3 MR. WALLACE: I will ask him some foundational
 4 questions.
 5 Q So, let me back up. The suitable skill, knowledge and
 6 experience refers to the process of valuing properties. Is that
 7 correct?
 8 A Amongst other things.
 9 Q And are you familiar with the skill, knowledge or
 10 experience of, let's start with Mr. McConney, in valuing real
 11 estate?
 12 A No, I'm not.
 13 Q What about Mr. Weisselberg?
 14 A No, I'm not.
 15 Q So you don't have any familiarity with their skill,
 16 knowledge or experience.
 17 Did you ever make a determination as to whether or not
 18 they had suitable skill, knowledge or experience?
 19 MR. KISE: Objection.
 20 MR. WALLACE: I'm asking if he made a
 21 determination.
 22 MR. KISE: How can he make a determination if he
 23 has no understanding?
 24 MR. WALLACE: Then the answer can be no.
 25 THE COURT: Overruled. Whether it was right or

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1 wrong, proper-improper determination, if he made a
 2 determination, he made a determination.
 3 Q And the question is, did you make a determination?
 4 A I made a determination they had the suitable skill,
 5 experience to oversee the services that we were providing.
 6 Q Understood.
 7 MR. WALLACE: If we turn to the next page of this
 8 engagement letter.
 9 Sorry. If we can go to the bottom. Next page.
 10 Q Do you recognize -- well, first let me ask you,
 11 underneath WeiserMazars, did you sign this agreement?
 12 A WeiserMazars.
 13 Q WeiserMazars?
 14 A But some people use the French interpretation.
 15 You are asking who signed?
 16 Q Who signed that?
 17 A That's either my signature, or an electronic signature
 18 of mine, which I would have given permission to use. But it's
 19 probably a real signature.
 20 Q On behalf of the firm?
 21 A Yes.
 22 Q And do you recognize the signature underneath that
 23 one?
 24 A That's Alan Weisselberg.
 25 Q Okay. And did you have an understanding of whether or

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1 not Mr. Weisselberg had the authority to retain Mazars for this
 2 engagement, based on his position as CFO of the Trump
 3 Organization?
 4 A Yes, I did.
 5 Q And what was the basis for that understanding?
 6 A He was -- he signed all the engagement letters for the
 7 Trump Organization, for the entities that -- let me take that
 8 back. He signed all the engagement letters for the entities
 9 that were run out of 725 Fifth Avenue. I'm not sure he ran all
 10 the entities. And he was the go-to guy for all accounting
 11 matters for the Trump Organization.
 12 Q Mr. Bender, do you recognize -- I've handed you a
 13 document that's been marked Plaintiff's Exhibit 1893 --
 14 MR. WALLACE: Strike that.
 15 Q Mr. Bender, I've handed you a document that has been
 16 marked Plaintiff's Exhibit 1873 for identification. Do you
 17 recognize this document?
 18 A Yes, I do.
 19 Q And what is it?
 20 A This is a -- this is an email from Jeff McConney to
 21 me -- Doc is me. That's a nickname. That's the most asked
 22 question in deposition history -- where Jeff is sending us some
 23 information. It appears to be in Excel, for the June 30th, 2011
 24 statement of the compilation of the June 30th, 2011 Statement of
 25 Financial Conditions for Donald J. Trump.

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1 MR. WALLACE: I believe the defendants have an
 2 objection.
 3 MR. KISE: Thank you, Mr. Wallace.
 4 Yes. Same objection, your Honor. Predates the
 5 July 13, 2014.
 6 THE COURT: Okay. Duly noted, and overruled, for
 7 the same reasons.
 8 Q Do you want to explain why you're called Doc, on this?
 9 A Jeff came from the predecessor firm, Spahr Lacher &
 10 Berk, I won't go through all the -- and this was a nickname I
 11 had 35, 40 years ago, and it's only legend. I don't remember
 12 exactly what it is, and it still sticks around with one or two
 13 people, today.
 14 Q So, do you have an understanding of, what are these
 15 attachments that he's sending to you, in this email?
 16 A These are certain -- this is the schedule. It appears
 17 to be the schedule we previously discussed, which was their
 18 control schedule, or at least the first version of it, for
 19 the Jeff Supporting Data, and certain backup schedules, as shown
 20 under the attachment section.
 21 Q Okay. And so, this would be at the beginning of the
 22 process of preparing the Statement of Financial Condition?
 23 A Assuming that this is the first one. There could have
 24 been a predecessor one. I couldn't answer that, today.
 25 Q You can see, there's a number of exhibits listed under

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1 attachments, and the first one is Jeff Supporting Data. Can you
 2 just describe for me what you understand that exhibit to be?
 3 A That's Jeff's control sheet on how he is coming up to
 4 the Statement of Financial Condition for Mr. Trump, as of
 5 June 30th, 2011, and if that's the control sheet, we would be
 6 using those numbers. At the end of the day, the numbers on the
 7 Jeff Supporting Data, when all is said and done, have to agree.
 8 Should agree. Nothing has to, in life. Should agree, to the
 9 assets and liabilities on the Statement of Financial Condition.
 10 Q Okay.
 11 MR. WALLACE: Can we pull up, I believe it's the
 12 native one of that attachment to this email. This is still
 13 Exhibit 1873. This is the native version, the Excel
 14 version of the attachment that we were just looking at. If
 15 we can just go up to the top.
 16 Q Do you recognize this document, or this attachment?
 17 A This is one, a version of the Jeff Supporting Data for
 18 the Statement of Financial Conditions for Mr. Trump, as of
 19 June 30, 2011.
 20 MR. KISE: Same objection, your Honor.
 21 THE COURT: Well, it's part of the same exhibit,
 22 so --
 23 MR. KISE: Well, that's not exactly clear. I
 24 think it is.
 25 THE COURT: You are right. So I'll recognize the

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1 objection, and overrule it.
 2 MR. KISE: Thank you.
 3 Q So, can you describe for me how this document works?
 4 A Jeffrey, line-by-line, prepares -- he is saying that
 5 the cash, 207 million -- yes. \$207,488,027, Jeff would have a
 6 back-up schedule in this case, for that amount. Sometimes he
 7 would do the computation, but this is his control, and his
 8 backup. In many ways, it would be like a trial balance. This
 9 is where Jeff is determining Jeff, or the Trump Organization,
 10 whoever is determining it, would -- this would be their control
 11 sheet.
 12 Q And what would you do with this document, when you
 13 received it?
 14 A Whatever version was the last version we would have
 15 received when we started our compilation work at Mazars, that
 16 would be our control. So, if Jeffrey -- and we would change.
 17 If Jeffrey would send updates afterwards, Jeff, or a member of
 18 his team, we would cut and paste that information into a new
 19 worksheet, because we do a lot of referencing back and forth,
 20 and we didn't want to put what we call tick marks, and I'm sure
 21 we'll see that the next few days. We wouldn't want to have to
 22 put all these references in 500 times, so we needed to take a
 23 version that was our control, and that would be the version when
 24 we started, really started to do the work.
 25 Q Okay. So he might send you this, and you might not

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1 work on it, but it might be the version you would use to control
2 and put together your final work?
3 A The version that we received when we started our
4 compilation procedures, started the real work, not the
5 engagement, but honestly started the work, that was the one we
6 would use, and any updates came in, we would just cut and paste
7 the certain lines, as needed, to make it agree to the Trump
8 Organization's version that they were sending us later.
9 Q If we go back to the original email, Exhibit 1873 --
10 MR. KISE: Just for record purposes. Sorry. How
11 are we keeping track? I know that the exhibit has a number
12 on it, but the spreadsheet, do we have some number
13 associated with it? I mean, how are we --
14 MR. WALLACE: That's incorporated with the
15 exhibit list, I believe is how we prepared it, and there is
16 a native file attachment. So, I think that's what we sent
17 to you guys when we produced our exhibit list. I'm not
18 sure. I'll confess, I don't remember how you guys
19 structured your --
20 MR. KISE: I just want to make sure we have got
21 some way of keeping track. We will sort that out later.
22 MR. WALLACE: Sure. I will, when I'm reading in
23 the record, I did read -- this is native 01, so we'll try
24 to make that as clear as possible.
25 So, I would like to open one of the other

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1 exhibits. It's escrow balances 0611XLS. I'll say this is
2 going to be Plaintiff's Exhibit 1873, native file 04. This
3 was on the exhibit list, with a file name of September 23,
4 2011, Restricted Cash Flow and Escrow Balances.
5 Q Do you recognize this document?
6 A I think you said Restricted Cash Flow. I think it's
7 Restricted Cash.
8 Q Restricted Cash. You are correct. Thank you for
9 correcting me.
10 Do you recognize this document?
11 A It appears to be -- it appears to be a schedule Jeff
12 McConney or the Trump Organization would have sent us, with the
13 restricted cash and escrow balances for Donald J. Trump for
14 June 20, 2011.
15 Q Do you have an understanding of who would have
16 prepared it?
17 A Somebody in the Trump Organization.
18 (Continued on the next page.)
19
20
21
22
23
24
25

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1 Q What would you do with this document once you
2 received it?
3 A I would have to check my work papers but,
4 presumably, we would have footed it, added it up. I don't
5 know if any other backup came with it, and, we'd make sure
6 that the total at the end of the day, if you can't see down
7 here, ties into the Jeff Supporting Data at the end.
8 Q You're saying you want to make sure?
9 A 9,000,180.
10 Q That comports with the Jeff Supporting Data
11 spreadsheet?
12 A Yes.
13 Q This e-mail plaintiff's Exhibit 1873, file name is
14 Native 05. Do you recognize this document?
15 A It appears to be the Trump Organization's schedule
16 of cash and short-term investments from Mr. Trump and his
17 entities as of June 30, 2011.
18 Q Do you have an understanding of who prepared it?
19 A It would have been prepared by Trump Organization.
20 Q What would you do with this document when you
21 received it?
22 A I can't --
23 MR. KISE: Same objection. Same objection.
24 THE COURT: Noted and same ruling.
25 MR. KISE: I think that applied to the last file

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1 too. It's moving so quickly. I don't recall it but just
2 for the record.
3 MR. WALLACE: We're happy to note --
4 THE COURT: We'll accept the objection
5 retroactively.
6 MR. WALLACE: We're happy to recognize that the
7 defendant's have a standing objection to documents from
8 before the Statute of Limitations.
9 Q So, I'm sorry. I don't know if it was asked and
10 answered. What would you do when you received this?
11 A What would we do when we received it?
12 Q Yes.
13 A First, we would insert it in our binder. I would
14 need to see our work papers, specifically, to see what we
15 did. I presume that we would have footed it or cross-footed
16 it. We'd have to check that and we would have made sure that
17 the total on the bottom agrees to Jeff Supporting Data.
18 Q So, you mentioned footing and cross-footing. Is that
19 how you're recording your work on Statements of Financial
20 Condition?
21 A I record-- we didn't always do it but sometimes we
22 just check the math. You go down Excel, boom, and make sure
23 it adds.
24 Q Why don't we see if it's helpful. This is a Native
25 file document, so we just have a slip sheet for the document.

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1 (Handing.)

2 Q So, the exhibit is Excel spreadsheet bearing

3 production number Mazars NYAG 00003154. Do you recognize this

4 document?

5 A It appears to be Mazars' version, final version of

6 the Jeff Supporting Data Statements of Financial Condition to

7 Donald J. Trump as of June 30, 2011.

8 MR. KISE: Same objection.

9 THE COURT: Can we simplify this by calling it a

10 standing objection?

11 MR. KISE: It's the objection on the Statute of

12 Limitations. Perhaps, I should frame it that way.

13 Statute of Limitations objection.

14 THE COURT: Standing objection to any document

15 before 2014?

16 MR. KISE: July 13, 2014. Yes, your Honor.

17 THE COURT: Okay. If I change my ruling on the

18 objections, I'll let you know.

19 Q So, Mr. Bender, you mentioned this is the final

20 version. How did you determine that?

21 A It appears to be the final version because it has

22 tick marks the blue. Red marks which would be the control

23 version I previously discussed. We would have had the blue

24 numbers cross-references to Mazars' work papers. So, it

25 appears to be our version.

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1 electronically. The back of the schedule, I can't see what--

2 the yellow sign is for the number but the 207 million and

3 change is on schedule 4100.01 and if the software works

4 correctly, and I clicked that 4100.01, it will open up that

5 schedule and see the numbers are the same.

6 Q Okay. So, I'm going to ask if we can pull up the

7 document marked as Plaintiff's Exhibit 2613. This is another

8 Native file document. So, we have handed up a slip sheet.

9 We're going to put the Excel version up on the

10 screen here and I could ask you, do you recognize this

11 document?

12 Actually, let me state for the record that on

13 our exhibit list, this document is identified as a document

14 listed as SLA&E and it's saved as 4100. Cash balances as of

15 6/30/11, XLS XLS.

16 Do you recognize this document?

17 A It appears to be the schedule short-term cash and

18 short-term investments under 50,000 for Mr. Trump and his

19 entities as of June 30, 2011.

20 Q There's an earlier tab 6/30/11. What is that tab

21 document?

22 A This is the schedule prepared by the Trump

23 Organization of cash and short-term investments for Mr. Trump

24 and his entities as of June 30, 2011.

25 Q What does the notation up on the top in red PBC

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1 Q Okay. So, let's walk through that. First, I'll walk

2 up to the screen. The first one you mentioned, what are these

3 red indications? I'll describe them for the record as two red

4 arrows in the form of a circle.

5 What does that indicate?

6 A I'd have to go back and confirm to our software

7 definition of tick marks but I believe it means the math was

8 calculated.

9 Q To the extent folks can see, up in the C area here.

10 "=round (+ E-11, *E-12, 0.)" What does the combination of red

11 circles of the formula of that cell indicate?

12 A They are saying 535,714 multiplied by .0615 equals

13 32,946.

14 Q So, if I'm understanding correctly, the red circles

15 indicate someone from Mazars is confirming the math is being

16 performed correctly on that?

17 A Yes.

18 Q You also mentioned the blue numbers. I'll describe

19 it for the record. We're here at -- why don't we take a look

20 at this one. I'll note for the record it's in row six, column

21 H. There's a blue number 4100.01. What does that indicate?

22 A I previously mentioned Mazars had a software package

23 which we call-- I think it's called edge game. We call it,

24 E-pace. In E-pace these work papers are inserted. That's our

25 file. It was paper in the olden days. This is done

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1 indicate?

2 A That's -- it stands for prepared by client.

3 Software you can just click it and it goes on.

4 Q This is indicating this is information you received

5 from the Trump Organization. It's not something generated by

6 Mazars; is that correct?

7 A Yes.

8 Q Is this a schedule that would pop up in your system?

9 A Yes.

10 Q When you click on number 41?

11 A It should.

12 MR. KISE: Your Honor, Statute of Limitations

13 objection.

14 THE COURT: I don't think we have to do it for

15 every document.

16 MR. KISE: I'm going to look again, but, my

17 understanding of the case law is we actually do,

18 unfortunately. That the Appellate Division won't accept

19 a straight line objection. We can come up with a way to

20 streamline this, I assure you.

21 THE COURT: Okay. Well, we only have a few more

22 months.

23 Q So, if we could scroll down to the bottom here, row

24 42. The line reads: "Balances in US dollars at the exchange

25 rate on 6/30/11."

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1 I'm actually interested in the notation next to
 2 it that's in small red letters, TB.
 3 What does that indicate?
 4 A That stands for trial balance. That was one of the
 5 ways we could reference it back to Jeff Supporting Data.
 6 Q So, can you explain to me how that works? Is this
 7 another link?
 8 A It's just placed on top PBC. Trial balance in most
 9 accounting closings is the control sheet. In many ways, I
 10 think I stated earlier today the Jeff Supporting Data is
 11 equivalent of trial balance for this purpose.
 12 So, you might see a TB, you might see a
 13 reference to control sheet or whatever the reference is to
 14 Jeff Supporting Data.
 15 Q This is an indication the number here matches the
 16 number in the Jeff Supporting Data?
 17 A Yes.
 18 Q If we look at the bottom, the number here, again,
 19 it's got the-- we'll describe as two red arrows and a circle.
 20 What is indicated by two red arrows and circle?
 21 A I have to check the definition but I think it means
 22 math calculated.
 23 Q Okay. That number there 207,488,026.58. Did Mazars
 24 undertake any audit procedures to confirm that number was
 25 correct?

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1 document look the same way, they'd take you back to another
 2 file that would have information that sports the number in the
 3 spreadsheet?
 4 A I believe that would be true, but, I'd have to look
 5 at the whole document to confirm that.
 6 MR. WALLACE: Could we pull up Plaintiff's
 7 Exhibit 787?
 8 Q I put a copy image up on the screen, Mr. Bender. Do
 9 you recognize this document?
 10 THE COURT: Objection duly noted.
 11 MR. KISE: Thank you.
 12 A Yes, I do.
 13 Q What is this document?
 14 A This is the Statement of Financial Condition for
 15 Mr. Trump as of June 30, 2011.
 16 Q Is this the final version?
 17 A Yes, it is.
 18 Q How can you tell?
 19 A It has my electronic signature on the second page of
 20 the Accountant's Compilation Report.
 21 Q If we can turn to that page, the second page, Bates
 22 number 3133. This is the electronic signature you're talking
 23 about?
 24 A Could be by manual or electronic. I don't know.
 25 Q So, what should the relationship be between this

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1 A No, he did not.
 2 Q Did Mazars undertake any assurance procedures
 3 whatsoever with respect to that number?
 4 A No, it did not.
 5 Q So, I think we just follow the link 4100.01 to see
 6 the \$207 million number. Is that how it works?
 7 A The little yield sign is --
 8 Q That should be what it is?
 9 A Yes.
 10 Q Okay. So, that looks right?
 11 A I think it was, yeah.
 12 Q So, when Mazars would check that numbers, the
 13 207,488,027 against the spreadsheet we were just looking at,
 14 are you performing any accounting procedure in doing that?
 15 A No, I did a quick overview and I told you, one year
 16 I looked at the high level. The second, a member of the
 17 Mazars looked at it and one year I included the foundation
 18 and we took it up and we suggested-- we made the
 19 recommendation it should be taken out and the Trump
 20 Organization agreed with us and they took it out.
 21 Q So, as you spot an issue, you bring it up. You
 22 weren't going out and looking for issues?
 23 A If something bothered me and I noticed it, I would
 24 bring it to their attention, and we'd talk about it.
 25 Q So, can I ask, if all of the blue numbers in this

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1 document and the Jeff Supporting Data spreadsheet we were
 2 looking at?
 3 A The numbers should be the same.
 4 Q So, why don't we go to the top -- actually, let's go
 5 down a couple of pages here. So, cash and Marketable
 6 Securities, the number here is 258,900,000. That should match
 7 the number in Jeff Supporting Data?
 8 A Yes, it should.
 9 Q You see the number 258,900,000 those are the numbers
 10 that should be matching?
 11 A Yes.
 12 Q That was the service Mazars is providing, translating
 13 those numbers into the form of the financial statement we were
 14 just looking at?
 15 A No, Trump Organization put the statement together.
 16 So, we didn't have to do it. We would have checked the
 17 number as part of our compilation procedure. We would have
 18 made sure the numbers on this spreadsheet would have agreed
 19 to the Statements of Financial Condition by the Trump
 20 Organization.
 21 Q So, you're just typesetting the financial statement
 22 or is there some other --
 23 A No, we'd-- all of those things, it's more of
 24 typesetting. We would discuss the kind of things we talked
 25 about before the cash, Ivanka's apartment, footing of the

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1 schedule. We make sure they cross-reference but we would
 2 have typed final statements.
 3 Q Okay. So, if we could go back to the statement which
 4 I believe is Exhibit 787, I want to walk through the various
 5 segments of the report. I believe this is the first page.
 6 So, this page stating "Donald J. Trump Statement of Financial
 7 Condition June 30, 2011."
 8 What is this section of the Statements of
 9 Financial Condition?
 10 A This page?
 11 Q Yes.
 12 A This page is the asset page.
 13 Q Okay. What is reflected -- so, who is responsible
 14 for the numbers on this page?
 15 A The Trump Organization.
 16 Q I should have gone back a couple of pages. Can we go
 17 back. So, if we go to the top, actually. Independent
 18 Accountant's Compilation Report. What is this section of the
 19 Statements of Financial Condition?
 20 A As we talked about earlier this afternoon, this is
 21 the Accountant's Compilation Report. This is basically a
 22 AICPA promulgated form. We make some changes. In this case,
 23 the GAAP exceptions, for example, and this explains that, you
 24 know, our procedures are only compilation procedures.
 25 They're not order review procedures, and we did not do review

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1 Q Okay. Did this language have to be included with the
 2 Statements of Financial Condition?
 3 A This letter had to be included in the Independent
 4 Accountant's Compilation Report.
 5 Q Which attaches to the Statements of Financial
 6 Condition?
 7 A Yes.
 8 Q So, to make sure we're describing the full document
 9 here as the Statements of Financial Condition but,
 10 technically, that list of values, that's what is his statement
 11 and this is an attachment?
 12 A That and the accompanying footnotes, notes.
 13 Q Why don't we take -- why don't we take a quick look
 14 at those. I think they appear on page six -- no. Four. So,
 15 this says: "Notes to Statement of Financial Condition," and
 16 in parenthesis, "Independent Accountant's Compilation of
 17 Work."
 18 What does it mean? These are the notes to
 19 Statement of Financial Condition?
 20 A This is, simplistically, these are requirements
 21 under GAAP or other disclosures that are made related to the
 22 Statements of Financial Condition.
 23 Q What is the purpose of notes?
 24 A To allow the reader to have a full picture of the
 25 financial statement, simplistically.

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1 or audit testing or analytics, as we went through this
 2 afternoon.
 3 Q So, why is this addressed to Donald J. Trump?
 4 A Because the engagement-- it's assets of Donald J.
 5 Trump and, in this case, the engagement letter was and the --
 6 the engagement letter is addressed to Donald J. Trump.
 7 Q The first paragraph states --
 8 A I take that back. It's not true. The engagement
 9 letter does not address Donald J. Trump but the engagement
 10 letter says we were engaged to prepare the financial letter
 11 statement for Donald J. Trump.
 12 Q The engagement letter was to the Trump Organization
 13 signed by Allen Weisselberg to prepare, compile the Statements
 14 of Financial Condition for Donald J. Trump?
 15 A Yes. I apologize for the error.
 16 Q First paragraph states: "We have compiled the
 17 accompanying Statements of Financial Condition of Donald J.
 18 Trump as of June 30, 2011. We have not audited or reviewed
 19 the accompanying financial statement and, accordingly, do not
 20 express an opinion or provide any assurance about whether the
 21 financial statement is in accordance with accounting
 22 principles generally accepted in the United States of
 23 America."
 24 Is this statement accurate?
 25 A Yes, it is.

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1 Q So, is this information coming from Mazars or the
 2 Trump Organization?
 3 A This is coming from the Trump Organization. Mazars
 4 may have made some adjustments over the years or potentially
 5 put wording in, but, the original numbers come from the Trump
 6 Organization, and, any changes that would have been made at
 7 the end, would have been approved by the Trump Organization.
 8 MR. WALLACE: Judge Engoron, I don't know what
 9 time we all need to be filtering out. I'm trying to
 10 structure my next sections.
 11 THE COURT: I said this morning we'll go to
 12 4:30. In two minutes, I would have given you the
 13 ten-minute warning.
 14 What do you want to do?
 15 MR. WALLACE: We're okay to stay until 4:30.
 16 THE COURT: We'll break at 4:30. How's that?
 17 MR. WALLACE: Got it. Understood.
 18 Q We can move on from this in a moment. I want to ask
 19 you to turn to page 17. I want to direct your attention down
 20 at the bottom segment where it says: "Miss Universe Pageant,"
 21 and it says "in 1996 Donald J. Trump and CBS acquired all of
 22 the assets together on the Miss Universe Pageants."
 23 Do you remember this was an asset to be included
 24 in the DJT Statements of Financial Condition?
 25 A I remember Mr. Trump for many years owned Miss

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1 Universe, yes, or a portion of it.
 2 Q This was included as one of the assets in the
 3 Statements of Financial Condition?
 4 A In 2011, yes, it was.
 5 Q Whose decision was it to include the Miss Universe
 6 Pageants as an asset on Statements of Financial Condition?
 7 A It was the Trump Organization's but it was required
 8 by GAAP anyway.
 9 Q Mr. Bender, we've handed you a document marked as
 10 Plaintiff's Exhibit 786.
 11 Do you recognize this document?
 12 A Yes, I do.
 13 Q What is this document?
 14 A It's the representation letter for the June 30,
 15 2011, compilation of Donald J. Trump's Statements of
 16 Financial Condition.
 17 MR. KISE: We assert a Statute of Limitations
 18 objection on this document.
 19 THE COURT: Noted.
 20 Q How did this representation letter fit into the
 21 process of compiling a Statement of Financial Condition?
 22 A It's something that would have been required for us
 23 to issue the Statements of Financial Condition.
 24 Q Why was it required?
 25 A Because I felt I wanted it.

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1 Q Why did you want it?
 2 A To make sure that the client took responsibility for
 3 his-- for the Statements of Financial Condition.
 4 Q Looks like this is dated the same day as the
 5 Statements of Financial Condition; is that correct?
 6 A Yes.
 7 Q Why is it dated the same day as Statements of
 8 Financial Condition?
 9 A On a compilation, I believe, and I haven't done it
 10 in I long time but I believe the letter on the statement is
 11 the date of representation letter. That's when we completed
 12 our compilation procedures and were ready to issue as soon as
 13 we'd get the compilation -- as soon as we get the
 14 representation letter.
 15 Q So, there's no gap between the Statements of
 16 Financial Condition and the representation?
 17 A Not if I prepared the statement, no.
 18 Q We'll look at the first paragraph. It states:
 19 "We're providing this letter in connection with your
 20 compilation of Statements of Financial Condition of Donald J.
 21 Trump as of June 30, 2011 (the statement.) We confirm that we
 22 are responsible for the fair presentation in the Statement of
 23 Financial Condition in conformity with accounting principals
 24 generally accepted in the United States of America."
 25 Before I ask you about this, could we go to the

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1 bottom of the document? Do you recognize the signature at the
 2 bottom?
 3 A Yes, I do.
 4 Q Whose signature is that?
 5 A Allen Weisselberg's.
 6 Q He's signing on behalf of the Trump Organization?
 7 A Yes, he is.
 8 Q Can we go back to the paragraph I just read into the
 9 record? This is the first paragraph of the letter.
 10 Would Mazars have issued a Statements of
 11 Financial Condition if Allen Weisselberg did not make this
 12 representation on behalf of Mr. Trump?
 13 A No, we would not.
 14 Q Would Mazars issue Statements of Financial Condition
 15 if they learned this representation was not true?
 16 A No, we would not have.
 17 Q We'll look at the next paragraphs. We'll read them
 18 to go. It states: "We confirm, to the best of our knowledge
 19 and belief, the following: As of October 6, 2011, you have
 20 provided us with a copy of the statement that you have
 21 compiled. We've read that information. The data presented in
 22 the statement was provided to you by members of Mr. Trump's
 23 accounting department and you have compiled that information
 24 in an appropriate manner when preparing the statement."
 25 What's the significance of this language?

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1 A It's, you know, it's confirming that the Trump
 2 Organization has read the statement; and, the information
 3 included and the data presented in the statement was provided
 4 by the Trump Organization's accounting department.
 5 Q So --
 6 A And you've compiled the information in an
 7 appropriate manner. That we prepared it.
 8 Q So, they've read the final statement, and they're
 9 signing off on it?
 10 A And that the information was provided by them.
 11 Q Okay. The next paragraph states: "The statement
 12 referred to above is fairly presented in conformity with
 13 accounting principles generally accepted in the United States
 14 of America. All assets are presented at their estimated
 15 current value and all liabilities are presented at their
 16 estimated current amount which have been determined in
 17 accordance with the guidelines promulgated by the American
 18 Institute of Certified Public Accountants except to the extent
 19 noted in the Accountant's Compilation Report which was annexed
 20 to this statement."
 21 Would Mazars have issued a Statements of
 22 Financial Condition if Alan Weisselberg did not make that
 23 representation on behalf of Mr. Trump?
 24 A It says "to the statement," not to this statement.
 25 No, we would have not.

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1 Q Would Mazars have issued a Statements of Financial
2 Condition if they learned this representation was not true?
3 A No, we would not have.
4 Q I'll go on to the next paragraph. It states: "There
5 are no material transactions that have not been properly
6 recorded in the accounting work papers underlying the
7 statement, other than those exceptions from accounting
8 principles generally accepted in the United States of America
9 that are noted in the Accountant's Compilation Report."
10 So, first the Accountant's Compilation Report is
11 that section of the Statements of Financial Condition we were
12 looking at before?
13 A That's the first two pages of the Accountant's
14 Compilation Report that bears my signature on the second
15 page.
16 Q Focusing on the word "material". There are no
17 material transactions that have not been properly recorded.
18 Is that an accounting term of art or what is meant by the term
19 "material"?
20 A In this case, the materiality is not a concept on
21 compilation. Material means important, big. There's no
22 state of art to it.
23
24 (Continued on following page..)
25

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1 Q There are other contexts in an accounting engagement
2 where materiality has a specific meaning?
3 A In a review or an audit, it would.
4 Q Would Mazars have issued the Statement of Financial
5 Conditions if Alan Weisselberg did not make this representation
6 on behalf of Mr. Trump?
7 A No, it would not have.
8 Q Would Mazars have issued the Statement of Financial
9 Condition if it learned this representation was not true?
10 A No we would not have.
11 Q If I could direct you to the next paragraph, it
12 states, "We have no plans or intentions that may materially
13 affect the carrying amounts or classification of assets and
14 liabilities, other than those noted in the accounting work
15 papers underlying the statement."
16 Would Mazars have issued the Statement of Financial
17 Condition if Alan Weisselberg did not make this representation
18 on behalf of Mr. Trump?
19 A No, we would not have.
20 Q Would Mazars have issued the Statement of Financial
21 Conditions if it learned this representation was not true?
22 A No, we would not have.
23 MR. WALLACE: If we could turn the last
24 paragraph, here.
25 Q It states, "There are no material losses, such as from

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1 purchase or sale commitments that have not been properly accrued
2 or disclosed in the statement."
3 Would Mazars have issued the Statement of Financial
4 Condition if Alan Weisselberg did not make this representation
5 on behalf of Mr. Trump?
6 A No, we would not have.
7 Q Would Mazars have issued the Statement of Financial
8 Condition if it learned this representation was not true?
9 A No, we would not have.
10 MR. WALLACE: If we could scroll onto the next
11 page. I'll just -- we can highlight this section?
12 Q That starts, "There are no," and it talks about
13 violations or possible violations of regulations, other claims,
14 other material liabilities.
15 Would Mazars have issued the Statement of Financial
16 Condition if Alan Weisselberg did not make this representation
17 in these three paragraphs on behalf of Mr. Trump?
18 A No, we would not have.
19 Q Would Mazars have issued the Statement of Financial
20 Condition if it learned these representations were not true?
21 A No, we would not have.
22 Q I'll skip ahead, and direct you to -- this is at the
23 top of the page, now. There's a paragraph that states,
24 "Mr. Trump has satisfactory title to all owned assets, and there
25 are no liens or encumbrances on such assets, or has any asset

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1 been pledged as collateral, other than those noted in the
2 statement."
3 Would Mazars have issued the Statement of Financial
4 Condition if Alan Weisselberg did not make this representation
5 on behalf of Mr. Trump?
6 A No, we would not have.
7 Q Would Mazars have issued the Statement of Financial
8 Condition if it learned this representation was not true?
9 A No, we would not have.
10 THE COURT: Let me stop you there, because we
11 only have one more minute.
12 I think the "or" in that paragraph should be
13 "nor", but I'll let everybody else interpret it.
14 I just want to talk to both sides for a second.
15 Stay where you are.
16 Mr. Robert, you are very well versed in the CPLR;
17 correct?
18 MR. ROBERT: You will know, after I answer your
19 question.
20 THE COURT: I will. It might be a softball,
21 though. Am I correct that somewhere above the first
22 section of Article Two, it says that judges do not have any
23 discretion to ignore statutes of limitation? That's
24 correct; right?
25 MR. ROBERT: That is correct, sir.

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1 THE COURT: All right. So, I just want to say,
 2 after all we have gone through this afternoon, that I trust
 3 that -- well, that unless the Attorney General can relate
 4 all the discussions about 2011 documents to something that
 5 happened later, this has all been a waste of time.
 6 MR. KISE: We certainly agree with that, Judge.
 7 MS. HABBA: Thank you.
 8 THE COURT: I figured you would.
 9 MR. WALLACE: As you said, it's turned into a
 10 love fest, I guess.
 11 Your Honor, I think we saw, in Mr. Kise's
 12 opening, that there are credit reports from Deutsche Bank
 13 that include these earlier years that happen --
 14 MR. KISE: No, your Honor. These credit reports
 15 related to the OPO loan that was closed in August of 2014,
 16 which postdates the statute of limitations. Those credit
 17 reports relate to that specific loan that, unfortunately
 18 for us, is within the limitations period. So, that's a
 19 very different scenario, then.
 20 MR. WALLACE: I will explain my point, then.
 21 There are credit reports that consider things that happen
 22 in 2011, during the period that is under the statute of
 23 limitations.
 24 MR. KISE: Not for any loans that are within the
 25 limitations period, your Honor, but we'll tie that up

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1 later. You told him he needs to tie it up.
 2 THE COURT: I'm sure we'll address this many
 3 times, going forward.
 4 And Mr. Robert, I hereby deem you an expert in
 5 the CPLR, and no doubt other aspects of New York law.
 6 MR. ROBERT: Thank you, Judge.
 7 THE COURT: All right. Give me one second.
 8 (Whereupon, there was a pause in the
 9 proceedings.)
 10 THE COURT: Okay. We are going to break for the
 11 day. I appreciate everybody's patience and stamina. We
 12 resume tomorrow on schedule, 10:00 in the morning. Have a
 13 good evening.
 14 MR. WALLACE: Thank you, your Honor.
 15 (Whereupon, the proceedings were adjourned to
 16 Tuesday, October 3, 2023 at 10:00 a.m.)
 17 * * * * *
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Table with 5 columns containing legal terms and their corresponding case references. The first column lists terms like 'illegal', 'illegality', 'immediately', etc. The second column lists case numbers. The third column lists terms like 'included', 'income', 'independent', etc. The fourth column lists case numbers. The fifth column lists terms like 'instant', 'instead', 'institute', etc. The sixth column lists case numbers. The table is organized into sections, with a large 'I' section in the middle.

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Table with 5 columns containing word counts and definitions for terms like 'talk', 'talked', 'talking', 'talks', 'Tallahassee', 'target', 'taste', 'tax', 'taxes', 'TB', 'teach', 'team', 'technically', 'technique', 'technologically', 'technology', 'telegraph', 'television', 'telling', 'tells', 'Ten', 'tends', 'ten-minute', 'tens', 'ten-year', 'term', 'terms', 'test', 'testified', 'testify', 'testimony', 'testing', 'tests', 'that', 'the', 'therefore', 'thereof', 'thereon', 'thinking', 'Third', 'Thomas', 'though', 'took', 'thought', 'thousand', 'thousands', 'three', 'throughout', 'Thursday', 'tick', 'tie', 'tier', 'ties', 'tight', 'till', 'timeline', 'timely', 'times', 'title', 'today', 'together', 'told', 'Tommy's', 'tomorrow', 'triple', 'tripling', 'trophy', 'trouble', 'true', 'Trulia', 'truly', 'TRUMP', 'Tracey', 'track', 'training', 'transaction', 'transactions', 'transcript', 'transferred', 'translating', 'travel', 'treated', 'Tremaine', 'tremendous', 'TRIAL', 'tried', 'triplex'.

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 2 COUNTY OF NEW YORK: CIVIL TERM: PART 37
 3 -----X
 4 PEOPLE OF THE STATE OF NEW YORK, BY LETITIA
 5 JAMES, ATTORNEY GENERAL OF THE STATE OF NEW
 6 YORK,
 7
 8 Plaintiff,
 9
 10 - against - INDEX #
 11 452564-2022
 12
 13 DONALD J. TRUMP; DONALD TRUMP, JR.; ERIC TRUMP;
 14 IVANKA TRUMP; ALLEN WEISSELBERG; JEFFREY
 15 McCONNAY; THE DONALD J. TRUMP REVOCABLE TRUST;
 16 THE TRUMP ORGANIZATION, INC; TRUMP ORGANIZATION,
 17 LLC; DJT HOLDINGS, LLC; DJT HOLDINGS MANAGING
 18 MEMBER; TRUMP ENDEAVOR 12, LLC; 401 NORTH WABASH
 19 VENTURE, LLC; TRUMP OLD POST OFFICE, LLC; 40 WALL
 20 STREET, LLC; AND SEVEN SPRINGS, LLC, ,
 21
 22 Defendants.
 23 -----X
 24 October 3, 2023
 25 60 Centre Street
 New York, New York 10007

B E F O R E: THE HONORABLE ARTHUR S. ENGORON,
 Justice of the Supreme Court

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(Continued.)

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1 THE COURT: The man you just heard I have
 2 affectionately called Tommy. His next gig is, no doubt,
 3 going to be with the Metropolitan Opera Company.
 4 Good morning, everyone. If you were here for
 5 yesterday's excitement, welcome back; and if you weren't,
 6 you might have heard a little about it.
 7 First, let me apologize, mea culpa, for
 8 erroneously stating yesterday that expert opinion testimony
 9 is not evidence. It certainly is. I was reacting to what
 10 seemed like an attempt to have an expert introduce new
 11 facts, of which the expert would not have personal
 12 knowledge, which is impermissible. I hope that no harm, no
 13 fall applies.
 14 Second, I want to clear up any possible
 15 misconceptions that might have arisen over colloquy in the
 16 last five minutes of yesterday, and over the repercussions
 17 of the June 27th Appellate Division First Department
 18 decision and order. This case arrived at the App. Div., as
 19 we call it, with seven causes of action. It left with
 20 seven causes of action. It arrived with 16 defendants. It
 21 left with 15 defendants. It arrived at the Appellate
 22 Division with a six-year statute of limitations. It left
 23 with a six-year statute of limitations, extended by both
 24 Covid tolling, and a tolling agreement.
 25 The App. Div. ruled that the continuing wrong

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1 doctrine, which would have pushed the statute of
 2 limitations back at least to 2011, did not apply, so that
 3 only claims that accrued after June 13, 2014, or
 4 February 6, 2016, depending upon application of the tolling
 5 agreement, remained viable.
 6 The general rule is that a claim accrues when
 7 someone can sue on it. Here, the Attorney General is suing
 8 over the use of false financial statements in business, not
 9 over the underlying deals themselves. Obviously, she could
 10 not have sued on those statements until defendants issued
 11 them. Every use of a false financial statement in business
 12 starts the statute of limitations running, again, no matter
 13 when the transaction out of which is arose, closed.
 14 I understand that the defendants strongly
 15 disagree with this, and will appeal, in part, on this
 16 ground. Yesterday afternoon's testimony was based on
 17 certain agreements between defendants and non-party Mazars
 18 that were consummated in 2011, long before they could be
 19 sued on, in isolation. Thus, I made clear that unless
 20 those agreements were somehow tied to something that
 21 occurred years later, at least three years later, or five
 22 years later, the afternoon was a waste of time.
 23 Mr. Wallace promised to connect the dots however,
 24 as I stated yesterday, statutes of limitation bar claims,
 25 not evidence. In any event, on the first day of a

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1 multi-month trial, I am inclined to grant considerable
 2 leeway to both sides as to what may be relevant.
 3 Finally I want to emphasize that this trial is
 4 not an opportunity to relitigate what I have already
 5 decided, including my conclusions in the summary judgment
 6 decision. That's why we have appeals.
 7 So, let's continue with the testimony of Donald
 8 Bender, a former principle of Mazars, and I will, over
 9 defendant's continuing objection, allow testimony about
 10 documents, dates and events that occurred in 2011 and
 11 beyond, subject to connection to later documents.
 12 Speaking of continuing objections, although I
 13 appreciate Mr. Kise's diligence in attempting to preserve
 14 the record by continuing to object to the use of documents
 15 dated prior to 2014, the Court of Appeals, the highest
 16 Court in New York State, has made clear that a continuing
 17 objection makes it unnecessary to challenge other evidence,
 18 for the same reason. And that is Kulak, K-U-L-A-K, versus
 19 Nationwide Mutual Insurance Company, 40 N.Y.2d 140 at page
 20 145, 1976.
 21 Obviously, I would not be commenting like this if
 22 a jury was present. It is not, so I've taken the liberty
 23 of attempting to clarify where the trial stands at this
 24 juncture.
 25 And, now shall we continue with Mr. Bender?

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1 And as yesterday -- and most of you know this --
 2 I'm allowing a group of pool photographers and one
 3 videographer to come in and show how good looking we all
 4 are.
 5 (Photographs taken.)
 6 THE COURT: Oh, the wages of fame.
 7 MR. WALLACE: Your Honor, if I could just raise
 8 one procedural issue with the defendants concerning timing?
 9 I understand Mr. Bender was served with a trial subpoena
 10 when he left the courthouse yesterday, from the defendants,
 11 and so I just would want to know for us, in ordering our
 12 witnesses, are they planning to cross Mr. Bender, or are
 13 they doing taking him as a -- separately, during their case
 14 in chief?
 15 MR. KISE: As of now, we are planning to cross
 16 Mr. Bender.
 17 MR. WALLACE: Okay.
 18 MR. KISE: One other point of clarification, your
 19 Honor. So, I have not yet -- I did receive a letter from
 20 the Attorney General early this morning. I have not yet
 21 looked at the cases, including the cases that you cite --
 22 Usually no one has a problem hearing me.
 23 -- including the cases that -- the case that you
 24 just cited, the Kulak case. I've not looked at them. I
 25 will state, again, that our appellate consultants, some of

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1 whom I'm sure the Court would recognize, have told us
 2 differently. But, give us the opportunity to look at the
 3 case. I take it that your Honor is not precluding me from
 4 making the objection. I just don't now how to balance
 5 this, because I'm being told that I need to preserve these
 6 objections a certain way.
 7 THE COURT: My mother always told me, Do what
 8 you're told. So, yes. Feel free, until you have had a
 9 chance to digest that case --
 10 MR. KISE: Thank you, Judge.
 11 THE COURT: -- to object to each document.
 12 Okay. Are we recalling Mr. Bender?
 13 MR. WALLACE: The People are going to continue to
 14 the testimony of Mr. Bender.
 15 (Whereupon, there was a pause in the
 16 proceedings.)
 17 THE COURT: This is a big room, and apparently
 18 the isolation room is far away.
 19 MR. WALLACE: I believe the words rabbit warren
 20 came to mind, as we were making our way through, yesterday.
 21 DONALD BENDER, having been previously sworn, was
 22 examined and testified as follows:
 23 THE COURT: I will remind the witness, as I
 24 remind every witness, that he is still under oath.
 25 THE WITNESS: Good morning.

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1 THE COURT: Good morning.
 2 Counselor, please proceed.
 3 CONTINUED DIRECT EXAMINATION
 4 BY MR. WALLACE:
 5 Q Good morning, Mr. Bender. Are you settled in?
 6 A I need two seconds.
 7 Q Okay.
 8 (Whereupon, there was a pause in the
 9 proceedings.)
 10 A Okay.
 11 Q Mr. Bender, when we closed yesterday, we talked in
 12 fairly extensive detail about the process and documents related
 13 to the preparation of the 2011 Statement of Financial Condition.
 14 Do you recall that testimony?
 15 A Yes, I do.
 16 Q And we talked about, I believe there was an engagement
 17 letter, Jeff Supporting Data, a representation letter, and the
 18 reported -- the statement itself; is that correct?
 19 A Yes. That's correct.
 20 Q Did Mazars also compile a Statement of Financial
 21 Condition for Donald J. Trump as of June 30 for each year from
 22 2012 to 2020?
 23 A That's correct.
 24 Q Okay. Were there any significant changes in the
 25 preparation process for those statements between the 2011 and

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1 the 2020 statement?

2 MR. KISE: Objection, your Honor. I don't think

3 that we can summarize. This case involves documents, as

4 they have said, and so we can't just summarize. It's

5 inappropriate to summarize a ten-year span and say the

6 process is the same, everything is the same. Each year

7 stands on its own. It's a very complicated process, and if

8 the government intends to establish intent, materiality and

9 reliance, then it needs, respectfully, to go year-by-year.

10 MR. WALLACE: What's the evidentiary objection?

11 MR. KISE: The nature of my objection is, it's

12 calling for a narrative. The question calls for a

13 narrative. It's an open-ended question, and it's

14 introducing facts that are not in evidence. There's no

15 foundation.

16 MR. WALLACE: Yesterday you said I needed to tie

17 things together. The 2011 process continues. I'm allowed

18 to ask this general question. If I want to go through the

19 additional documents, I will. It's my exam.

20 MR. KISE: Okay. That's fine. If he's intending

21 to through the additional documents year-by-year, that's

22 fine. I just want to make that clear. If it's an initial

23 summary question, then I'll withdraw my objection.

24 THE COURT: Was the question whether the -- I

25 think the question was whether the process that he used

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1 changed, over time.

2 MR. WALLACE: That's correct, your Honor.

3 THE COURT: And has that question been answered?

4 MR. WALLACE: That question has not been

5 answered.

6 THE COURT: Objection overruled. Let's hear the

7 answer to that, and then we can discuss whether it's proper

8 to group everything, or to what extent every year has to be

9 examined individually.

10 A I think the process was pretty much the same. The

11 only thing I could think of off the top of my head was that I

12 think the December 2015 return -- return. Financial

13 statement -- the trustees were in place by the time the

14 statement got released in -- no. One year, the trustees took

15 over. That would have been the 2016 statement, probably.

16 Q So that I'm understanding correctly, the process

17 generally remained the same, but at some point the trustees of

18 the Donald J. Trump Revocable Trust became responsible for the

19 statement?

20 A They were the one that signed the engagement letter

21 and the representation letter.

22 Q Can I ask, did the obligations of Mazars in compiling

23 this financial statement change in any significant way, from

24 2011 to 2020?

25 A No, sir.

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1 Q Okay. Did the responsibility of the Trump

2 Organization regarding the preparation of the financial

3 statement change in any significant way, between 2011 and 2020?

4 A No, sir.

5 Q Do you know if, for each statement from 2011 to 2020,

6 Mazars required a signed engagement letter from the Trump

7 Organization?

8 A It was signed. I'm not sure if it was signed by Trump

9 Organization, or the trustees, after Mr. Trump became president.

10 Q But in each year from 2011 to 2020, you required an

11 engagement letter?

12 A Yes. Mr. Weisselberg would have signed, either way.

13 Q And do you know if, in fact, in each year from 2011 to

14 2020, you did, in fact, receive an engagement letter?

15 A Yes, we did.

16 Q Okay. For each Statement of Financial Condition

17 engagement, from 2011 to 2020, did Mazars receive a supporting

18 data spreadsheet from the Trump Organization?

19 A Yes. Jeff Supporting Data.

20 Q For your Statement of Financial Condition engagement

21 from 2011 to 2020, did Mazars maintain a control version of the

22 supporting data spreadsheet?

23 A Say that again, please?

24 Q Did you maintain, in each year from 2011 to 2020, a

25 control version?

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1 A Yes, we did.

2 Q Okay. For each Statement of Financial Condition

3 engagement from 2011 to 2020, would the final version of the

4 supporting data spreadsheet tie out to the final Statement of

5 Financial Condition?

6 A Yes, it did.

7 Q And for each year for -- as of June 30 year, from 2011

8 to 2020, did Mazars require a signed representation letter from

9 the Trump Organization in order to issue the Statement of

10 Financial Condition?

11 A It would have been signed by Trump Organization. Like

12 I said, it may have been signed by the trustees, in the later

13 years.

14 Q Okay. But in each year, you would have required a

15 representation letter in order to release the statement?

16 A Yes, we did.

17 Q And for each statement from 2011 to 2020, did Mazars

18 receive a signed representation letter from the Trump

19 Organization?

20 A Yes, we did. Or the trustees.

21 Q Or the trustees. We can go through the document in

22 detail, now.

23 MR. WALLACE: So, could we please put up, on

24 the -- well no.

25 Would it be helpful if we actually put the

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1 document up on the screen? I know typically we do it
 2 before it's admitted, for you to see it. Is it helpful if
 3 we put it up on the screen?
 4 MR. KISE: This is this one?
 5 MR. WALLACE: Yes. I handed you a copy.
 6 (Whereupon, a document was displayed, and handed
 7 to the witness.)
 8 Q Mr. Bender, do you recognize the document you were
 9 just handed?
 10 A Yes, I do.
 11 Q And what is this document?
 12 A This is the engagement letter, the Trump -- to prepare
 13 the Statement of Financial Conditions for Donald J. Trump as of
 14 June 30, 2012.
 15 MR. KISE: Your Honor, we just assert our statute
 16 of limitations objection.
 17 THE COURT: I understand the objection. Same
 18 ruling, et cetera.
 19 Q And does this appear to be the final engagement
 20 letter?
 21 A Yes, it does.
 22 Q Okay. You can put that one down.
 23 MR. WALLACE: Can we put up PX793. Native.
 24 (Whereupon, a document was displayed, and handed
 25 to the witness.)

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1 Q Mr. Bender, you are being handed what's a pull sheet
 2 for a document that's produced in an Excel format. We have put
 3 up on the screen a copy of the Excel file that was attached at
 4 that location. It's Plaintiff's Exhibit 793.
 5 Based on what you see on the screen, do you recognize
 6 this document?
 7 A Yes. This is what we have been calling the Jeff
 8 Supporting Data for the Statement of Financial Conditions for
 9 Mr. Trump's financial statement, as of June 30, 2012.
 10 MR. KISE: Objection. Statute of limitations.
 11 THE COURT: Overruled, but understood.
 12 Q And again, what is indicated by the red letters, PBC?
 13 A Prepared by client.
 14 Q Okay.
 15 MR. WALLACE: We can take that down.
 16 (Whereupon, a document was displayed, and handed
 17 to the witness.)
 18 Q Mr. Bender, you have been handed a document that is
 19 marked as Plaintiff's Exhibit 815. Do you recognize this
 20 document?
 21 A Give me a second, please.
 22 Q Sure.
 23 A Okay. Yes, I do.
 24 Q And what is this document?
 25 A It's the Statement of Financial Condition for Donald

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1 J. Trump for the year June 30th, 2012. In this case it looks
 2 like it was sent to the client by PDF, by email.
 3 MR. KISE: Objection. Statute of limitations.
 4 THE COURT: Overruled.
 5 Q And is that a copy of the -- is that the final copy of
 6 the Statement of Financial Condition?
 7 A Yes, it is.
 8 MR. WALLACE: Your Honor, I'm not saying the
 9 words, We would ask to have this moved into evidence, but I
 10 assume that once the objection is overruled, it comes in.
 11 Or, would you like me to make that clear on the record?
 12 THE COURT: Well, why don't you make it clear,
 13 and we'll see if there's an objection, other than what's
 14 already been objected to.
 15 MR. KISE: Right. There won't be an additional
 16 objection, but it's up to Mr. Wallace to move them into
 17 evidence, or for your Honor to.
 18 THE COURT: Unless I hear an objection in the
 19 next three seconds, it is now admitted into evidence.
 20 MR. WALLACE: Going forward, do the People want
 21 me to -- should we be saying the magic words, We would like
 22 to move this into evidence? We have had a number of
 23 documents where I haven't always said it.
 24 MR. KISE: That's usually how trials work, your
 25 Honor, but --

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1 MR. WALLACE: Trials work in many ways.
 2 MR. KISE: That's been my experience, in the last
 3 33 years.
 4 THE COURT: Yes. We might as well use the magic
 5 words.
 6 MR. WALLACE: Is there any objection?
 7 MR. KISE: That's why I keep standing up and
 8 making that objection, because there's a process.
 9 MR. WALLACE: There are plenty of bench trials
 10 where you don't say the magic words, but I will say the
 11 magic words, and I will ask if we could let the record
 12 reflect that the exhibits that were shown to Mr. Bender
 13 yesterday, where the objections, or the ones that were
 14 objected to and were overruled, are admitted into evidence,
 15 record-wise.
 16 MR. KISE: Other than the objections that have
 17 been raised and overruled, no further objections.
 18 THE COURT: All of yesterday's and today's
 19 documents are hereby officially admitted into evidence,
 20 over objection.
 21 Q Mr. Bender, I've just handed you a document marked
 22 Plaintiff's Exhibit 792. Do you recognize this document?
 23 A Yes, I do.
 24 Q And what is this document?
 25 A This is the letter of representation for the Statement

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1 of Financial Conditions for Donald J. Trump as of June 30th,
 2 2012.

3 MR. KISE: Objection. Statute of limitations.
 4 THE COURT: Overruled, and it's in evidence.
 5 MR. WALLACE: And it's in evidence. Thank you,
 6 your Honor.
 7 (Whereupon, Plaintiff's Exhibit 792 was received
 8 in evidence.)
 9 Q Mr. Bender I'm going to direct your attention to the
 10 first paragraph. It states, "We are providing this letter in
 11 connection with your compilation of the Statement of Financial
 12 Condition of Donald J. Trump as of June 30, 2012, the statement.
 13 We confirm that we are responsible for the fair presentation in
 14 the Statement of Financial Condition and conformity with
 15 accounting principles generally accepted in the United States of
 16 America."
 17 Would Mazars have issued the Statement of Financial
 18 Condition if you did not receive this representation letter?
 19 A No, we would not have.
 20 Q Would Mazars have issued the Statement of Financial
 21 Condition if it learned that any of the financial statements in
 22 this letter were not true?
 23 A No, we would not have.
 24 (Whereupon, a document was displayed, and handed
 25 to the witness.)

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1 Q Mr. Bender, you have just been handed a document that
 2 has been marked Plaintiff's Exhibit 705. Take a moment.
 3 Do you recognize the document?
 4 A Yes, I do.
 5 Q And what is the document?
 6 A This is the engagement letter to compile the Statement
 7 of Financial Conditions for Donald J. Trump as of June 30, 2013.
 8 I may have said prepare in the past times. I should
 9 have said compile.
 10 MR. KISE: Objection. Statute of limitations.
 11 THE COURT: Overruled.
 12 Magic words?
 13 MR. WALLACE: Your Honor, we move Exhibit 705
 14 into evidence.
 15 THE COURT: Granted. It's now in evidence.
 16 (Whereupon, Plaintiff's Exhibit 705 was received
 17 in evidence.)
 18 MR. WALLACE: You can put the evidence down, now.
 19 (Whereupon, a document was displayed, and handed
 20 to the witness.)
 21 Q Mr. Bender, you have been handed an exhibit that is
 22 marked Plaintiff's Exhibit 708. It's a pull sheet for a
 23 document that was produced as an Excel file. We have put a copy
 24 of that file up on the screen, here. Based on what you see on
 25 the screen, do you recognize this document?

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1 A Yes. This is the Jeff Supporting Data for the
 2 Statement of Financial Condition for Donald J. Trump, as of
 3 June 30, 2013.
 4 MR. KISE: Objection. Statute of limitations.
 5 THE COURT: Overruled.
 6 Q I'll just refer you, again, to the red letters PBC.
 7 What do those stand for?
 8 A Prepared by client.
 9 MR. WALLACE: Your Honor, we ask this document be
 10 admitted into evidence.
 11 THE COURT: Granted. It's now in evidence.
 12 (Whereupon, Plaintiff's Exhibit 705 was received
 13 in evidence.)
 14 (Whereupon, a document was displayed, and handed
 15 to the witness.)
 16 Q Mr. Bender, you have been handed a document that has
 17 been marked Plaintiff's Exhibit 707. I'll give you a moment to
 18 look through it.
 19 Mr. Bender, do you recognize this document?
 20 A Yes, I do.
 21 Q And what is it?
 22 A It's a compilation of Donald J. Trump's Statement of
 23 Financial Condition as of June 30, 2013.
 24 Q And does this appear to be the final version?
 25 A Yes, it does.

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1 MR. KISE: Objection. Statute of limitations.
 2 THE COURT: Overruled.
 3 MR. WALLACE: Your Honor, I would ask this
 4 document be entered into evidence.
 5 THE COURT: Granted. It's now in evidence.
 6 (Whereupon, Plaintiff's Exhibit 707 was received
 7 in evidence.)
 8 Q Mr. Bender --
 9 A Just, I may not have used the word compiled for the
 10 previously financial statements you showed me. I just want to
 11 make sure that I said compiled, for the records. All the
 12 financial statements you showed me were compilations, this
 13 morning.
 14 Q They were compilations. Let's turn to the document
 15 that's up on the screen here, and the document that you have
 16 been handed, it's Plaintiff's Exhibit 706. I'll give you a
 17 minute to just look through it.
 18 Do you recognize the document, Mr. Bender?
 19 A Yes, I do.
 20 Q And what is this document?
 21 A This is the representation letter for the compilation
 22 of the Statement of Financial Conditions for Donald J. Trump as
 23 of June 30, 2013.
 24 MR. KISE: Objection. Statute of limitations.
 25 THE COURT: Overruled.

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1 MR. WALLACE: Your Honor, we would ask that the
 2 document be entered into evidence.
 3 THE COURT: Granted. It's now in evidence.
 4 (Whereupon, Plaintiff's Exhibit 706 was received
 5 in evidence.)
 6 Q If we go to the bottom on page three, do you recognize
 7 that signature at the bottom of this page?
 8 A Yes. It's Allen Weisselberg.
 9 Q If we go back to the top, the first paragraph states,
 10 "We are providing this letter in connection with your
 11 compilation of the Statement of Financial Condition of Donald J.
 12 Trump as of June 30th, 2013. The statement. We confirm that we
 13 are responsible for the fair presentation in the Statement of
 14 Financial Condition, in conformity with accounting principles
 15 generally accepted in the United States of America."
 16 Would Mazars have issued the Statement of Financial
 17 Condition if Mr. Weisselberg did not make the representations in
 18 this letter, on behalf of Mr. Trump?
 19 A No, we would not have.
 20 Q Would Mazars have issued the Statement of Financial
 21 Condition if it learned that any of the representations in the
 22 letter were not true?
 23 A No, we would not have.
 24 (Whereupon, a document was displayed, and handed
 25 to the witness.)

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1 Q Mr. Bender, you have been handed a document that has
 2 been marked as Plaintiff's Exhibit 717. You can take a moment
 3 to look through it.
 4 Do you recognize the document?
 5 A Yes, I do.
 6 Q And what is it?
 7 A It's the engagement letter to compile the financial
 8 statements, Statement of Financial Condition of Donald J. Trump,
 9 as of June 30th, 2014.
 10 MR. KISE: Objection. Statute of limitations.
 11 THE COURT: Overruled.
 12 MR. WALLACE: Your Honor, we would ask this
 13 document be entered into evidence.
 14 THE COURT: Granted. It's now in evidence.
 15 (Whereupon, Plaintiff's Exhibit 717 was received
 16 in evidence.)
 17 (Whereupon, a document was displayed, and handed
 18 to the witness.)
 19 Q Mr. Bender, you have been handed a document that has
 20 been marked as Plaintiff's Exhibit 719. It's a pull sheet for a
 21 document that was produced as an Excel file. The copy of that
 22 file is up on the screen, in front of you.
 23 Do you recognize this document?
 24 A Yes, I do.
 25 Q What is this document?

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1 A This is the Jeff Supporting Data for the Statement of
 2 Financial Conditions for Donald J. Trump, as of June 30, 2014.
 3 MR. KISE: Objection. Statute of limitations.
 4 THE COURT: Overruled.
 5 MR. WALLACE: Your Honor, I would ask that this
 6 document be entered into evidence.
 7 THE COURT: Granted. It's in evidence.
 8 (Whereupon, Plaintiff's Exhibit 719 was received
 9 in evidence.)
 10 (Continued on the next page.)
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D. Bender - Direct/Wallace Page 202

1 Q Mr. Bender, you've been handed an exhibit marked as
 2 Plaintiff's Exhibit 730. I'll give you a minute to look
 3 through.
 4 Mr. Bender, do you recognize this document?
 5 A Yes, I do.
 6 Q This is a compilation of Donald J. Trump Statement of
 7 Financial Condition as of June 30, 2014?
 8 MR. ROBERT: Objection. Statute of Limitations.
 9 THE COURT: Overruled.
 10 MR. WALLACE: Your Honor, we have additional
 11 information that may be relevant to the objection. Can
 12 you go to the third page of document, please?
 13 Q Mr. Bender, what is the date at the bottom near the
 14 signature?
 15 A November 7, 2014.
 16 Q What does that date indicate?
 17 A That is the date we finalized the financial
 18 statement and the date of representation.
 19 MR. ROBERT: That doesn't change the objection.
 20 The objection is-- one is for all. Nonetheless, my
 21 clients don't believe they are --
 22 Even though it's an objection for one, it's an
 23 objection for all. My clients, in particular, do not
 24 believe they're bound by the tolling agreement. So, to
 25 preserve their Appellate rights, we object to anything up

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1 to February 6, 2016, and respectfully object based on
 2 Statute of Limitations.
 3 THE COURT: I knew you were an expert in the
 4 CPLR.
 5 MS. HABBA: Not to be redundant, but, I'm going
 6 to preserve the same objection for my clients as well,
 7 and, I agree, it's one for all.
 8 THE COURT: Understood. Overruled, but, I
 9 understand the objection.
 10 MR. ROBERT: Thank you, sir.
 11 MR. WALLACE: I guess I'm curious, since Cliff's
 12 a CPLR expert, if it's admissible, at least for some of
 13 the defendants, do we have to have the objections
 14 preserved for the Statute of Limitations argument?
 15 MR. ROBERT: Absolutely.
 16 THE COURT: I think they do.
 17 MR. KISE: Absolutely.
 18 MR. WALLACE: Your Honor, we would move this
 19 document be entered into evidence.
 20 THE COURT: Granted. It's in evidence over
 21 objection, as to certain defendants.
 22 MR. KISE: Actually, it's all for one and one
 23 for all, under our agreement. I just got tired of
 24 standing up, so I let Mr. Robert do it.
 25 THE COURT: Overruled objection for all the

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1 defendants.
 2 MR. KISE: Thank you.
 3 MS. HABBA: Thank you.
 4 MR. ROBERT: Thank you.
 5 Q Mr. Bender, you've been handed a document that's been
 6 marked as Plaintiff's Exhibit 718.
 7 Do you recognize this document?
 8 A Yes, this is the letter of representation for the
 9 compilation of Statement of Financial Condition of Donald J.
 10 Trump as of June 30, 2014.
 11 Q If we take a look, the header on the document is the
 12 Trump Organization. That's the same as the previous years; is
 13 that correct?
 14 A Yes, sir.
 15 Q The top states:
 16 "We're providing this letter in connection with
 17 your compilation of Statement of Financial Condition of Donald
 18 J. Trump as of June 30, 2014 (the statement.) We confirm that
 19 we are responsible for the fair presentation in the Statement
 20 of Financial Condition in conformity with accounting
 21 principles generally accepted in the United States of
 22 America."
 23 Do you see that language?
 24 A I do.
 25 Q Would Mazars have issued a Statement of Financial

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1 Condition if Allen Weisselberg had not made the representation
 2 on behalf Mr. Trump?
 3 A No.
 4 Q Would Mazars have issued a Statement of Financial
 5 Condition if they knew any of the representations were not
 6 true?
 7 A No.
 8 Q Mr. Bender, I handed you a copy of Plaintiff's
 9 Exhibit 786. This is the document you saw yesterday
 10 previously admitted into evidence over defendants' objection.
 11 You can take a look. You should have -- you still have 718,
 12 as well? You have 718 and 786.
 13 Can you take a moment and look at those, compare
 14 those two documents? It's two pages, so I'll give you a
 15 minute.
 16 Mr. Bender, did you have a chance to compare the
 17 two letters?
 18 A I gave them both an overview, yes.
 19 Q Apart from the dates listed, is the language in the
 20 two letters identical?
 21 A It appears to be, pretty much.
 22 Q Does that mean all the representations Mazars
 23 required in connection with 2011 Statement of Financial
 24 Condition were also required for the 2014 Statement of
 25 Financial Condition?

D. Bender - Direct/Wallace Page 206

1 A Yes. Substantially, that's correct.
 2 Q Mr. Bender, you've been handed a document that's been
 3 marked as Plaintiff's Exhibit 727. I'll give you a minute to
 4 look for the document.
 5 Mr. Bender, do you recognize this document?
 6 A Yes, I do.
 7 Q What is it?
 8 A It's the engagement letter, compilation of
 9 Statements of Financial Condition of Donald J. Trump as of
 10 June 30, 2015.
 11 MR. ROBERT: Objection. Statute of Limitations.
 12 THE COURT: Overruled.
 13 MR. WALLACE: Your Honor, we ask this document
 14 be entered into evidence.
 15 THE COURT: Granted. It's now in evidence.
 16 Q Mr. Bender, you have been handed a document marked as
 17 plaintiff's Exhibit 731. It's pull sheet for a document
 18 produced in Excel format. There's a copy of that Excel file
 19 up on the screen.
 20 Do you recognize this document?
 21 A Yes, I do.
 22 Q What is it?
 23 A The Jeff Supporting Data for the Statements of
 24 Financial Condition of Donald J. Trump as of June 30, 2015.
 25 Q What is indicated by the red letters, PBC, at the

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1 top?

2 A Prepared by client.

3 Q Was this the final supporting data spreadsheet for

4 the 2015 Statements of Financial Condition?

5 A It appears so, yes.

6 MR. ROBERT: You want to move it in first?

7 MR. WALLACE: I move, over your objection.

8 MR. ROBERT: Objection. Statute of Limitations.

9 He used the magic words this time.

10 THE COURT: Overruled. Those are my magic words

11 or magic word.

12 MR. WALLACE: I ask this document be moved into

13 evidence.

14 THE COURT: Granted. It's now in evidence.

15 Q Mr. Bender, you've been handed a document marked

16 Plaintiff's Exhibit 729. I'll give you a minute to peruse it.

17 Mr. Bender, do you recognize this document?

18 A Yes, I do.

19 Q What is it?

20 A The compilation of Donald J. Trump's Statements of

21 Financial Condition as of June 30, 2015.

22 Q Does this appear to be the final copy?

23 A Yes, it does.

24 MR. WALLACE: Your Honor, I ask this be moved

25 into evidence.

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1 MR. ROBERT: Objection. Statute of Limitations.

2 THE COURT: Overruled. It's now in evidence.

3 Q Mr. Bender, you've been handed a document that's been

4 marked as Plaintiff's Exhibit 728. Take a minute to look

5 through.

6 Do you recognize this document?

7 A Yes, I do.

8 Q What is this document?

9 A This is the representation letter for compilation of

10 Statements of Financial Condition for Donald J. Trump as of

11 June 30, 2015.

12 MR. WALLACE: Your Honor, I ask this document be

13 entered into evidence.

14 MR. ROBERT: I think we're past the February 6,

15 2016. So, no Statute of Limitations as to this document.

16 Thank you.

17 THE COURT: Granted. It's now in evidence.

18 MR. WALLACE: If you can just scroll down to the

19 bottom of this document.

20 Q Do you recognize the signature at the bottom?

21 A Yes. It's Allen Weisselberg's.

22 MR. WALLACE: Can you go back to the top?

23 Q First paragraph states:

24 "We're providing this letter in connection with

25 your compilation of Statements of Financial Condition of

D. Bender - Direct/Wallace Page 209

1 Donald J. Trump as of June 30, 2015. We confirm that we're

2 responsible for the preparation and fair presentation of the

3 Statements of Financial Condition in accordance with

4 accounting principles generally accepted in the United States

5 of America and the selection and application of accounting

6 principles."

7 Do you see that language?

8 A I do.

9 Q Would Mazars-- Mr. Bender, would Mazars have issued

10 the 2015 Statement of Financial Condition if Allen Weisselberg

11 did not make these representations in this letter on behalf of

12 Mr. Trump?

13 A No, it would not.

14 Q Would Mazars --

15 THE COURT: One minute.

16 MR. ROBERT: I actually am going to make a

17 Statute of Limitations objection to this as well because

18 it's cited to conduct in 2015. So, we renew the

19 objections.

20 THE COURT: Understood. Overruled.

21 Q Would Mazars have issued the 2015 Statements of

22 Financial Condition if it learned any of these representations

23 were not true?

24 A No, it would not have.

25 Q Mr. Bender, you've been handed a document that has

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1 been marked plaintiff's Exhibit 740. I'll give you a minute

2 to look through it.

3 Mr. Bender, do you recognize this document?

4 A Yes, I do.

5 Q What is it?

6 A It's the engagement letter, compiled the Statements

7 of Financial Condition of Donald J. Trump as of June 30,

8 2016.

9 MR. WALLACE: Can we go to last page, a

10 production number that ends 62?

11 Q Do you recognize the signature here at the bottom of

12 the page?

13 A Yes, I do.

14 Q Whose signature is that?

15 A Allen Weisselberg's.

16 MR. WALLACE: We ask this document be entered

17 into evidence.

18 MR. ROBERT: Objection. Statute of Limitations.

19 THE COURT: Isn't it past the Statute of

20 Limitations?

21 MR. ROBERT: No, your Honor, because, it's

22 certifying the material accuracy of the financial

23 statement of June 30, 2016. Since our position is the

24 statute runs to February 6th of '16, we preserve the

25 objection.

People of the State of New York v. Donald J. Trump, et al - CORRECTED

October 3, 2023

D. Bender - Direct/Wallace Page 211

1 Thank you, sir.
 2 THE COURT: Understood. Overruled.
 3 Q If you look at the top, it says:
 4 "This letter correctly sets for the
 5 understanding of the trustees on behalf of Donald J. Trump."
 6 Do you know what trustees that's referring to?
 7 A The trustees would have been Donald, Jr. and Mr.
 8 Weisselberg.
 9 Q What trusts were they the trustees of?
 10 A Exact name, I think it's the Donald J. Trump
 11 Revocable Trust as of 2014, but, I'm not sure. It says it
 12 right there, okay.
 13 Q So, I'll, just for the record, underneath Mr.
 14 Weisselberg's signature, it states: "Trustee, Donald J.
 15 Trump, Revocable Trust dated April 7, 2014, as amended."
 16 That's the trust you understood?
 17 A Yes.
 18 Q Do you have an understanding of why Mr. Weisselberg
 19 is now signing this on behalf of a trust?
 20 A He's signing on behalf of both, Executive Vice
 21 President of Trump Organization and as trustee.
 22 Q So, why is it now the trust that's involved?
 23 A Because Mr. Trump was now President and a
 24 significant portion of his assets were put into holding
 25 companies that we discussed yesterday and were all

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1 transferred all into the trust.
 2 Q So, the trust became responsible for the preparation
 3 of Statements of Financial Condition?
 4 A I would say that's correct, yes.
 5 Q If we can go back to the top of this document?
 6 A I would say the trust and the Trump Organization.
 7 Q If we look at the second paragraph, it states: "We
 8 will prepare the statement of financial position of Donald J.
 9 Trump and the related notes to the financial statement and
 10 perform compilation engagement with respect to this financial
 11 statement."
 12 Do you have an understanding of why the language
 13 has changed in this engagement letter from prior years?
 14 A I don't recall.
 15 Q Does the nature of the work that you were performing
 16 on behalf -- strike that question.
 17 Is the nature of the work you were preparing--
 18 strike that question.
 19 Is the nature of the work you were performing in
 20 compiling Statements of Financial Condition changed in any
 21 way?
 22 A No, except now some of the assets are in a trust but
 23 the statement included the assets of Donald J. Trump through
 24 his Revocable Trust.
 25 THE COURT: I have a question. The word

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1 "position" in the highlight, should that have been
 2 condition or is there a reason that it's a different word
 3 being used?
 4 THE WITNESS: I think it's a mistake but I'd
 5 have to check. Good catch.
 6 THE COURT: You don't have to check. I think
 7 it's a mistake.
 8 THE WITNESS: It's still a good catch.
 9 Q We'll go through a little more of this. It might be
 10 easier to read up here. The next paragraph states: "We'll
 11 also provide other accounting services, as necessary, to
 12 obtain sufficient accounting records from which to prepare a
 13 statement. The performance of these additional accounting
 14 services does not alter the fact that you are responsible for
 15 the content of the financial statement, including the
 16 estimated current value of assets and"-- "the estimated
 17 current value of liabilities."
 18 Do you have a recollection of what is being
 19 referred to in the "other accounting services, as necessary?"
 20 A Anything-- the example I gave yesterday is we may
 21 assist with a few footnotes or something.
 22 Q Any assistance you provided did not change the nature
 23 of the work that Mazars was responsible for; is that correct?
 24 A Yes, that's correct.
 25 Q If we scroll down to the number paragraphs below.

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1 Paragraph number one states -- well, I'll read the
 2 introduction.
 3 "The objective of our engagement is, one,
 4 prepare a financial statement in accordance with accounting
 5 principles generally accepted in the United States of America
 6 based on information provided by you."
 7 Who, again, is the "you" in that sentence?
 8 A The Trump Organization and the trustees.
 9 Q Who is responsible for preparing the statement in
 10 accordance with accounting principles generally accepted in
 11 the United States of America?
 12 A The Trump Organization and the trustees.
 13 Q If you look at the next one, number two, it says:
 14 "Apply accounting and financial reporting expertise to assist
 15 you in the presentation of the financial statement without
 16 undertaking to obtain or provide any assurance that there are
 17 no material modifications that should be made to the financial
 18 statement in order for it to be in accordance with accounting
 19 principles generally accepted in the United States of
 20 America."
 21 Is that consistent with the practice Mazars
 22 would have followed in prior years?
 23 A I'd have to compare the two but, I believe, yes. It
 24 would be consistent with our practice.
 25 Q So, separate and apart from the language, the

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1 practice would remain the same?

2 A Yes.

3 Q Okay. Please, scroll down to the bottom paragraph.

4 It states: "We're not required to, and will not, verify the

5 accuracy or completeness of the information you will provide

6 to us for the engagement or otherwise gather evidence for the

7 purpose of expressing an opinion or a conclusion.

8 Accordingly, we will not express an opinion or a conclusion

9 nor provide any assurance on the financial statement."

10 Why would Mazars not verify the accuracy or

11 completeness of any information provided?

12 A You don't do those types of procedure in a

13 compilation. That is what we're being asked to perform.

14 Q If you look at the paragraph that it's in italics,

15 underneath the statement "our accountant's compilation report

16 is expected to include" -- I won't read it into the record.

17 I'll give you a minute to just look at it.

18 A Just the first paragraph?

19 Q First two. Actually, the one that starts: "The

20 accompanying Statement of Financial Condition." So, what's

21 being reflected in these paragraphs?

22 A These are basically the GAAP exceptions we discussed

23 yesterday and that GAAP is-- the accompanying statement does

24 not reflect above-noted items.

25 Q Who was responsible for determining what exceptions

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1 to GAAP will be in the Statements of Financial Condition?

2 A Trump Organization.

3 Q If you look at the next paragraph, I will read that

4 one into the record. It says: "Further, our report will

5 include the following: Because the significance and

6 pervasiveness of the matters discussed above make it difficult

7 to assess their impact on the Statements of Financial

8 Condition, users of this personal financial statement should

9 recognize that they might reach different conclusions about

10 the financial condition of Donald J. Trump if they had access

11 to a revised Statement of Financial Condition prepared in

12 conformity with accounting principles generally accepted in

13 the United States of America."

14 I'd like to direct your attention to the phrase

15 "users of this personal financial statement should recognize

16 that they might reach different conclusions." The reason for

17 those different conclusions -- what's the basis for the

18 different conclusions a user might reach?

19 A Because if you didn't have these GAAP exceptions,

20 these financial statements would be presented in a different

21 format.

22 Q So, is the GAAP exceptions disclosed above the reason

23 someone might have a different view of this financial

24 condition of Mr. Trump? Is that what's being said?

25 A Yes.

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1 Q If you look at the paragraph underneath that, it

2 states: "Our engagement cannot be relied upon to identify or

3 disclose any financial statement and misstatements including

4 those caused by fraud or error or to identify or disclose any

5 wrongdoing or noncompliance with laws and regulations.

6 However, we will inform you of any material errors and any

7 evidence or information that comes to our attention during the

8 performance of our procedures that fraud may have occurred."

9 With respect to this period from 2016, do you

10 remember any instances where you identified any fraud that may

11 have occurred at the Trump Organization?

12 A It's not the Trump Organization. This is a

13 Statement of Financial Condition of Donald J. Trump.

14 Q I'll rephrase the question. Do you know, from the

15 period of this letter in 2016, if you, in the course of

16 compiling the Statements of Financial Condition, identified

17 any fraud at the Trump Organization?

18 A Trump Organization?

19 Q Did you identify any fraud at the Trump Organization?

20 A We didn't do any work as of June 30th.

21 Q If we go down to the last paragraph under the heading

22 "your responsibilities," it states: "The engagement to be

23 performed is conducted on the basis that you acknowledge and

24 understand that our role is to prepare financial statements in

25 accordance with accounting principles generally accepted in

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1 the United States of America and assist you in the

2 presentation of the financial statement in accordance with

3 accounting principles generally accepted in the United States

4 of America."

5 Who is the "you" that's being referred to in

6 this paragraph?

7 A The Trump Organization and trustees.

8 Q Let's look at what the responsibilities are. They're

9 on the next page. Under item one, it states: "The selection

10 of accounting principles generally accepted in the United

11 States of America as the financial reporting framework to be

12 applied in the preparation of the financial statement."

13 Which party is responsible for selecting the

14 accounting principles to be used?

15 A The Trump Organization and trustees.

16 Q Item two states: "The preparation and fair

17 presentation of financial statement in accordance with

18 accounting principles generally accepted in the United States

19 of America and the inclusion of all informative disclosures

20 that are appropriate for accounting principles generally

21 accepted in the United States of America, other than

22 previously noted."

23 Let's start with the end there. Do you know

24 what's being referred to in the "other than previously noted?"

25 A The GAAP exceptions that were delineated in italics

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1 in the beginning.

2 Q So, who is responsible for this paragraph?

3 A The Trump Organization and trustees.

4 Q Do you understand what is meant by inclusion of all

5 informative disclosures?

6 A Generally, they include notes to financial

7 statements.

8 Q So, the actual text of what's contained in that

9 financial statement?

10 A Yes.

11 Q Look at item number 25. It states: "Compliance with

12 the laws and regulations applicable to its activities."

13 Do you know who the "its" is in this?

14 A The Trump Organization and the trustees.

15 Q So, who's responsible for their compliance with the

16 laws and regulations?

17 A The Trump Organization and trustees.

18 Q Look at the next item number six. It states: "The

19 accuracy and completeness of the records, documents,

20 explanations, and other information, including significant

21 judgments you provide us for the engagement."

22 Why is this item included?

23 A Because the parties we discussed are responsible for

24 the accuracy of the compilation of records, documents,

25 explanations, and other significant items and judgments.

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1 Q Item seven states: "To provide us with access to all

2 information of which you are aware is relevant to the

3 preparation and fair presentation of the financial statements

4 such as records, documentation, and other matters."

5 What's encompassed within information that is

6 relevant to the preparation and fair presentation of financial

7 statements?

8 A Any information that they know or documents that

9 they know pertaining to the financial statement.

10 Q If there was a document that related to the value of

11 the asset but they weren't using it for their specific form

12 valuation, would you still expect that to be shared?

13 A Yes, I would.

14 Q Mr. Bender, you've been handed a document that has

15 been marked as plaintiff's Exhibit 3003. Do you recognize

16 this document?

17 A Yes, I do.

18 Q What is it?

19 A This is certain data that was sent to us from the

20 Trump Organization for the preparation of the June 30, 2016,

21 compilation of Statement of Financial Condition for Donald J.

22 Trump.

23 MR. WALLACE: Your Honor, we ask this document

24 be entered into evidence.

25 MR. ROBERT: Objection. Statute of Limitations.

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1 MR. KISE: Just -- go ahead. Sorry. I just

2 have a housekeeping question.

3 THE COURT: Overruled on Statute of Limitations.

4 What's the housekeeping question?

5 MR. KISE: Maybe it's me. I want to make sure

6 there's-- it looks like there's two copies of the

7 Statement of Financial Condition, one redline and the

8 other is very thick. So, I'm just.

9 MR. WALLACE: I can ask, maybe, Mr. Bender if he

10 understands it and, if not, I can make a proffer on

11 something.

12 MR. KISE: That's fine.

13 Q So, I believe your testimony was -- I think you said

14 that this was information that was provided to you by the

15 Trump Organization in connection with the preparation of

16 Mr. Trump's Statement of Financial Condition; is that correct?

17 A Yes.

18 Q I'll get to what some of the attachments are in a

19 moment but answer first. Who is Patrick Birney?

20 A He's an employee of the Trump Organization.

21 Q Do you know why he's the one sending you this

22 information?

23 A At some point, he started being involved with the

24 Statements of Financial Condition and helping Jeff McConney.

25 Q Helping Jeff McConney?

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1 A Yes.

2 Q Did you understand that he reported Mr. McConney I?

3 A Yes, I believe he did.

4 Q So, I think we recognize the name of the first

5 attachment. What is that one?

6 A Jeff Supporting Data.

7 Q We can go through it, but, I believe there's two file

8 names separated by semicolons. I'll attempt to read them into

9 the record.

10 The first one states: "SOFC 02-17-2017 VPB

11 2.17.17 clean.doc," and the second file states: "SOFC 2.17.

12 2017 VPB 2.17.17.doc."

13 Do you have an understanding of what those two

14 files are?

15 A I can guess. I'm not sure.

16 Q Based on your experience of working with Mr. Birney?

17 A I can't-- I can make a guess but not based on

18 working with Mr. Birney.

19 Q What was your guess?

20 A I'm guessing--

21 MR. ROBERT: Objection.

22 THE COURT: Sustained. Not allowed to have

23 speculation.

24 (Continued on following page..)

25

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1 Q Do you have an understanding of what a clean document
2 means?

3 A I'm thinking that it's a document that they want us to
4 use for -- as their version of the typed financial statement.
5 It appears they typed the financial statements themselves, this
6 time.

7 Q And there are two files that are dot doc files, that
8 are SOFC 21717.

9 If you take a look at the list underneath, Mr. Birney
10 writes, "Bender, see attached. Item six is Word document,
11 clean. Item seven is Word document, track changes."

12 Based on that language, do you have any understanding
13 of what the files are, that are included?

14 A It just appears to me that one of them would be the
15 document that we just spoke, and one of them would track
16 changes, but I would have to review.

17 Q I'm happy to move on from this. It's not actually
18 relevant to the questions I was asking about the --

19 MR. ROBERT: I just want to be clear, your Honor.
20 Are you moving in the attachments, too? Or just
21 the covering email?

22 MR. WALLACE: The full document. The document
23 comes with the attachments.

24 MR. ROBERT: Okay. So, then our objection was
25 including the attachments that you moved in, as one piece?

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1 MR. WALLACE: Yes.

2 MR. ROBERT: Thank you for the clarification.

3 THE COURT: Ten-minute warning.

4 MR. WALLACE: Absolutely fine, your Honor.

5 THE COURT: Ten minute, I thought you said ten
6 minutes for morning.

7 Q Mr. Bender --

8 MR. WALLACE: If we could pull up the native
9 file.

10 Q We are going to pull up one of the exhibits that was
11 in the Excel file, native five. Do you recognize this
12 attachment to the email I just showed you?

13 A It appears to be their copy of the Jeff Supporting
14 Data for the compilation of Donald J. Trump financial statements
15 as of June 30th, 2016.

16 Q And do you have an understanding of who would have
17 prepared this document?

18 A It would have been somebody -- it would have been the
19 Trump Organization.

20 Q Okay. But you are not sure which precise individual
21 would have done it?

22 A I'm not. I wouldn't be 100 percent sure, no.

23 Q And what would you have done with this document, when
24 you received it?

25 A We would insert it into our binder, presumably.

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1 MR. WALLACE: Let's pull up Exhibit 742.

2 Q Mr. Bender, you have been handed a document that was
3 marked Plaintiff's Exhibit 742. It's a pull sheet for a
4 document that was produced as an Excel file. We have put a copy
5 of that Excel file up on the screen, here. Let me ask, do you
6 recognize this document?

7 A Yes, I do.

8 Q And what is this document?

9 A This is the file from Mazars' binder for the Statement
10 of Financial Condition compilation of Donald J. Trump, as of
11 June 30, 2016.

12 Q And what do the letters PBC stand for?

13 A Prepared by client.

14 Q And what was the use of this table?

15 A This was our control to tie into the statement of --
16 the compilation of the Statement of Financial Condition for
17 Mr. Trump, as of June 30, 2016.

18 MR. WALLACE: If we could --

19 Q I'll just ask you this: The systems you described for
20 preparing this document, did they operate the same way in 2016
21 as what we discussed in 2011?

22 I can clarify the question.

23 A At some point, they started putting stuff into a
24 portal. I don't think it was this early, but the systems would
25 have been the same, except for that.

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1 Q Okay. So if I'm understanding correctly, the way in
2 which people at the Trump Organization would send you documents,
3 the Statement of Financial Condition, changed, but there was no
4 change to how you prepared this document?

5 A The last document you gave me was 2016, also.

6 Q Correct.

7 A So, yes. So, the stuff would have been -- the same
8 process would have on the statement, as before.

9 MR. ROBERT: To the extent Mr. Wallace is going
10 it move this document in, we object on statute of
11 limitations, and I also object, it was a leading question.

12 THE COURT: Do you want to withdraw it?

13 MR. WALLACE: No, I don't want to withdraw the
14 question. I was just going to say, this is the electronic
15 version of an attachment of the document that was already
16 entered into evidence, over Mr. Robert's objection.

17 MR. ROBERT: I thought, because you identified it
18 as a separate exhibit number, it wasn't.

19 MR. WALLACE: No, I didn't. This was the same
20 exhibit number.

21 MR. ROBERT: It's the same exhibit number?

22 MR. WALLACE: Different file name.

23 MR. ROBERT: Then I still have the objection to
24 the leading question, your Honor.

25 MR. WALLACE: I would say that the leading

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1 question was in response to a general response from the
 2 witness, and I was clarifying his answer.
 3 THE COURT: Oh. In all my years of objections
 4 about leading questions, I never heard the defense that,
 5 Well, he was just asking for a qualification.
 6 MR. ROBERT: If that works, we'll use it all the
 7 time. That's fine.
 8 THE COURT: It seems, to me, a legitimate device
 9 in the search for the truth. Overruled.
 10 MS. HABBA: Your Honor, before we proceed, I just
 11 wanted to let the court reporter know that this is actually
 12 Mr. Robert, not Mr. Solomon. I want to make sure the
 13 record is clear.
 14 THE COURT: That would be a bad mistake to make.
 15 MR. SOLOMON: Okay, your Honor.
 16 THE COURT: That's Mr. Solomon.
 17 MS. HABBA: That's Mr. Solomon.
 18 Q So, we were discussing how this document operates
 19 what's indicated by the numbers in blue, in row 84100.01?
 20 A Those are the cross references to the underlying work
 21 papers in the Mazars binder in that case, and an example, the
 22 cash worksheet appears to be worksheet 4100.01.
 23 (Whereupon, a document was displayed, and handed to
 24 the witness.)
 25 Q Mr. Bender, I've handed you a document that's been

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1 marked as Plaintiff's Exhibit 2587. This is a document that was
 2 produced as an Excel file, so I've put a copy of the Excel file
 3 that was produced up on the screen. Do you recognize this
 4 document -- let me introduce -- this document has been produced
 5 with, and is listed on plaintiff's exhibit list, as a file name
 6 of 4100.01 Cash Balances as of 6/30/16 - final VPB
 7 2.17.17.XLS.XLS.
 8 Do you recognize this document?
 9 A Yes. This is the Excel file for the cash and
 10 short-term investments for the compilation of Donald J. Trump's
 11 Statement of Financial Condition as of June 30, 2016.
 12 MR. WALLACE: Your Honor, we would ask that this
 13 document be marked into evidence.
 14 MR. ROBERT: Objection. Statute of limitations.
 15 THE COURT: Overruled.
 16 (Whereupon, Plaintiff's Exhibit 2587 was received
 17 in evidence.)
 18 Q Again, what does the red letters at the top say, PBC,
 19 what do those indicate?
 20 A Prepared by client.
 21 Q And what would you do with this table?
 22 A It would -- the bottom total should hopefully tie into
 23 the Jeff Supporting Data.
 24 Q Okay. So this is the support for the number on the
 25 document we were just looking at?

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1 A Yes, sir.
 2 Q If we look at the lettering in blue, on row one, it
 3 states, "Per discussion with J. McConney, 2.717, cash balances
 4 are from bank reconciliations and not individual balance
 5 sheets."
 6 Can you just tell me, what does that mean?
 7 A I'm not 100 percent sure, today.
 8 Q Do you recall if Mr. McConney was still involved in
 9 the preparation of the Statement of Financial Condition, as of
 10 February 27, 2017?
 11 A He was involved with the compilation for the Statement
 12 of Financial Condition of Donald J. Trump as of June 30th, 2016.
 13 I don't know if you said '16 or '17.
 14 Q So, just to clarify, this is a discussion that
 15 happened in 2017, but it's for the as-of-June 30, 2016
 16 statement?
 17 A It appears to be so, yes.
 18 Q Do you have a recollection as to why work on the
 19 as-of-June 30, 2016 statement was happening in 2017?
 20 A I have a general recollection.
 21 Q What's your general recollection?
 22 A I think things -- Mr. Trump became president, and
 23 things were a little crazy.
 24 Q Okay.
 25 A For the Trump Organization.

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1 Q If we go down to rows 69 through 72, I just want to
 2 direct your attention to -- there's two red arrows -- let me
 3 start by staying, we are on row 69. There's two red arrows.
 4 One going up, and one going down, and they each go into a red
 5 line. What is indicated by that symbol?
 6 A I believe, and I would have to double check, I believe
 7 that it was footed. Added done.
 8 Q So, someone has confirmed that the formula that's
 9 operating there, it had been prepared correctly?
 10 A Somebody would have taken the --
 11 Q Okay.
 12 A -- mouse, and would have went down with it, and made
 13 sure the math checks.
 14 MR. WALLACE: I think we are done with this
 15 document, if that's a good time to break, your Honor.
 16 THE COURT: I don't allow breaks longer than
 17 10 minutes, but we are going to have 15 minutes to have the
 18 10-minute break. So, please be back at 11:45, everyone.
 19 MR. WALLACE: Thank you.
 20 (Whereupon, a recess was taken.)
 21 * * * * *
 22 THE COURT: You know, for various reasons, I want
 23 to run a tight ship. It seems like I'm going to have to be
 24 a little firmer in these the timing of these breaks. I
 25 said -- another example of lame humor -- we'll take a

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1 10-minute break, but you can have 15 minutes. Maybe you
 2 could push that to 20, but I'm starting in 20 minutes. If
 3 I say we are talking a 10-minute break in 15 minutes, and
 4 if you are not here, I'm starting anyway. So, please be
 5 here.
 6 I see Mr. Kise is nodding. You understand.
 7 Mr. Robert.
 8 Ms. Habba.
 9 10-minute break, at most 20 minutes.
 10 All right. Let's continue.
 11 Before we do, I looked at Kulak, the case that I
 12 mentioned before, very closely. Kulak versus Nationwide,
 13 40 N.Y.2d 140, and at page 145 -- depends which version --
 14 the Court of Appeals makes clear, not just that continuing
 15 objections can be made, but they don't even have to be
 16 made.
 17 Quote, "The objection, thus clearly made and
 18 overruled, served as a continuing objection, and made it
 19 unnecessary to challenge other improper evidence," close
 20 quote.
 21 The next sentence says, quote, "Although
 22 objection was not made to every question during this line
 23 of testimony, the objections were," internal quote, "Were
 24 sufficient to cover the whole of the material accepted as
 25 evidence."

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1 So, I beg to differ with the advice that the
 2 defendants received. You can make continuing objections,
 3 and you can just object, and it's understood that that will
 4 cover the exact or similar, same situations.
 5 MR. KISE: Just looking at this, your Honor,
 6 briefly, and I didn't get to look at it on the break, even
 7 though it was a long break, but just pulling it up now, I
 8 think this goes -- and I've sent it off to our folks. I
 9 think this goes to what I said yesterday, the difference
 10 between testimony and documents. This case relates, I
 11 think, from what I'm seeing more, to testimony, and that's
 12 why with Mr. Bender, we have made one blanket objection as
 13 to testimony, which is sufficient. But, I don't know that
 14 that covers us with documents.
 15 But, I can assure you, to the extent that I
 16 don't -- and Mr. Robert, so we don't have to keep standing
 17 up and down -- if we can come up with a way to satisfy our
 18 side, we would do that. I just think this is testimony and
 19 not documents, because it speaks to, defendant objected
 20 only to the first of three hypothetical questions. The
 21 last hypothetical question -- the first three hypothetical
 22 questions addressed to the first expert, it was not error
 23 to admit, into evidence, testimony as to the possibility of
 24 adequate representation. I think that's the distinction
 25 that we are drawing here, as I did yesterday, I mentioned

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1 that. But we will continue to look into it, to save all of
 2 us the --
 3 MR. WALLACE: Your Honor, I can, also, though --
 4 I think we have offered to -- the parties exchanged exhibit
 5 lists that contained the information. If they want to do a
 6 list that specifies the document to which they object,
 7 based on statute of limitations ground and timing, just
 8 that, and your Honor can rule on the list, regardless of
 9 whether or not -- and then they can preserve their
 10 objections that way, we would be happy to do something
 11 along those lines.
 12 MR. KISE: We'll look at that as well, your
 13 Honor. Anything to expedite these process, I can assure
 14 you.
 15 THE COURT: As I said much earlier, Mr. Kise and
 16 everyone at defense table, I'll let you do what you feel
 17 like you need to do.
 18 MR. KISE: Understood and appreciated. But we'll
 19 streamline it, as much as we possibly can.
 20 THE COURT: And by the way, I didn't read the
 21 exception into this that you are reading into it, but you
 22 know, reasonable minds can differ. Okay.
 23 I hope he is closer, this time.
 24 (Whereupon, the witness resumed the witness
 25 stand.)

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1 THE COURT: Please proceed.
 2 CONTINUED DIRECT EXAMINATION
 3 BY MR. WALLACE:
 4 Q We have three minutes of good morning left,
 5 Mr. Bender, so good morning, again.
 6 MR. WALLACE: I would like to offer the witness a
 7 new document.
 8 (Whereupon, a document was displayed, and handed
 9 to the witness.)
 10 Q Mr. Bender, you are being handed a document that has
 11 been marked Plaintiff's Exhibit 756. Can you just take a moment
 12 to look through this document?
 13 THE COURT: And while he is looking, I'll ask the
 14 court officer to hand a copy of the Kulak case to the
 15 defense table, for their convenience.
 16 MR. KISE: Thank you.
 17 Q Mr. Bender, do you recognize this document?
 18 A Yes, I do.
 19 Q And what is this document?
 20 A This is the compilation of Donald J. Trump's Statement
 21 of Financial Condition, as of June 30, 2016.
 22 Q And does this appear to be the final version?
 23 A Yes, it does.
 24 MR. WALLACE: Your Honor, we ask that this
 25 document be moved into evidence.

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1 MR. ROBERT: Objection. Statute of limitations.
 2 THE COURT: This, the date of this -- I'm
 3 speaking to the expert here. The date of this document is
 4 after the limitations period had started, if we can call it
 5 that; right?
 6 MR. ROBERT: Correct. The limitations period, in
 7 our view, is from February 6, 2016, so what is contained in
 8 here, and the work product that's within here, to protect
 9 our record, we believe that that would be barred by the
 10 statute of limitations as for those defendants not bound by
 11 the tolling agreement.
 12 THE COURT: And what if it was 2017?
 13 MR. ROBERT: It gets a little more complicated
 14 there, because sometimes, especially on the McConney
 15 spreadsheets, you will see that they have two years' worth
 16 of information on a spreadsheet the year before, in that
 17 year. That's why we have to take them one document at a
 18 time, just to make sure we are preserving our position and
 19 not waiving that we feel, for those defendants not bound by
 20 the tolling agreement: Anything that happened prior to
 21 February 6th of 2016, is out.
 22 THE COURT: Overruled.
 23 MR. WALLACE: Your Honor, you have already ruled,
 24 so I probably should just sit down, is the standard
 25 operating advice. I will note that we don't believe that

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1 the defendants are entitled to lie about events that
 2 happened in 2014, in '17 and so that the statute of
 3 limitations isn't applicable, or the statute of limitations
 4 period certainly encompasses this document, but I will move
 5 on.
 6 And so I take it this document has now been
 7 entered into evidence?
 8 THE COURT: Yes. It's now in evidence.
 9 MR. WALLACE: Thank you.
 10 (Whereupon, Plaintiff's Exhibit 756 was received
 11 in evidence.)
 12 Q Mr. Bender --
 13 MR. WALLACE: If we could pull up page three of
 14 the document. It's the one that has the production number
 15 1985.
 16 Q Just please reorient us. What portion of the
 17 Statement of Financial Condition is this section?
 18 A These are the notes to the financial statements.
 19 Notes to the Statement of Financial Condition.
 20 Q And who is responsible for this language?
 21 A The Trump Organization, and the trustees.
 22 Q And just to clarify, I'll leave the record here, under
 23 the heading, Basis of Presentation it states, "Prior to June 30,
 24 2016, Donald J. Trump transferred certain of his assets and
 25 liabilities, including certain entities that he owned, to two

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1 holding companies. These two holdings companies are owned by
 2 the Donald J. Trump Revocable Trust, dated April 7, 2014, as
 3 amended, (The Trust). Prior to Mr. Trump being sworn in as
 4 President of the United States of America on January 20, 2017,
 5 he transferred a significant portion of his remaining assets and
 6 liabilities, including certain entities, to either the trust, or
 7 entities owned by the trust."
 8 "The accompanying Statements of Financial Condition
 9 consists of the assets and liabilities of Donald J. Trump,
 10 including the assets and liabilities of the trust."
 11 So, just to reorient, this is the trust process that
 12 you speak about earlier this morning?
 13 A I'm not sure what you mean by that?
 14 Q Okay. You are not sure --
 15 A What you mean by that question.
 16 Q You said that at some point trustees took over the
 17 responsibility for the preparation of the Statement of Financial
 18 Condition. This is the trust that the trustees were operating
 19 on behalf of --
 20 A Yes, it was.
 21 Q Okay. So, if we look at the next full paragraph, it
 22 states that, "Assets are stated at their estimated current
 23 values, and liabilities at their estimated current amounts,
 24 using various valuation methods."
 25 So who is responsible for making sure that assets are

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1 stated at their estimated current values?
 2 A The Trump Organization, and the trustees.
 3 Q Okay. So, if we could just flip to the page five of
 4 this report, it's the production number that ends 1987, if we
 5 look at the second paragraph, it states, "The estimated current
 6 value of 600 million -- \$631 million, is based on an evaluation
 7 by the trustees in conjunction with their associates and outside
 8 professionals, applying a capitalization rate to the cash flow
 9 to be derived from building operations."
 10 So, who is responsible for deciding to use this
 11 technique, to value Trump Tower?
 12 A Trustees, in conjunction with their associates and
 13 outside professionals.
 14 Q And did Mazars undertake any procedures to determine
 15 if that was an appropriate means of valuing Trump Tower?
 16 A No, we did not.
 17 Q And did Mazars undertake any accounting procedures to
 18 determine if the 631 million number was accurate?
 19 A Say the question again, please?
 20 Q Did Mazars undertake any accounting procedures to
 21 determine if the \$631 million number was accurate?
 22 A Anything that -- I would have to see the Jeff
 23 Supporting schedule, to see if we footed any other, or if we did
 24 any other work.
 25 Q But would you have undertaken any kind of audit or

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1 review to check the number, the \$631 million number?

2 A No, we would not have done that.

3 (Whereupon, a document was displayed, and handed

4 to the witness.)

5 Q Mr. Bender, you have been handed a document that has

6 been marked as Plaintiff's Exhibit 741. I'll give you a moment

7 to look through it.

8 Do you recognize this document, Mr. Bender?

9 A Yes, I do.

10 Q And what is this document?

11 A It's a representation letter for the personal -- for

12 the compilation of the financial statements of Donald J. Trump,

13 as of June 30, 2016.

14 MR. WALLACE: Your Honor, we would ask that this

15 document be moved into evidence.

16 MR. ROBERT: Objection. Statute of limitations.

17 THE COURT: Overruled.

18 (Whereupon, Plaintiff's Exhibit 741 was received

19 in evidence.)

20 Q Mr. Bender, would Mazars have issued the Statement of

21 Financial Condition if the trustees --

22 MR. WALLACE: Well, let's actually strike that

23 question.

24 Can we turn to the last page of this document?

25 THE COURT: The correct term is withdrawn, not

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1 strike.

2 MR. WALLACE: Thank you, your Honor.

3 Q If we take a look at the bottom of this page, do you

4 recognize the signature on the left hand side of the screen?

5 A Yes. That's -- excuse me. That's Allen Weisselberg.

6 (Continued on the next page.)

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D. Bender - Direct/Wallace Page 241

1 Q In what capacity is he signing this letter?

2 A He signed it as Chief Financial Officer of the Trump

3 Organization and as Trustee of Donald J. Trump Revocable

4 Trust.

5 Q Do you recognize the signature on the right-hand side

6 of the screen?

7 A Yes, it's Don, Jr.'s signature.

8 Q In what capacity is he signing this?

9 A As Executive Vice President of the Trump

10 Organization and Trustee of Donald J. Trump Revocable Trust.

11 Q Would Mazars have issued, as of June 30, 2016,

12 Statements of Financial Condition for Donald J. Trump if the

13 trustees had not signed this representation letter?

14 A No, they would not.

15 Q I'd like to direct your attention to the second page

16 of this document. Paragraph two states: "We've made

17 available to you all financial records and related data and

18 any additional information you requested from us for the

19 purpose of the compilation. We have not, knowingly, withheld

20 from you any financial records or related data that, in our

21 judgment, would be relevant to your compilation."

22 You see that language?

23 A Yes, I do.

24 Q Would Mazars have issued the Statements of Financial

25 Condition if the trustees had not made that representation?

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1 A No, it would not.

2 Q After the date of this letter, which was signed --

3 after the date of this letter on March 10, 2017, did you learn

4 whether or not the Trump Organization had, in fact, not

5 provided you with all financial records and related data and

6 any additional information requested for the purpose of the

7 compilation?

8 A I'd have to double check 2016. I'm not sure of

9 2016.

10 Q So, after -- I'm trying to clarify. After this

11 letter, did you learn this representation was not accurate?

12 A I can't tell you the specific year, off the top of

13 my head.

14 Q At some point, did you learn this representation was

15 inaccurate?

16 A I'm not sure for the year June 30, 2016. I'd have

17 to go back and look at that to answer the question.

18 Q At some point, did you learn, during the course of --

19 withdrawn.

20 At some point did you learn that the Trump

21 Organization had not made available to you all financial

22 records for any of your compilation engagements?

23 A Yes, sir.

24 Q What did you learn --

25 A There were certain matters -- certain documents were

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1 shown to us, appraisals, that were in their possession that
 2 we did not know about.
 3 THE COURT: Please keep your voice nice and
 4 loud.
 5 THE WITNESS: I apologize. My throat is --
 6 THE COURT: That's because you're talking too
 7 much the last few days.
 8 THE WITNESS: That's because I'm retired. I'm
 9 not used to talking.
 10 Q So, Mr. Bender, how did you learn there were
 11 appraisals you had not been provided?
 12 A I believe the first time I saw them were interviews
 13 with the District Attorney of the City of New York.
 14 Q Was that information you thought you should have
 15 received in the course of preparing a compilation engagement?
 16 A Yes.
 17 Q Let's go down to another portion of this letter. If
 18 you look at item number 15, item 15 states: "We've responded
 19 fully and truthfully to all inquiries made to us by you during
 20 your compilation."
 21 After the receipt of this letter, did you learn
 22 whether or not that representation was inaccurate?
 23 A It was inaccurate for not-- I can't tell you for
 24 this year but for various years in total, yes.
 25 Q Based on your understanding, why was that

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1 presentation inaccurate?
 2 A Because they were not giving us all the documents
 3 that we needed, potentially, to compile the compilation.
 4 Q So, had you made inquiries for those documents?
 5 A In many, yes, I did. Yes.
 6 MR. KISE: Objection. Which documents? He's
 7 testified he's not sure which year it was. So, which
 8 documents are we talking about?
 9 THE COURT: Sustained.
 10 MR. KISE: What year? When? When --
 11 THE COURT: Sustained. I think we need to be a
 12 little more particular.
 13 Q Mr. Bender, you testified that the Trump Organization
 14 was not giving us all the documents that we needed to
 15 potentially compile the compilation. What documents are you
 16 referring to?
 17 A There were certain appraisals out there for a number
 18 of years.
 19 Q Do you remember, specifically, which years?
 20 A Not all years off the top of my head, no.
 21 Q Do you remember some of the years, off the top of
 22 your head?
 23 A I think it was '15, '16, something like that but I'd
 24 have to double check.
 25 Q So, you made inquiries for appraisals to the Trump

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1 Organization?
 2 A Yes.
 3 MR. KISE: Objection. Which year?
 4 THE COURT: I may be second-guessing myself but
 5 I think he can ask if it was done, and, you can
 6 cross-examination well, when was it done.
 7 MR. KISE: Okay, if he's asking generally, did
 8 he ever make inquiries about appraisals, that is one
 9 thing. He's asking, specifically, the representation
 10 with respect, rather, to this particular year. I think
 11 that's quite another.
 12 THE COURT: I don't think he was but let's see
 13 if he'll clarify.
 14 MR. WALLACE: I appreciate Mr. Kise's evidence
 15 coming in but--
 16 Q Did you ask the Trump Organization, during the course
 17 of your work on compilation reports, for appraisal reports?
 18 A Yes, I think it started at the time-- first time, my
 19 recollection of asking where the appraisals were, they gave
 20 me certain appraisals for TIHT Commercial LLC of Trump Plaza,
 21 LLC, and, I think those questions I asked in most years of
 22 Jeff McConney. That was started, based on, I guess,
 23 approximately, 2013 or other.
 24 Q Do you have a specific recollection of it starting in
 25 2013?

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1 A I recently saw that we had those appraisals appear
 2 in 2013. So, that's probably when I asked for them.
 3 Q So, your best recollection is you started asking for
 4 appraisals in or about 2013?
 5 A Yes.
 6 Q You had asked Mr. McConney, I believe you said?
 7 A Yes, most years.
 8 Q Can you describe, to your recollection, how you asked
 9 Mr. McConney for those documents?
 10 A First time he gave me appraisals, I said, do you
 11 have any more appraisals, and, I'd ask every year after that.
 12 All-- most accountants -- I did ask for appraisals.
 13 Q What did he tell you?
 14 A "That's all we have."
 15 Q Every year you asked, that's what he told you?
 16 A Yes.
 17 Q Again, you don't remember exactly when that practice
 18 started?
 19 A No, but, I did see that the appraisal appeared
 20 around 2013.
 21 Q You've seen an appraisal dated 2013 that conforms to
 22 what your memory is?
 23 A I saw appraisals in the 2013, the binder for the
 24 compilation for the year, as of June 30, 2016.
 25 Q What did you do when you learned that there were

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1 appraisals that had not been given to you?

2 A What did I do?

3 Q Yes.

4 MR. KISE: Objection. The timeframe. Back to

5 timeframe. Objection.

6 MR. WALLACE: He identified the timeframe as

7 during a meeting with the New York District Attorney's

8 Office.

9 MR. KISE: Is that a timeframe? He said some

10 timeframe but then it was unclear as to which -- I just

11 want the record to be clear.

12 THE COURT: We all do.

13 Q Do you remember when?

14 THE COURT: Hold on a second. Let's start with:

15 Can you remember a specific time when you reacted to this

16 realization.

17 Q Can you answer the question from the Judge?

18 A It was my first meeting with a Zoom meeting with the

19 District Attorney of the State of New York.

20 THE COURT: You remember, roughly, when that

21 meeting was?

22 THE WITNESS: Not off the top of my head.

23 THE COURT: Can you approximate from point of

24 view of more than speculation but less than certainty?

25 THE WITNESS: I would say about three years ago,

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1 during COVID. Yeah, it was during COVID but, yes, the

2 late part. Wasn't the first year of COVID.

3 Q Did you do anything after you learned from that

4 meeting with the District Attorney's Office that there were

5 appraisals you'd not been given?

6 A I was not personally involved in any of those

7 matters. It wasn't handled by me.

8 Q Were you still working on the compilation for Donald

9 J. Trump's Statement of Financial Condition at the time you

10 learned that information?

11 A No, we did not. So, it had to be after 2020. The

12 date would have to be after June 30, 2020, was, I believe,

13 the last compilation we did.

14 Q Did you have any conversations with Mr. McConney

15 after you learned this information from the District

16 Attorney's Office?

17 A Pertaining to that matter?

18 Q Correct.

19 A No, I did not.

20 Q You had conversations with him on other matters?

21 A Yes. Let me go back.

22 THE WITNESS: It would have been early part of

23 '21, your Honor.

24 THE COURT: Just finish the sentence.

25 A Would be the early part of the '21 that we had the

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1 Zoom meeting with DANY.

2 Q Meaning the District Attorney's Office of New York

3 County?

4 A Somebody taught me this.

5 THE COURT: DANY.

6 THE WITNESS: Somebody taught me this. I'm

7 sorry.

8 Q Mr. Bender, in any given year where you asked for

9 appraisals you were not given -- let me withdraw that

10 question.

11 THE COURT: He's a quick learner.

12 Q Mr. Bender, would Mazars have issued Statements of

13 Financial Condition-- without reference to a specific year

14 but, if Mazars learned that the Trump Organization had not

15 provided all appraisals, would you have issued the Statement

16 of Financial Condition?

17 MR. KISE: Objection. Back to which year?

18 THE COURT: Overruled. Again, I may be

19 second-guessing myself but you can ask if it was ever

20 done. I don't see a problem with that.

21 MR. KISE: Which years did he not receive the

22 appraisals? Which years is the government asking him

23 which statements wouldn't have been produced? I mean,

24 there are some years where there might not have been any

25 appraisals provided and some years were there were

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1 appraisals provided but what the government is doing is

2 mashing it all together and saying, in those years that

3 you didn't get appraisals, would you have issued the

4 statements, but, that doesn't speak to the direct point

5 which they have to establish that it was a specific year

6 or a specific appraisal not provided in connection with a

7 specific statement.

8 Not generally, over a ten-year period, whether

9 appraisals you didn't receive and did that then -- what

10 the --

11 MR. WALLACE: How would the witness know if he

12 didn't receive an appraisal, apart for the ones shown by

13 DANY?

14 MR. KISE: According to his testimony, he was

15 told by the District Attorney of New York when he didn't

16 receive it. So, if the witness can recall which years

17 that related to and he can recount what he would have

18 done or not have done, based on information he would have

19 received in that particular year, fine; but, if it's no,

20 he can't just speculate generally about --

21 MR. WALLACE: You're arguing in front of the

22 Judge now.

23 THE COURT: He is allowed to. Overruled.

24 MR. WALLACE: Can we go back to --

25 THE COURT: Subject to the cross-examination.

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1 Q Mr. Bender, would Mazars have issued a Statement of
 2 Financial Condition if it knew it had not been provided with
 3 all appraisals?
 4 A No, it would not.
 5 Q Thank you.
 6 MR. KISE: Just for the record, I didn't object
 7 to that last question because of the Kulak case, okay.
 8 I'm glad we're on the same page.
 9 Q Mr. Bender, you have been handed a document that has
 10 been marked Plaintiff's Exhibit 753. Take a moment to look at
 11 this. Do you recognize this document?
 12 A Yes, I do.
 13 Q What is this document?
 14 A This is the engagement letter compiling the
 15 Statement of Financial Condition of Donald J. Trump as of
 16 June 30, 2017.
 17 Q Does this appear to be the final letter?
 18 A Yes, it does.
 19 MR. WALLACE: Your Honor, I would ask this be
 20 entered into evidence.
 21 THE COURT: Granted. It's now in evidence.
 22 By the way, I can ask why you're not objecting.
 23 Because of the continuing objection rule or because of
 24 the date of the document?
 25 MS. HABBA: Don't worry, your Honor. I'm about

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1 to object. I'm just letting him do his thing.
 2 THE COURT: Okay.
 3 Q Mr. Bender, I've handed you a document marked
 4 Plaintiff's Exhibit 758. It is a pull sheet for a document
 5 that was produced to us in the form of an Excel file. We put
 6 a copy of the Excel file up on the screen here.
 7 Do you recognize this document?
 8 A Yes, I do.
 9 Q What is this document?
 10 A This is the Jeff Supporting Data for the Statement
 11 of Financial Condition of Donald J. Trump as of June 30,
 12 2017.
 13 Q Does this appear to be the final form?
 14 A Yes, it does.
 15 MR. WALLACE: Your Honor, we ask the document be
 16 entered into evidence.
 17 MS. HABBA: Your Honor, I'll state my objection
 18 on the record. To the extent that the 2017 documents
 19 look back to 2016, and anything in there before
 20 February 2016, we assert the same Statute of Limitations
 21 objection.
 22 THE COURT: Maybe this is the right time to
 23 discuss this point.
 24 If the defendants make a statement, or any of
 25 the defense makes a statement, within the permissible

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1 Statute of Limitations period but it's about events that
 2 happened before, isn't that still actionable or am I
 3 missing something?
 4 MS. HABBA: Again, we've raised these issues
 5 with the Appellate Division, which we're preserving. I
 6 would like to state the objection that any reference to
 7 anything in here before 2016, which I know your Honor has
 8 a differing opinion, but, I have to state my objection
 9 against it, should not be considered.
 10 THE COURT: I'll just say in front of everyone,
 11 I don't see how you can possibly object to a statement
 12 that's timely even if it's about a fact that comes before
 13 that; but, as you just said, we'll agree to disagree.
 14 MS. HABBA: Thank you, your Honor.
 15 THE COURT: Thank you.
 16 Q So --
 17 THE COURT: Objection overruled and we'll ask
 18 the witness to answer.
 19 MR. WALLACE: I believe there was a pending
 20 request to put this in the record.
 21 THE COURT: It's in.
 22 Q Mr. Bender, you have been handed a document that's
 23 been marked Plaintiff's Exhibit 755. I'll give you a moment
 24 to look through the document.
 25 Mr. Bender, do you recognize this document?

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1 A Yes, I do.
 2 Q What is this document?
 3 A It's the compilation of Donald J. Trump's Statements
 4 of Financial Condition as of June 30, 2017.
 5 Q Does this appear to be the final version of the
 6 document?
 7 A Yes, it does.
 8 MR. WALLACE: Your Honor, we ask this document
 9 be entered into evidence.
 10 THE COURT: Granted. It's now in evidence.
 11 Q Mr. Bender, you've been handed a document marked
 12 Plaintiff's Exhibit 754. Just take a moment to look through
 13 this document.
 14 Do you recognize this document -- withdrawn.
 15 A I'm sorry.
 16 Q Mr. Bender, do you recognize this document?
 17 A Yes, I do.
 18 Q What is this document?
 19 A This is the representation letter for the
 20 compilation of the personal financial statement, Statements
 21 of Financial Condition of Donald J. Trump as of June 30,
 22 2017.
 23 Q If we just flip to the last page. Do you recognize
 24 the signature on the left-hand side of the screen?
 25 A Yes, I do.

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1 Q Whose signature is that?

2 A Allen Weisselberg.

3 Q In what capacity is Mr. Weisselberg signing this

4 letter?

5 A Chief Financial Officer and Trustee of Donald J.

6 Trump Revocable Trust.

7 Q The signature on the right-hand side of the page, do

8 you recognize that signature?

9 A Yes.

10 Q Whose signature is that?

11 A That's Don, Jr.'s signature.

12 Q In what capacity is Mr. Trump signing this letter?

13 A As Executive Vice President and Trustee of Donald J.

14 Trump Revocable Trust.

15 Q Would Mazar's have issued a Statement of Financial

16 Condition in-- withdrawn.

17 Would Mazars have issued a Statement of

18 Financial Condition if Allen Weisselberg and Donald Trump, Jr.

19 did not make representations in this letter on behalf of the

20 trustees in the Revocable Trust?

21 A It would not have.

22 Q Would Mazars have issued 2017 Statement of Financial

23 Condition if they learned any of the representations in this

24 letter were not true?

25 A No, they would not have.

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1 Do you recognize this document?

2 A Yes, I do.

3 Q What is this document?

4 A It's the Jeff Supporting Data for the Statements of

5 Financial Condition for Donald J. Trump as of June 30, 2018.

6 Q The initials, again, PBC in red at the top, what do

7 those mean?

8 A Prepared by client.

9 Q We haven't seen these symbols before, but, next to

10 number \$76 million on line 12 are the letters PY. Do you know

11 what the letters indicate?

12 A Prior year.

13 Q The next cel lists the number of 76,200,000, says FS.

14 What does that indicate?

15 A Financial statement.

16 Q What is being indicated by the fact that is the

17 financial statement?

18 A It agrees to the financial statement.

19 Q So, that you've confirmed that the number that is

20 marked there is 76,200,000 is in the final Statement of

21 Financial Condition?

22 A I don't like the word confirm. I'll say check,

23 cross-reference.

24 Q You've cross-referenced?

25 A Yes.

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1 Q Mr. Bender, you've been handed a document marked as

2 Plaintiff's Exhibit 771. I'll give you a few minutes to look

3 through the document.

4 Mr. Bender, do you recognize this document?

5 A Yes, I do.

6 Q What is this document?

7 A This is the engagement letter compiling the

8 Statements of Financial Condition of Donald J. Trump as of

9 June 30, 2018.

10 Q If you take a look at the bottom of this document, do

11 you recognize that signature?

12 A Yes, I do.

13 Q Whose signature is it?

14 A Allen Weisselberg's.

15 Q In what capacity is Mr. Weisselberg signing this

16 letter?

17 A Executive Vice President of the Trump Organization

18 and Trustee of Donald J. Trump Revocable Trust.

19 MR. WALLACE: We ask this document be entered

20 into evidence.

21 THE COURT: Granted. It's in evidence.

22 Q Mr. Bender, you've been handed a document that's

23 marked as Plaintiff's Exhibit 774. It's a pull sheet for a

24 document that was produced as an Excel file. We've put a copy

25 of the Excel file on the screen here.

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1 (Whereupon, a document was displayed, and handed

2 to the witness.)

3 Q Mr. Bender, you have been handed a document that is

4 marked as Plaintiff's Exhibit 773. I'll give you a few moments

5 to look through the document.

6 Mr. Bender, do you recognize this document?

7 A Yes, I do.

8 Q What is it?

9 A It's the compilation of the Donald J. Trump Statement

10 of Financial Condition as of June 30, 2018.

11 Q And does this appear to be the final version?

12 A Yes, it does.

13 MR. WALLACE: Your Honor, we would ask that this

14 document be moved into evidence.

15 THE COURT: Granted. It's in evidence.

16 (Whereupon, Plaintiff's Exhibit 773 was received

17 in evidence.)

18 (Whereupon, a document was displayed, and handed

19 to the witness.)

20 Q Mr. Bender, you have been handed a document that has

21 been marked Plaintiff's Exhibit 772. Have you had a chance to

22 look at this document?

23 A Yes, I have.

24 Q And what is this document?

25 A This is a letter of representation for the compilation

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1 of the personal financial statement of Donald J. Trump, as of
 2 June 30, 2018.
 3 MR. WALLACE: Your Honor, we would ask that this
 4 document be entered into evidence.
 5 THE COURT: Granted. It's in evidence.
 6 (Whereupon, Plaintiff's Exhibit 772 was received
 7 in evidence.)
 8 MR. WALLACE: If we could scroll down to the
 9 bottom of the last page of this document.
 10 Q Mr. Bender, do you recognize the signature on the left
 11 of the screen?
 12 A Yes, I do.
 13 Q Whose signature is that?
 14 A It's Allen Weisselberg.
 15 Q And in what capacity is Mr. Weisselberg signing this
 16 letter?
 17 A Chief Financial Officer of the Trump Organization, and
 18 Trustee of the Donald J. Trump Revocable Trust.
 19 Q Do you recognize the signature on the right hand side
 20 of the screen?
 21 A Yes, I do.
 22 Q Who signature is that?
 23 A It's Don, Junior's signature.
 24 Q And in what capacity is Mr. Trump signing this letter?
 25 A Mr. Trump. Okay. Executive Vice President of the

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1 Trump Organization, and Trustee of the Donald J. Trump Revocable
 2 Trust.
 3 Q Was there a confusion with Mr. Trump? Usually refers
 4 to Donald J. Trump?
 5 A It's just everybody is getting older.
 6 Q Okay. If we go up to the top, would Mazars have
 7 issued the 2018 Statement of Financial Condition if
 8 Mr. Weisselberg and Mr. Trump did not sign this representation
 9 letter?
 10 A No, we would not have.
 11 Q Would Mazars have issued the 2018 Statement of
 12 Financial Condition if it knew that any of the representations
 13 in this letter were false?
 14 A No, we would not have.
 15 (Whereupon, a document was displayed, and handed
 16 to the witness.)
 17 Q Mr. Bender, you have been handed a document marked
 18 Plaintiff's Exhibit 840. Do you recognize this document?
 19 A Yes, I do.
 20 Q And what is this document?
 21 A This is the engagement letter to compile the Statement
 22 of Financial Condition for Donald J. Trump, as of June 30, 2019.
 23 Q Does this appear to be the final version of the
 24 letter?
 25 A Yes, it does.

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1 MR. WALLACE: Your Honor, we would ask that this
 2 document be entered into evidence.
 3 THE COURT: We move a lot faster without all
 4 those objections.
 5 Granted. It's in evidence.
 6 (Whereupon, Plaintiff's Exhibit 840 was received
 7 in evidence.)
 8 (Whereupon, a document was displayed, and handed
 9 to the witness.)
 10 Q Mr. Bender, you have been handed a document marked as
 11 Plaintiff's Exhibit 843. It's a pull sheet for a document that
 12 was produced to us as an Excel file. We have put a copy of that
 13 Excel file up on the screen here.
 14 Do you recognize this document?
 15 A Yes, I do.
 16 Q And what is this document?
 17 A This is the Jeff Supporting Data for the Statement of
 18 Financial Condition for Donald J. Trump as of June 30, 2019.
 19 Q And what is indicated by the red letters on the top,
 20 PBC?
 21 A Prepared by client.
 22 Q And does this appear to be the final supporting data
 23 spreadsheet for the 2019 Statement of Financial Condition?
 24 A Yes, it does.
 25 MR. WALLACE: Your Honor, we would ask that this

D. Bender - Direct by Mr. Wallace Page 262

1 document be entered into evidence.
 2 THE COURT: Granted. It's in evidence.
 3 (Whereupon, Plaintiff's Exhibit 843 was received
 4 in evidence.)
 5 (Whereupon, a document was displayed, and handed
 6 to the witness.)
 7 Q Mr. Bender, you have been handed a document that's
 8 been marked Plaintiff's Exhibit 842. I'll give you a few
 9 moments to look through the document.
 10 Mr. Bender, do you recognize this document?
 11 A Yes, I do.
 12 Q What is this document?
 13 A This is the compilation of Donald J. Trump Statement
 14 of Financial Condition as of June 30, 2019.
 15 Q And this appears to be the final Statement of
 16 Financial Condition?
 17 A Yes, it does.
 18 MR. WALLACE: Your Honor, we would ask that this
 19 document be entered into evidence.
 20 THE COURT: Granted. It's in evidence.
 21 (Whereupon, Plaintiff's Exhibit 842 was received
 22 in evidence.)
 23 (Whereupon, a document was displayed, and handed
 24 to the witness.)
 25 Q Mr. Bender, you have been handed a copy of the

D. Bender - Direct by Mr. Wallace Page 263

1 document marked Plaintiff's Exhibit 841. I'll give you a
 2 moment.
 3 Mr. Bender, do you recognize this document?
 4 A Yes, I do.
 5 Q What is this document?
 6 A This is the representation letter for the compilation
 7 of the personal financial statement of Donald J. Trump, as of
 8 June 30, 2019.
 9 Q And if we look down at the bottom of this document, do
 10 you recognize the signature on the left hand side of the screen?
 11 A Allen Weisselberg.
 12 Q And in what capacity is Mr. Weisselberg signing this
 13 letter?
 14 A Chief Financial Officer and Trustee of the Donald J.
 15 Trump Revocable Trust.
 16 Q And do you recognize the signatures on the right hand
 17 side of screen?
 18 A Yes. It's Donald Trump, Junior.
 19 Q And in what capacity did Donald Trump, Jr. sign this
 20 document?
 21 A Executive Vice President of the Trump Organization,
 22 and Trustee of the Donald J. Trump Revocable Trust.
 23 Q Would Mazars have issued the 2019 Statement of
 24 Financial Condition if Mr. Weisselberg and Mr. Trump did not
 25 sign this representation letter?

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1 A No, we would not have.
 2 Q Would Mazars have issued the 2019 Statement of
 3 Financial Condition, if it knew that any of the representations
 4 contained in this letter were false?
 5 A No, we would not have.
 6 (Whereupon, a document was displayed, and handed
 7 to the witness.)
 8 Q Mr. Bender, you have been handed a document that is
 9 marked Plaintiff's Exhibit 854. I'll give you a moment to look
 10 through it.
 11 Mr. Bender, do you recognize this document?
 12 A Yes, I do.
 13 Q What is this document?
 14 A This is the engagement letter to compile the Statement
 15 of Financial Condition for Donald J. Trump for the year ending
 16 June 30, 2020.
 17 Q And does this appear to be the final version of the
 18 letter?
 19 A Yes, it does.
 20 MR. WALLACE: Your Honor, we would ask that this
 21 document be entered into evidence.
 22 THE COURT: Granted. It's in evidence.
 23 (Whereupon, Plaintiff's Exhibit 854 was received
 24 in evidence.)
 25 THE COURT: If I keep saying that, my voice is

D. Bender - Direct by Mr. Wallace Page 265

1 going to be as hoarse as his, eventually.
 2 MR. WALLACE: Only a few more.
 3 (Whereupon, a document was displayed, and handed
 4 to the witness.)
 5 Q Mr. Bender, I've handed you a document that has been
 6 marked as Plaintiff's Exhibit 857. It is a pull sheet for a
 7 document that was produced as an Excel file. We have put a copy
 8 of that Excel file up on the screen. Do you recognize this
 9 document?
 10 A Yes, I do.
 11 Q What is this document?
 12 A It's Jeff Supporting Data for the -- for the
 13 compilation of the -- it's the Jeff Supporting Data for the
 14 Donald J. Trump compilation Statement of Financial Condition, as
 15 of June 30, 2020.
 16 Q And does this appear to be the final version of the
 17 spreadsheet?
 18 A Yes, it does.
 19 MR. WALLACE: Your Honor, we would ask that this
 20 be entered into evidence.
 21 THE COURT: Granted.
 22 (Whereupon, Plaintiff's Exhibit 857 was received
 23 in evidence.)
 24 Q I'll just ask, before we take it down, what do the
 25 letters PBC mean, again?

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1 A Prepared by client.
 2 Q Thank you.
 3 (Whereupon, a document was displayed, and handed
 4 to the witness.)
 5 Q Mr. Bender, you have been handed a document that's
 6 been marked Plaintiff's Exhibit 856. If you can, take a moment
 7 to look through this document.
 8 Mr. Bender do you recognize this document?
 9 A Yes, I do.
 10 Q What is this document?
 11 A This is a compilation of Donald J. Trump Statement of
 12 Financial Condition as of June 30, 2020.
 13 Q Does this appear to be the final form of the document?
 14 A Yes, it does.
 15 MR. WALLACE: Your Honor, I would ask that this
 16 document be entered into evidence.
 17 THE COURT: Granted. It's in evidence.
 18 (Whereupon, Plaintiff's Exhibit 856 was received
 19 in evidence.)
 20 THE COURT: And, 10-minute warning.
 21 MR. WALLACE: Understood.
 22 (Whereupon, a document was displayed, and handed
 23 to the witness.)
 24 Q Mr. Bender, you have been handed a document marked
 25 Plaintiff's Exhibit 855. If you could, take a moment and look

D. Bender - Direct by Mr. Wallace Page 267

1 through the document, please.
 2 Mr. Bender, do you recognize this document?
 3 A The document --
 4 Q What's that?
 5 A Repeat the question, please?
 6 Q Do you recognize this document?
 7 A Yes, I do.
 8 Q What is this document?
 9 A This is the representation letter for the DJT -- the
 10 compilation of the personal financial statement of Donald J.
 11 Trump, as of June 30, 2020.
 12 MR. WALLACE: If we could go to the bottom of
 13 this document.
 14 Q Do you recognize the signature on the left hand side
 15 of the screen?
 16 A Yes, I do.
 17 Q Whose signature is that?
 18 A It's Allen Weisselberg.
 19 Q And in what capacity is Mr. Weisselberg signing this
 20 document?
 21 A Chief Financial Officer and Trustee of the Donald J.
 22 Trump Revocable Trust.
 23 Q And do you recognize the signature on the right hand
 24 side?
 25 A Yes, I do.

D. Bender - Direct by Mr. Wallace Page 268

1 Q Whose signature is that?
 2 A That's Donald J. Trump, Junior's signature.
 3 Q And in what capacity is he signing this document?
 4 A Executive Vice President of the Trump Organization,
 5 and Trustee of the Donald J. Trump Revocable Trust.
 6 MR. WALLACE: Your Honor, we would ask that this
 7 document be entered into evidence?
 8 THE COURT: Granted. It's in evidence.
 9 (Whereupon, Plaintiff's Exhibit 855 was received
 10 in evidence.)
 11 Q And Mr. Bender, would Mazars have issued the 2020
 12 Statement of Financial Condition if Mr. Weisselberg and
 13 Mr. Trump did not offer these representations?
 14 A No, we would not have.
 15 Q Would Mazars have issued the 2020 Statement of
 16 Financial Condition if it knew that any representations
 17 contained in this letter were false?
 18 A No, we would not have.
 19 Q Mr. Bender, did you work on Statements of Financial
 20 Condition for Mr. Trump in any later years?
 21 A No, we did not.
 22 Q Why not?
 23 A Mazars disengaged from the Trump Organization.
 24 Q And did you have any involvement in the decision to
 25 disengage from the Trump engagement?

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1 A No, I did not.
 2 Q After the time that you disengaged from the Trump
 3 engagement, did you have any personal contact with Donald J.
 4 Trump?
 5 A No, I did not.
 6 Q Before seeing him in the courtroom the last two days,
 7 when was the last time you saw Donald J. Trump in person?
 8 A It was before Covid. It was December, 2019.
 9 Q And do you remember in what context that was?
 10 A Yes. Ms. Trump had invited by son to a
 11 Christmas party for children, to make ornaments, and I had to
 12 get some papers signed by Mr. and Ms. Trump.
 13 Q Since that meeting, did you have any conversations
 14 with Mr. Trump?
 15 A No, I have not.
 16 Q Did you have any conversations with Mr. Trump about
 17 the decision by Mazars to end the engagement with the Trump
 18 Organization?
 19 A No, I did not.
 20 Q Did you have any in-person meetings with Mr. Trump
 21 about the decision by Mazars to end to the relationship with the
 22 Trump Organization?
 23 A No, I did not.
 24 MR. WALLACE: Your Honor, we reserve our right to
 25 re-direct; or cross, if they go beyond the scope of his

D. Bender - Direct by Mr. Wallace Page 270

1 testimony. We have no more questions at this time, of
 2 Mr. Bender.
 3 THE COURT: Mr. Kise, do you want five minutes to
 4 cross exam?
 5 MR. KISE: Do we want to -- just, probably better
 6 to just take our break.
 7 THE COURT: I thought you would say that. Give
 8 me one second.
 9 (Whereupon, there was a pause in the
 10 proceedings.)
 11 THE COURT: Okay. We are going to resume at
 12 2:15. Have a good lunch, everybody.
 13 (Whereupon, a recess was taken.)
 14 * * * * *
 15 THE COURT: Welcome back, everyone.
 16 This morning, one of the defendants posted, to a
 17 social media account, a disparaging, untrue and personally
 18 identifying post about a member of my staff. Although I
 19 have since order the post deleted, and apparently it was,
 20 it was also emailed out to millions of other recipients.
 21 Personal attacks on members of my court staff are
 22 unacceptable, inappropriate, and I will not tolerate them,
 23 under any circumstances. Yesterday, off the record, I
 24 warned counsel of this, and this was disregarded. My
 25 warning was disregarded.

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1 Consider this statement a gag order forbidding
 2 all parties from posting, emailing, or speaking publicly
 3 about any members of my staff. Any failure to abide by
 4 this directive will result in serious sanctions. I hope
 5 I've been very clear.
 6 Okay. Let's get Mr. Bender back.
 7 MR. KISE: While we're waiting, Judge, I'll just
 8 observe, this will be better for me because I don't have to
 9 stand up and object when there's a document, since it's
 10 cross examination.
 11 THE COURT: Are we up to cross?
 12 MR. SUAREZ: Your Honor, I'll take the
 13 opportunity to introduce myself. My name is Jesus Suarez.
 14 Thank you for admitting me, pro hac vice. I practice with
 15 Mr. Kise, in Florida.
 16 THE COURT: Of course. I remember the
 17 application.
 18 MR. SUAREZ: I don't speak as nicely as he does.
 19 THE COURT: Well, almost nobody does, so --
 20 MR. SUAREZ: Is my mike on? Now my mike is on.
 21 THE COURT: Is he as good in the office as he is
 22 in court?
 23 MR. SUAREZ: He is certainly as charming in the
 24 office as he is in court, but he almost never picks up
 25 lunch. I don't know what that's about.

D. Bender - Cross by Mr. Suarez Page 273

1 Q And Mr. Bender, preparing the president's Statements
 2 of Financial Condition, that was a big job; wasn't it,
 3 Mr. Bender?
 4 A It wasn't a big job. It was part of my normal
 5 engagement.
 6 Q Part of your normal engagement, I see. In 2011 alone,
 7 the first Statement of Financial Condition that the Attorney
 8 General had you talk about, the president had over \$258 million
 9 in cash, Mr. Bender. You don't think that's a significant
 10 engagement?
 11 A No, sir.
 12 Q Okay. The president had a company with a brand value
 13 of over \$10-, maybe even \$20 billion, Mr. Bender. That, for
 14 you, wasn't a significant engagement?
 15 A No, sir.
 16 Q Okay. Now, is that because you were the in-house
 17 accountant at the Trump Organization for over 30 years,
 18 Mr. Bender?
 19 A I wasn't the in-house accountant.
 20 Q Okay. So who was?
 21 A The in-house accountant?
 22 Q Yes.
 23 A Mr. McConney, Mr. Weisselberg. They were the in-house
 24 accountants.
 25 Q Mr. McConney. Mr. McConney worked with you at Spahr

D. Bender - Cross by Mr. Suarez Page 272

1 That was a joke. Mr. Kise picks up lunch.
 2 MR. KISE: You are forgetting all the dinners.
 3 THE COURT: They don't laugh at mine, either, so.
 4 (Whereupon, the witness resumed the witness
 5 stand.)
 6 THE COURT: I'll remind the witness, as usual,
 7 that he is still under oath.
 8 THE WITNESS: Thank you.
 9 THE COURT: Counsel, please proceed.
 10 CROSS EXAMINATION
 11 BY MR. BENDER:
 12 Q Mr. Bender, good afternoon.
 13 A Good afternoon.
 14 Q We have met before?
 15 A Good afternoon.
 16 THE COURT: That's a question. Have you met
 17 before?
 18 Q We have met before. We met in April of 2023, when I
 19 took your deposition on behalf of the defendants. Do you
 20 recall, sir?
 21 A Yes, sir.
 22 Q Okay. Mr. Bender, you have been up here testifying
 23 for the last day about the Statements of Financial Condition of
 24 the 45th President of the United States. Is that correct?
 25 A Yes, sir.

D. Bender - Cross by Mr. Suarez Page 274

1 Lacher?
 2 A Yes, he did.
 3 Q May have been responsible for giving you the name Doc?
 4 A He wasn't, but he kept it going.
 5 Q Did they call you Doc because you were good at
 6 documented transactions? That was the Doc?
 7 A No.
 8 Q It's a cute nickname.
 9 Was Mr. Weisselberg an accountant?
 10 A He was an accountant.
 11 Q Mr. Weisselberg is a CPA?
 12 A No. He is not a CPA.
 13 Q Mr. McConney is a CPA?
 14 A No. Mr. McConney is not a CPA.
 15 Q Okay. So who was the in-house accountant at the Trump
 16 Organization, Mr. Bender?
 17 A Mr. Weisselberg, and his team.
 18 Q All right. You did work for the Trump Organization
 19 for over 35 years; did you not, Mr. Bender?
 20 A Excuse me?
 21 Q You did work for the president and his company, the
 22 Trump Organization, for over 35 years?
 23 A Approximately.
 24 Q Approximately. In fact, you came to work with the
 25 Trump Organization through a gentlemen named Mr. Mitnick; didn't

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D. Bender - Cross by Mr. Suarez Page 275

1 you?

2 A Mr. Mitnick was my boss.

3 Q Mr. Mitnick your boss at Spahr Lacher, where you

4 started; right?

5 A Yes.

6 Q And ever since Spahr Lacher, more than 35 years ago,

7 you have been doing work for the Trump Organization; have you

8 not?

9 A Yes, sir.

10 Q Now, you have been a licensed certified public

11 accountant for over 40 years; have you not, Mr. Bender?

12 A Yes. That would be correct, yes.

13 Q Over 40 years as a certified public accountant;

14 correct?

15 Correct, Mr. Bender?

16 A Yes.

17 Q And as a certified public accountant, you have got

18 responsibilities to the public; right?

19 A I think that's fair.

20 Q If you put your signature on a document, that's a

21 document that you know is going to go out to the world; is it

22 not, Mr. Bender?

23 A Not necessarily.

24 Q All right. But as a certified public accountant, you

25 are certainly in a position to put together financial statements

D. Bender - Cross by Mr. Suarez Page 276

1 that go out to the world; right, Mr. Bender?

2 A Out to the world. I think in some cases.

3 Q In some cases. In some cases. And in fact, you not

4 only prepared financial statements for the president, you also

5 prepared his tax returns; did you not, Mr. Bender?

6 A Yes, I did.

7 Q You prepared the tax returns of the 45th President of

8 the United States?

9 A Yes, sir.

10 Q Possibly even the 47th President of the United States

11 Mr. Bender?

12 MR. WALLACE: Objection. Relevance.

13 THE COURT: Sustained.

14 Q It's a very serious thing, Mr. Bender, to have that

15 responsibility, that level of trust, that you were the person

16 that, for over 35 years, prepared the tax returns?

17 THE COURT: Asked and answered. Let's move on.

18 Q You also prepared the tax returns of other members of

19 the Trump family; did you not?

20 A Yes, sir.

21 Q For over 35 years; did you not?

22 A No, sir.

23 Q For more than 30 years?

24 A No, sir.

25 Q For more than 20 years?

D. Bender - Cross by Mr. Suarez Page 277

1 A I can't answer that.

2 Q You can't answer that. You can't remember the time

3 when you started preparing tax returns for the first lady?

4 A The first lady?

5 Q The First Lady of United States, Ms. Trump?

6 A When they got married.

7 Q Oh, okay. When they got married.

8 And how about other members of the Trump family? Do

9 you remember when you started preparing their tax returns?

10 A Not off the top of my head, no.

11 Q Did anyone other than you prepare President Trump's

12 tax returns in the last 30 years, Mr. Bender?

13 A I'm not sure. I prepared them for 30 years. I would

14 have to go back.

15 Q Do you have any issues with your memory, Mr. Bender?

16 A No, sir.

17 Q You also prepared tax returns for other entities that

18 are ultimately owned by President Trump; did you not?

19 A Yes, sir.

20 Q Dozens of entities?

21 A More than that.

22 Q More than that. How many more than that, Mr. Bender?

23 A In a year, it could have been hundreds.

24 Q Hundreds. You prepared tax returns for hundreds of

25 entities ultimately owned by Mr. Trump; did you not?

D. Bender - Cross by Mr. Suarez Page 278

1 A Yes, sir.

2 Q And in fact, you testified at your deposition, the

3 last time we met, that many of those flowed up into President

4 Trump's tax returns; did you not?

5 A Yes -- did I testify to that? I don't know if I

6 testified to that.

7 Q Well, we can play the tape in a little while.

8 And isn't it the case, Mr. Bender, that you were a

9 trusted adviser to the Trump Organization?

10 A I think that I was a trusted adviser. I would hope

11 so.

12 Q That they consulted you whenever they opened a new

13 entity?

14 A They did consult me quite often.

15 Q How often is quite often, Mr. Bender.

16 A They would usually check to see what type of entity it

17 should be, a partnership or a corporation.

18 Q So they frequently consulted with you when they

19 created a new entity?

20 A In that regard, yes.

21 Q And they frequently consulted with you as to where to

22 put that entity in the corporate structure of the company;

23 correct?

24 A Yes, sir.

25 Q And they also consulted with you, for example, to file

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D. Bender - Cross by Mr. Suarez Page 279

1 a new entity's tax documents, to get their EIN; right?

2 A No, sir.

3 Q You didn't pull the EIN numbers for new entities that

4 were created by the Trump Organization?

5 A Not the last 15 years or --

6 Q 18 years?

7 A No.

8 Q Was it other members of your firm that pulled --

9 A No. The Trump Organization --

10 MR. WALLACE: Can I just get an objection, your

11 Honor? If Mr. Suarez can please let the witness finish his

12 answer, before he starts asking his next question?

13 THE COURT: One at a time.

14 MR. SUAREZ: Okay. Yes, your Honor.

15 A The Trump Organization has been getting their own EIN

16 numbers for a significant period of time.

17 Q But before that, you pulled them, or someone working

18 at your direction?

19 A I may not have been at that level yet. It may not

20 have been under my supervision.

21 Q Now, the Trump Organization was with you as a client

22 when you were at Spahr Lacher; is that correct.

23 A Yes, sir.

24 Q And they were with you when you moved over to the

25 Weiser's firm; is that not correct?

D. Bender - Cross by Mr. Suarez Page 280

1 A Yes, sir.

2 Q And in fact, President Trump and the Trump

3 Organization were loyal clients of yours; were they not?

4 A I hope so.

5 Q In fact, they were so loyal to you, Mr. Bender, that

6 in 2004, when the Securities and Exchange Commission censured

7 Weiser, the Trump Organization let you keep their business; did

8 they not?

9 A I have no knowledge about that.

10 Q You have no knowledge of the Securities and Exchange

11 Commission censuring Weiser in 2004?

12 A I know there was something at one point. I don't

13 remember when it was.

14 Q Do you recall that the SEC called Weiser's conduct

15 highly unreasonable?

16 A I have no knowledge of that.

17 Q Do you recall if the SEC called Weiser's conduct

18 improper professional conduct?

19 A I have no knowledge of that.

20 Q Do you recall if a gentlemen named Victor Wahba, at

21 the time when he was at Weiser's, was also censured by the SEC?

22 A I don't remember exactly.

23 Q Who is Victor Wahba?

24 A He is the Chairman of Mazars.

25 Q Mazars?

D. Bender - Cross by Mr. Suarez Page 281

1 A Yes. Mazars U.S.A.

2 Q And that's the accounting firm that you retired from

3 recently; correct?

4 A Yes, sir.

5 Q Okay. And you later became a partner at Mazars; did

6 you not?

7 A When the firm merged in. Yes, I did.

8 Q And the Trump Organization and President Trump had

9 confidence in you to continue handling their business; did they

10 not?

11 A When we merged?

12 Q Yes.

13 A I was not a partner in Mazars at that point.

14 Q When President Trump's business went to Mazars, you

15 were no longer the partner in charge of his business?

16 A Say that again?

17 Q When President Trump transferred his business to the

18 Mazars firm, you were no longer the partner in charge of his

19 business?

20 A I was not the partner in charge at the time of the

21 merger, no.

22 Q Who was the partner in charge?

23 A Jerry Rosenblum.

24 Q Mr. Wilson was the partner in charge of the

25 relationship with the Trump Organization?

D. Bender - Cross by Mr. Suarez Page 282

1 A Rosenblum.

2 Q Rosenblum?

3 A Yes.

4 Q Okay.

5 A May he rest in piece.

6 THE COURT: I don't know how we got from Wilson

7 to Rosenblum.

8 MR. SUAREZ: My hearing.

9 Q When Weiser merged into Mazars, you continued to

10 handle work for the Trump Organization; did you not?

11 A I continued to be on the account, yes.

12 Q Okay. And as you testified today and yesterday, you

13 were one of the parties that signed the Statements of Financial

14 Condition compilation reports every year; were you not?

15 A For a number of years, yes.

16 Q Okay. According to your testimony from at least 2011

17 to 2020, was that not the case?

18 A Yes. That's the case.

19 Q And during that period of time, President Trump's

20 business was at least half of your billable work at the firm;

21 was it not?

22 A Close to it, I would say.

23 Q Close to it. He was your single biggest client, in

24 fact?

25 A Yes.

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D. Bender - Cross by Mr. Suarez Page 283

1 Q And companies controlled by Mr. Trump were your single
2 biggest client?
3 A Yes.
4 Q And the Trump Organization and President Trump, they
5 paid you a lot of money; didn't they, Mr. Bender?
6 A It was a significant amount.
7 Q In some years it was more than a million dollars?
8 A Yes.
9 Q In some years it was more than \$2 million?
10 A I can't specifically allocate it, but it's possible.
11 Q In fact, in 2015, the Trump Organization and related
12 entities paid Mazars over \$2.1 million; did they not?
13 A I don't know, off the top of my head.
14 (Continued on the next page.)
15
16
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25

D. Bender - Defendant/Suarez Page 285

1 you adhered to the professional standards promulgated by the
2 American Institute of Certified Public Accountants when you
3 did your work, Mr. Bender; is that not correct?
4 A I tried.
5 Q As a matter of fact, you were familiar with those
6 standards when you prepared the compilation reports, the
7 Statements of Financial Condition; were you not?
8 A No.
9 Q Why wasn't the case then, Mr. Bender, that when I
10 asked you whether the Statements of Financial Condition were
11 prepared in accordance with ASC 274 and I asked you what ASC
12 274 was, you said, not off the top of my head?
13 MR. WALLACE: Objection.
14 THE COURT: Can I have a read back? It was sort
15 of a compound question. Read back?
16 MR. SUAREZ: I can withdraw.
17 Q The accounting-- excuse me. The compilations for the
18 Statements of Financial Condition were prepared in accordance
19 with ASC 274; were they not.
20 A Yes, they were.
21 Q You're familiar with ASC 274, correct?
22 A I'm not an expert on it. I have some general
23 knowledge.
24 Q You have some general knowledge of ASC 274; is that
25 correct?

D. Bender - Defendant/Suarez Page 284

1 Q In 2016, they paid Mazars over a million and a half
2 dollars; did they not?
3 A I couldn't tell you.
4 Q Could you tell me, off the top of your head, if in
5 2017 the Trump Organization paid Mazars more than
6 \$1.7 million?
7 A No, I could not.
8 Q Does that figure seem right?
9 A I couldn't answer it off the top of my head.
10 Q In 2018 are you aware the Trump Organization paid
11 Mazars over \$1.6 million?
12 A I counts answer that.
13 Q In 2019 the last year you signed the compilation
14 report, the Trump Organization paid Mazars more than
15 \$2.4 million?
16 A I don't think 2019 was the last compilation report
17 but I could be wrong.
18 Q In fact in 2019, they paid you more than 72 percent
19 of the fees that you originated that year at Mazars?
20 A I couldn't answer that.
21 Q In all that time, Mr. Bender, I trust that you
22 followed your professional responsibilities as a CPA when you
23 performed work for the President; did you not?
24 A Yes, sir.
25 Q And in all that time, I can assume, Mr. Bender, that

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1 A Yes.
2 Q But you're not an expert?
3 A I'm lucky enough to be in a firm where the guy next
4 door to me was an expert on this stuff. So, I had a lot of
5 subject matter specialists. We were a large firm and I could
6 always pull resources when needed.
7 Q Did you, in fact, pull resources when you were
8 working on the President's Statement of Financial Condition?
9 A When needed, yes.
10 Q Did you conduct-- excuse me. Did you consult with
11 subject matter experts?
12 A I consulted with quality control or subject matter
13 specialists when I felt I needed help, yes.
14 Q What was the name of the person that you consulted
15 with in connection with preparing the President's Statements
16 of Financial Condition?
17 A It would be different people in different years.
18 Q Okay. Who did you consult within 2020?
19 A I couldn't answer that off the top of my head.
20 Q Who did you consult with in 2019?
21 A I couldn't answer that.
22 Q Who did you consult with in 2017?
23 A It would be-- these people were the quality control
24 people assigned to the engagement.
25 Q What were their names?

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1 A I'd have to check the-- each individual year.
 2 Q You can't answer the question?
 3 A For any individual year, no, I can't.
 4 Q Who did you consult with in 2016?
 5 A Off the top of my head, I couldn't answer that
 6 question.
 7 Q Who did you consult with in 2015?
 8 A Without my work papers, I couldn't answer that.
 9 Q Who did you consult with in 2014?
 10 A I couldn't answer that off the top of my head.
 11 Q Who did you consult with in 2013?
 12 A I can't answer that off the top of my head.
 13 Q Who did you consult with in 2013?
 14 A I can't answer that off the top of my head.
 15 Q Who did you consult with in 2011?
 16 A I can't say that off the top of my head.
 17 Q When you were preparing the-- excuse me. When you
 18 were preparing a compilation report for the Statements of
 19 Financial Condition for the President of the United States of
 20 America, you can't remember who you consulted with in
 21 preparing that compilation report?
 22 A That's why binders have sign-off. If I save the
 23 sign-off, I can see who the QC person was in any of the
 24 reports we prepared.
 25 Q How many compilation reports for Statement of

D. Bender - Defendant/Suarez Page 288

1 Financial Condition did you prepare in 2017?
 2 A I couldn't answer that off the top of my head.
 3 Q Did you prepare a compilation report for a Statement
 4 of Financial Condition for any one other than President Trump
 5 in 2017?
 6 A I don't know, off the top of my head.
 7 Q Did you prepare a compilation report for anyone other
 8 than President Trump for a Statements of Financial Condition
 9 in 2018?
 10 A I couldn't answer that off the top of my head.
 11 Q Did you prepare a compilation report to a Statement
 12 of Financial Condition for anyone other than President Trump
 13 in 2019?
 14 A I couldn't answer that off the top of my head.
 15 Q Did you prepare a compilation report for anyone other
 16 than President Trump for a Statement of Financial Condition in
 17 2020?
 18 A I couldn't answer that off the top of my head.
 19 Q In 2020, when President Trump was the leader of the
 20 free world and you were preparing the compilation report to
 21 his Statement of Financial Condition, you can't remember who
 22 you spoke with, or if you prepared a Statements of Financial
 23 Condition compilation report for anyone else? That's correct?
 24 A No. 2020 is that the last compilation report we
 25 did?

D. Bender - Defendant/Suarez Page 289

1 Q I don't know, Mr. Bender. You did the compilation
 2 report.
 3 A I need to confirm that would be the last one.
 4 Q Okay. In 2021, did you compile the President's
 5 Statement of Financial Condition in 2021?
 6 A I do not believe so. I wouldn't know who we
 7 consulted with in 2020.
 8 Q In 2020, when you prepared President Trump's
 9 Statement of Financial Condition or-- excuse me. The
 10 compilation report to President Trump's Statement of Financial
 11 Condition, what authoritative literature did you review?
 12 A I know we had the subject matter specialist and we
 13 discussed the -- any issues that were out there.
 14 Q My question was a little bit different. My question
 15 was: What literature did you review, in connection with
 16 preparing the compilation report to the Statement of Financial
 17 Condition, for the leader of the free world?
 18 A We have required check lists and I went through the
 19 required check lists that's required by Mazars.
 20 Q Did you check any AICPA guidelines?
 21 A I do not recall.
 22 Q Did you check any notes or commentary for the
 23 accounting standards?
 24 A I do not recall.
 25 Q Did you read any literature concerning the applicable

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1 accounting standards?
 2 A I'm sure I did but I don't recall.
 3 Q During all this time, you held yourself out to
 4 President Trump as someone who could ably compile the
 5 Statement of Financial Condition?
 6 A Yes, sir.
 7 Q Was that an accurate representation you made?
 8 A Absolutely.
 9 Q Despite the fact that you just hold yourself out as a
 10 generalist?
 11 A As I said before, I had a lot of resources in the
 12 firm. A partner who I worked with wrote SSARS 1 and 2. He
 13 wrote SSARS. He was in an office next store to me and always
 14 available to me.
 15 Q What is his name?
 16 A Andrew Cohen.
 17 Q Did you consult, in connection with preparing the
 18 compilation report for the President's Statement of Financial
 19 Condition in 2020?
 20 A Yes, I did.
 21 Q What did you consult him about?
 22 A He was involved in the numerous aspects of the
 23 compilation.
 24 Q Which ones?
 25 A Which topics?

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1 Q Yes.

2 A Off the top of my head, he was involved with the

3 valuation of the property of 57th Street.

4 Q What was he valuating?

5 A He was involved with the method of discussions with

6 the clients.

7 Q Excuse me?

8 A He was involved with discussions with clients on the

9 method of valuation.

10 Q What was discussed?

11 A At that point, the Nike lease was not renewed and

12 they were valuing it as being renewed and there were

13 discussions.

14 Q How was that documented?

15 A I don't know if it was specifically documented.

16 Q Anything else?

17 A There were other things, but, I can't recall.

18 Q How about in 2019?

19 A I can't tell you who I spoke to in 2019.

20 Q I think earlier you told me you were consulted

21 regularly by members of the Trump Organization and financial

22 accounting members; is that not the case?

23 A They would call me with their questions.

24 Q When they called you with questions, I presume you

25 provided answers?

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1 A Or I'd bring somebody in to help me when I couldn't

2 Q Who did you bring in to help you?

3 A Numerous people over the years.

4 Q Who?

5 A I can give you 20 or 30 names.

6 Q Give me one.

7 A Andy Cohen.

8 Q What did you bring him in on?

9 A He would discuss financial statement matters with me

10 and them.

11 Q Andy Cohen would discuss with you matters relating to

12 President Trump's Statement of Financial Condition; is that

13 correct?

14 A From time to time.

15 Q How often?

16 A I couldn't answer that off the top of my head.

17 Q When The Trump Organization called and they had

18 questions about accounting transactions, you'd answer them,

19 correct?

20 A If I could.

21 Q And, in fact, many times they consulted you before

22 even engaging in transactions; did they not?

23 A Sometimes.

24 Q They would run transactions by you and ask you to

25 help them understand certain loan terms?

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1 A I don't know about that.

2 Q They would give you an opportunity to review loan

3 agreements before they entered into them?

4 A Many years ago, they might have. Certain

5 paragraphs.

6 Q Certain paragraphs?

7 A Yes.

8 Q They wouldn't send you loan agreements and ask you,

9 hey, Mr. Bender, can you review these for us and let us know

10 if this is something we can enter into?

11 A I don't think they sent full agreements. I do

12 remember them sending certain paragraphs from time to time.

13 Q Do you remember reviewing loan agreements and seeing

14 whether the Trump Organization could comply with certain

15 covenants?

16 A Reviewing them before the loan documents were

17 signed?

18 Q Yes.

19 A I do not recall at this moment.

20 Q Can you recall reviewing loan agreements after they

21 were entered into and giving advice as to whether certain loan

22 covenants could be complied with?

23 A I don't think they advised. They did, sometimes as

24 an order, get a loan covenant.

25 Q Provide calculations?

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1 A I don't know if we provided the calculations or they

2 provided the calculations, but, we had discussions at certain

3 times.

4 Q So, they could have provided the calculations, if you

5 told them it was correct or not?

6 A No, we would have audited.

7 Q So, you did audit work for the Trump Organization?

8 A I did for a number of entities.

9 Q For which entries did you perform audit work for the

10 Trump Organization, Mr. Bender?

11 A It varied over the years, but, it would have

12 included Trump Tower Commercial, or its predecessor. In

13 early years, Trump Fifth Avenue. It would have been 40 Wall

14 Street, LLC for certain years, not all years.

15 Let's take that back. There was certiorari

16 work also and it would have been 57th Street Management for a

17 number of years. I'm sorry. 57th Street Associates LLC.

18 There would have been, I think, a couple of

19 years, 41 Wabash-- 401 and there might have been certiorari

20 work of certain properties, audit of certiorari work. I

21 couldn't tell you which companies, off the top of my head.

22 Q In fact, you did audit work for Trump Post Office,

23 LLC --

24 A Yes, I did.

25 Q --a defendant in this case. You performed audits of

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1 another defendant in this case, 40 Wall Street, LLC; did you
 2 not?
 3 A Certain years yes.
 4 Q In other years, you performed reviews?
 5 A Yes, sir.
 6 Q You performed compilations. Is that the case?
 7 A To the best of my recollection, we did some
 8 compilations of operating escalations.
 9 Q You performed audits for the Trump International
 10 Hotel and Tower, LLC; is that not the case?
 11 A Trump International Hotel and Tower, LLC?
 12 Q TIHT?
 13 A Okay. Okay, that's different. Yes.
 14 Q You're familiar with the acronym?
 15 A Excuse me?
 16 Q You're familiar with the acronym?
 17 A Yes.
 18 Q You performed audits of 57th Street Associates, LLC?
 19 A For a number of years.
 20 Q You performed both audits and compilations of another
 21 defendant in this case 401 North Wabash, LLC?
 22 A Yes, we did.
 23 Q You also performed compilations for another defendant
 24 in this case, Trump Endeavor 12, LLC; did you not?
 25 A Yes.

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1 Q What did Trump Endeavor, LLC own?
 2 A The Doral Hotel and Golf Course in Florida.
 3 Q Mr. Bender, you frequently visited the Trump
 4 Organization properties?
 5 A Pre-COVID, a few times a year.
 6 Q Pre-COVID?
 7 A Yes.
 8 Q Those are the suite of offices at Trump Tower on
 9 Fifth Avenue; is that correct?
 10 A Yes.
 11 Q Did you visit any other Trump properties over the
 12 years?
 13 A Yes.
 14 Q Which ones?
 15 A I went once to Trump Chicago for a tax exam. I went
 16 to -- what else? I went to Trump National Golf Course. That
 17 was for charity events. I went to Lamington Farms a couple
 18 of times for a tax-- a sales tax exam. I went to Trump
 19 International Hotel and Tower Association. I was on site
 20 there.
 21 I guess you could say I was at the Nike
 22 building because it's connected to Trump Tower. I was at Old
 23 Post Office a number of times. That's all I can think of off
 24 the top of my head.
 25 Q Any other properties you can recall visiting?

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1 A That's all I can recall right this second.
 2 Q What was the purpose of visiting these properties?
 3 A Sometimes I did work. Sometimes I did Post Office.
 4 I stayed there. I was there for the opening of Old Post
 5 Office.
 6 Q Old Post Office is the hotel on Pennsylvania Avenue?
 7 A Yes, sir.
 8 Q You were there on the opening of the Old Post Office
 9 Hotel on Pennsylvania Avenue?
 10 A Yes.
 11 Q For what purpose were you there?
 12 A The Trump Organization invited me to go.
 13 Q You were a guest of the Trump Organization?
 14 A For that night, yes.
 15 Q In fact, you enjoyed a very close working
 16 relationship with the Trump Organization; did you not?
 17 A Close? We got along.
 18 Q You got along. Who were your principal points of
 19 contact? Were they not Jeff McConney and Allen Weisselberg?
 20 A I'd say more Jeff than Allen.
 21 Q What is Mr. McConney's title?
 22 A It changed over the years. I believe, originally he
 23 was assistant comptroller then he became comptroller then he
 24 hit different levels of vice president. I don't know what
 25 was the prefix to his vice president was.

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1 Q You and Mr. McConney were close friends at one point;
 2 were you not?
 3 A We didn't have a relationship outside of work but we
 4 got along well.
 5 Q You got along well?
 6 A I had tremendous respect for him. He is a very good
 7 accountant.
 8 Q Mr. McConney went to your wedding?
 9 A Yes, he did.
 10 Q How many people were at the wedding?
 11 A Eighty-five
 12 Q Mr. McConney was one of 85 people at your wedding.
 13 You went to Mr. McConney's son's bris; did you not?
 14 A When he was at Spahr Lacher, yes.
 15 Q How many people were at Mr. McConney's son's bris?
 16 A I couldn't answer that.
 17 Q Okay. In fact, you enjoyed socializing with members
 18 of the Trump Organization whenever you got the chance, Mr.
 19 Bender; did you not?
 20 A I didn't really socialize too often, no.
 21 Q Did you go to President Trump's wedding, Mr. Bender?
 22 A Yes.
 23 Q You weren't a stranger to the Trump Organization,
 24 were you?
 25 A No, sir.

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1 Q In fact, you were also invited to the Inaugural; were
2 you not?
3 A I was invited after it was too late. They missed
4 me. So, I was invited, so I couldn't-- I was not on the
5 original list. I wasn't on the original list at the wedding.
6 They missed me at the wedding. It was last minute.
7 Gerry Rosenblum, the predecessor partner,
8 mentioned it to them. So, I was invited last minute to the
9 wedding also.
10 MR. KISE: Can we ask the witness-- because I'm
11 having a hard time hearing as well -- -maybe to just
12 speak a little closer to the microphone, please.
13 THE COURT: Consider yourself so asked.
14 THE WITNESS: Thank you.
15 THE COURT: Being close to the microphone is
16 really crucial and keeping your voice up.
17 Q The Trump Organization was always happy to
18 accommodate you; was it not, Mr. Bender?
19 A What do you mean by accommodate?
20 Q If you needed information, they provided it to you?
21 A Until the end, yes.
22 Q If you needed to speak with people, they'd make them
23 available?
24 A Yes.
25 Q If you came over to the offices, they'd give you a

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1 room to sit in?
2 A There was a conference room, usually.
3 Q They'd provide you laptops so you can go on and
4 review whatever it was you needed to review?
5 A Certain members of my team were able to review
6 information, for a few years, on laptops.
7 Q You were familiar with all the folks at the legal and
8 accounting department of the Trump Organization?
9 A Significant portion, yes.
10 Q The People at the Trump Organization trusted you'd
11 give them good advice; did they not?
12 A You'd have to ask them, but I'd hope so.
13 Q You'd hope so. In fact, you were often provided with
14 an ability to give input on loan transactions even before they
15 took place?
16 A That I don't recall right now, other than seeing
17 some loan documents, certain pages of loan documents, as we
18 previously stated.
19 Q Did you always read everything the folks over at the
20 Trump Organization sent you?
21 A Everything the Trump Organization sent me, no.
22 Q In connection with preparing tax returns, you had
23 access to ledgers, I trust?
24 A The Trump Organization supplied us with general
25 ledgers.

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1 Q You were supplied general ledgers for each entity you
2 were tasked with preparing taxes for?
3 A Not each entity had a general ledger.
4 Q To the extent, certainly, that an entity had a
5 general ledger, it was provided for you in connection with
6 preparing tax returns?
7 A Yes, sir.
8 Q Because you need a general ledger to prepare a tax
9 return; do you not?
10 A I think if the company has a general ledger,
11 generally, you need a general ledger to prepare a tax return.
12 Q In the last 25 years that you worked with the Trump
13 Organization, there wasn't any other accounting firm that was
14 involved with preparing a Statement of Financial Condition
15 compilation report, was there?
16 A There was. I don't know what year it was but Arthur
17 Anderson was doing it for a number of years. I couldn't tell
18 you what year.
19 Q Certainly, not between 2011 and 2020, right,
20 Mr. Bender?
21 A No, sir.
22 Q During that period of time, was there any other
23 accounting firm that worked with you on preparing President
24 Trump's tax returns?
25 A There were other firms that did tax returns for

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1 Mr. Trump.
2 Q Which firms were those?
3 A McGladry or whatever they were called after they
4 merged. There was a firm in California called Ludlow.
5 Something like that. I don't know. A firm that did-- DH
6 Properties Corp. in California. They had a number of firms
7 that did golf courses over a number of years before we took
8 them over.
9 A lot of them were McGladry over the years
10 before we took them over and McGladry continued to do
11 Mar-a-Lago. There was a gentleman who did some returns over
12 the years, Matthew Dapolito and, obviously, some of the
13 larger companies in the olden days. I don't remember
14 timeframe. Arthur Anderson did some returns, and, Ian Wise
15 did returns in the old days.
16 Q From 2011 to 2020, did anyone, other than Mazars,
17 prepare President Trump's tax returns?
18 A Entity returns?
19 Q President Trump's tax returns?
20 A His personal returns?
21 Q His personal returns.
22 A No. His personal income tax returns were prepared
23 by Mazars or its predecessor.
24 Q They were prepared by you at Mazars?
25 A 2020 yes, sir.

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1 Q They weren't prepared by anyone else?

2 A They were prepared-- I was the paid preparer.

3 Q Paid preparer means you're the one that appears on

4 the tax return?

5 A I sign it. I signed the returns.

6 Q Certainly, in order to sign the tax returns of an

7 individual in 2011 who had \$258 million in cash, you had to

8 become intimately familiar with his financial condition; did

9 you not?

10 A I understood the corporate entity structure of the

11 Trump Organization to a very strong extent.

12 Q You were familiar with its operations?

13 A To a significant extent.

14 Q And you were familiar with the properties that

15 President Trump owned through a number of different entities;

16 were you not?

17 A Most of them, yes.

18

19 (Continued on the following page..)

20

21

22

23

24

25

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1 Q You understood what 40 Wall Street was; correct?

2 A Yes, sir.

3 Q And Trump Old Post Office; correct?

4 A Yes.

5 Q And Trump Tower; correct?

6 A If you are talking about Trump Tower Commercial, yes.

7 Q And the Doral resort in Miami?

8 A I had less of a knowledge of that property, but I knew

9 what it did.

10 Q You generally understood that it was more than one

11 square mile in the middle of downtown Miami; correct?

12 A I didn't know the size of it.

13 Q Have you ever been to the Trump Doral?

14 A No, sir.

15 Q Did you do anything to become familiar the Trump

16 Doral, in preparation to preparing your compilation report?

17 A I was involved in the earlier years, and later years,

18 the other partners took over.

19 Q What partners took over, in the later years?

20 A Jennifer Safran.

21 Q And when was that?

22 A I would have to guess. I'm not exactly sure.

23 Q Mr. Bender, would it surprise you that you

24 participated in over 115 test engagements for the Trump

25 Organization?

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1 A In what period?

2 Q In your career, Mr. Bender.

3 A 115? No that would not surprise me.

4 Q Would it surprise you if it was higher?

5 A No. It would not surprise me.

6 Q Would it surprise you if there were over 11,000

7 discrete engagements, over the broad number of entities, in the

8 time that you worked with the Trump Organization, that you were

9 a party to?

10 A It might be high. I don't know. That might surprise

11 me.

12 Q It might be high?

13 A Yes.

14 Q But it doesn't sound like it's too many; does it?

15 A I can't answer that.

16 Q Does that sound too high?

17 A I can't answer if that --

18 Q It might have been 10,000?

19 A I can't answer that.

20 Q 9,000?

21 A I couldn't quantify it.

22 Q You couldn't quantify it. You did so many engagements

23 for the Trump Organization for the 30- plus years that you

24 worked for them, that you couldn't even quantify it.

25 A I just don't remember how many engagements were

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1 around, in the earlier years.

2 Q Do you have any other clients you did that many

3 engagements for?

4 A No, sir.

5 Q Did you ever work with any other individuals that

6 possessed President Trump's net wealth -- net worth?

7 A I don't know if some clients what -- I don't know what

8 my other clients' net worth is.

9 Q You don't know what your other client's net worth is?

10 A Yes.

11 MR. SUAREZ: Let's take a look at the Statement

12 of Financial Condition, previously marked PX 756.

13 (Whereupon, a document was displayed, and handed

14 to the witness.)

15 Q You previously identified this as President Trump's

16 Statement of Financial Condition for the year ending June 30,

17 2016?

18 A The compilation. Yes, sir.

19 MR. SUAREZ: And can we please turn to the next

20 page?

21 Q This is your independent accountant compilation

22 report; is it not?

23 A Yes, sir.

24 Q And see, down there, where it says, Mazars USA, LLP?

25 That's your signature?

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1 A That is either my signature, or an electronic copy
2 thereof.
3 Q Okay. And that's your letterhead down there, Mazars
4 USA, 60 Crossways Park Drive, in Woodbury, New York?
5 A Yes.
6 MR. SUAREZ: Can we turn to the next page of this
7 document? I think we skipped one. Come back. Next page.
8 Q All right. The first page is the cover, then you have
9 your independent accountant's compilation report. Is that
10 correct?
11 A Yes, sir.
12 MR. SUAREZ: And then, turn it over.
13 Q You have got the Statement of Financial Condition of
14 Donald J. Trump.
15 A That's the asset page.
16 Q And then there's reference there to the independent
17 accountant's compilation report. Do you see that?
18 A Yes, sir.
19 Q All right. And then, in the bottom it says, "The
20 accompanying notes are an integral part of this financial
21 statement."
22 A Yes, sir.
23 MR. SUAREZ: Turn it over. Next page, please.
24 Q Then the following sheet are the liabilities and net
25 worth. Do you see that?

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1 A Yes, sir.
2 Q And you see there it says that there's a loan related
3 to 40 Wall Street; do you not?
4 A Yes, sir.
5 Q You see it?
6 A Yes, sir.
7 Q And there's a loan related to Trump Park Avenue?
8 A Yes, sir.
9 Q And then there are other loans there related to the
10 Trump International Hotel and Tower, and the Old Post Office?
11 A Yes, sir.
12 Q In preparing the Statement of Financial Condition, you
13 would have done work to familiarize yourself with the loans that
14 are on this document?
15 A The Trump Organization would have supplied us a loan
16 statement for those individual loans, in most years.
17 Q A loan statement. And what would that loan statement
18 contain, Mr. Bender?
19 A The loan balance as of the date of the --
20 Q Okay --
21 MR. SUAREZ: Let's zoom back out, and keep going.
22 Q And here it's got the notes for the Statement of
23 Financial Condition, and again, a reference to the independent
24 accountant's compilation report. That's your report; correct,
25 Mr. Bender?

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1 A Yes, sir.
2 MR. SUAREZ: Now, keep going all the way to the
3 end of the document. This is the second to last page.
4 Flip it over. Keep going, to the end of the document.
5 Q And this would be the back page of the document;
6 correct?
7 A That would be the back cover.
8 Q The back cover of this document. So, this document
9 would be presented from front cover to back cover?
10 A Yes.
11 Q And the back cover, it's got -- what does it say down
12 there? Www.weisermazars.com?
13 A Yes, sir.
14 Q So it's presented as a single document with the front
15 and the back page?
16 A So, I can't speak for this individual year. In the
17 older days, they were bound statements, and they would be bound.
18 There would be a cover and a cover, and there would be the white
19 pages that you have just shown me, would be in between. In
20 later years, I don't know. In 2016, they may only have been
21 PDF-ed.
22 Q Now, so this would all be bound, in other words?
23 A In the earlier years.
24 Q And in the later years, when it was an electronic
25 document like this one that you identified previously, it would

D. Bender - Cross by Mr. Suarez Page 310

1 start with the WeiserMazars logo on its front page, it would
2 have your compilation report, it would go through the financial
3 statement and the notes, and then it would have this page;
4 correct.
5 A I can't speak to the fact that they might have gotten
6 hard copies in those years.
7 Q But the digital copy -- you would agree with me that
8 this is a true and correct copy of the documents; correct? I
9 think that's what you testified to earlier?
10 A Yes.
11 Q Yes it starts with a Mazars page, and ends with a
12 Mazars page?
13 A Starts with a cover, the bound the cover. The cover,
14 the statement, and it ends with a cover of the statement.
15 Q The documents all travel together. All the pages in
16 this document travel together.
17 A Yes.
18 Q Nothing is missing?
19 A No, sir.
20 Q Let's take a look at engagement letter for this
21 Statement of Financial Condition, which was PX 74 -- excuse me.
22 PX 740. Yes.
23 MR. SUAREZ: Can we put those up next to each
24 other?
25 (Whereupon, a document was displayed, and handed

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1 to the witness.)

2 Q Who drafted this engagement letter?

3 A A member of -- some staff member at Mazars.

4 Q A staff member at Mazars, working at your direction?

5 A I was the ultimate person responsible.

6 Q You signed the statement, not a staff member at

7 Mazars; right?

8 A That's correct.

9 Q The compilation report, you prepared it?

10 A I did not prepare it. It was a compilation. Mazars

11 compiled it.

12 Q You compiled the compilation report. You wrote the

13 compilation report, and you signed it?

14 A I did not write the compilation report. I signed the

15 compilation report.

16 Q Who wrote the compilation report?

17 A I couldn't tell you who wrote it that year. It could

18 have come from the client. Even they may have marked it up. I

19 couldn't answer that, right now.

20 Q Let's take those two statements that you just made

21 apart. It could have come from the client?

22 A We would have written a compilation report. I don't

23 know if they sent us a copy of it, also.

24 Q So who wrote the compilation report? Was it you or

25 the client?

D. Bender - Cross by Mr. Suarez Page 312

1 A Mazars wrote the compilation report.

2 Q Mazars wrote the compilation report, but who is the

3 human being at Mazars responsible for writing the compilation

4 report on June 30, 2016?

5 A I had the ultimate responsibility.

6 Q You had the ultimate responsibility. And how about in

7 connection with the engagement letter? It might have been

8 prepared by one of your staff members, but you had the ultimate

9 responsibility for preparing that engagement letter; correct?

10 A Yes. Yes, sir.

11 Q Okay. And let's take a look at that engagement

12 letter. That engagement letter says, in the second page, right

13 there in the middle of the second page it says, "Our report will

14 include the following. Because of the significance and

15 pervasiveness of the matters discussed above --"

16 Excuse me. Let me repeat that.

17 "Because the significance and pervasiveness of the

18 matters discussed above make it difficult to assess their impact

19 on the Statements of Financial Condition, users of this personal

20 financial statement should recognize that they might reach

21 different conclusions about the financial condition of Donald J.

22 Trump if they had access to a revised Statement of Financial

23 Condition prepared in conformity with the accounting principles

24 generally accepted in the United States of America."

25 Do you see that?

D. Bender - Cross by Mr. Suarez Page 313

1 A Yes, sir. I do.

2 Q Who wrote those words?

3 A I was responsible for them being, in 2017.

4 Q You prepared that engagement letter?

5 A Yes.

6 Q Before you even started compiling the compilation

7 report, producing the compilation report, you had already

8 determined that this disclaimer would be there; had you not?

9 A Yes, we had.

10 Q Okay. So before you got the first bit of information

11 in connection with the June, 2016 compilation report in the

12 Statement of Financial Condition, you had already decided to put

13 in there a statement that the financial statement should not be

14 relied on in accordance with that disclosure statement; had you

15 not?

16 MR. WALLACE: Objection.

17 THE COURT: What's the ground of the objection?

18 MR. WALLACE: I don't think he has accurately

19 stated what's on the screen.

20 THE COURT: Do you want to try to rephrase it,

21 just to be exactly congruent with what's on the screen?

22 Q Before you even began working on the engagement, you

23 had already determined that the compilation report had to

24 include that disclaimer?

25 A Due to the fact that the top paragraph had so many

D. Bender - Cross by Mr. Suarez Page 314

1 G.A.A.P. exceptions, we had determined that we would need to put

2 that paragraph.

3 Q Due to the fact that it had so many G.A.A.P.

4 exceptions. Let's talk about the G.A.A.P. exceptions. You just

5 described them as, so many G.A.A.P. exceptions. Is the Trump

6 Organization required to comply with G.A.A.P.?

7 A Even the G.A.A.P. exceptions aren't complying with

8 G.A.A.P. You are notifying them. So, everybody is required, to

9 a certain extent, to comply with G.A.A.P.

10 Q That wasn't my question, Mr. Bender. My question was,

11 is there anything that required the Trump Organization to

12 maintain their books in accordance with G.A.A.P., as a private

13 company?

14 A To maintain their books as a private company?

15 Q G.A.A.P.

16 A No.

17 Q A private company doesn't have to follow G.A.A.P.;

18 correct?

19 THE COURT: It probably depends on -- and I'm not

20 an accountant -- what they're using it for. If they are

21 using it for external reasons, or internal reasons. So,

22 I'm just asking you to be more specific.

23 MR. SUAREZ: I will be mindful of that.

24 Q But there's nothing that requires a private company to

25 follow G.A.A.P.?

D. Bender - Cross by Mr. Suarez Page 315

1 A No. A private company is not required to follow
 2 G.A.A.P.
 3 Q A private company is not required to follow G.A.A.P.,
 4 but it can choose to; correct?
 5 A Yes.
 6 Q Let's go to the statement above. "Accounting
 7 principles generally accepted in the United States of America
 8 require that personal financial statements include a provision
 9 for current income taxes, as well as estimated income taxes, on
 10 the differences between estimated current values --"
 11 Excuse me. Let me start that again.
 12 "Accounting principles generally accepted in the
 13 United States of America require that personal financial
 14 statements include a provision for current income taxes, as well
 15 as estimated income taxes, on the difference between estimated
 16 current values of assets, and the estimated current amounts of
 17 liabilities, and their tax bases, present cash, marketable
 18 securities, and hedge funds, separately, include amounts to be
 19 received in the future from estimated current values that are
 20 non-forfeitable, fixed and determinate, and do not require any
 21 future services.
 22 "Record the net --"
 23 Excuse me.
 24 "Record the current estimated value of all
 25 closely-held and other business entities, as a net investment,"

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1 open parentheses, "assets net of liabilities, and disclose
 2 summarized financial information about each entity. Record
 3 non-interest-bearing deposits in exchange for rights or
 4 privileges, and include all assets and liabilities of the
 5 individual whose financial statements are presented."
 6 I think I roughly got that right.
 7 A I think you did, too.
 8 Q Okay. Thank you.
 9 "The accompanying Statement of Financial Condition
 10 does not reflect the above-noted items. The affects of these
 11 departures from accounting principles, generally accepted in the
 12 United States of America, have not been determined."
 13 Correct?
 14 A Yes, sir. That's what it says.
 15 Q All right. So, in the first paragraph, you have
 16 identified about a half a dozen ways in which these Statements
 17 of Financial Condition do not comport to G.A.A.P.; correct?
 18 A Yes, sir.
 19 Q Who made the determination as to which departures from
 20 G.A.A.P. were applicable?
 21 A The Trump Organization.
 22 Q Who, at the Trump Organization, made that
 23 determination?
 24 A Mr. Weisselberg, when he signed the engagement letter.
 25 Q Mr. Weisselberg is not a CPA; is he?

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1 A No, he is not.
 2 Q Mr. McConney is not a CPA; is he?
 3 A No, he is not.
 4 Q How would Mr. Weisselberg and Mr. McConney know what
 5 G.A.A.P. exceptions should have been disclosed or not disclosed
 6 in a Statement of Financial Condition?
 7 A Mr. Weisselberg did not want these amounts included in
 8 the financial statement, and there would have to be a G.A.A.P.
 9 exception. Jeff McConney, as you said earlier, was a practicing
 10 accountant at our predecessor firm. Very experienced, and he,
 11 as I have said many times, he is one the best accountants I ever
 12 met.
 13 Q But you are the certified public accountant,
 14 Mr. Bender?
 15 A Yes, sir.
 16 Q You are the one that the Trump Organization turned to
 17 to determine what was a G.A.A.P. exception and what wasn't;
 18 weren't you?
 19 A No. They knew what they were signing, when they
 20 signed their engagement letter.
 21 Q Okay. The engagement letter that you prepared, that
 22 you drafted?
 23 A Yes.
 24 Q Okay. They knew what they were signing. And who
 25 advised them as to what they were signing on this engagement

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1 letter, as it related to departures from G.A.A.P.?
 2 A They read their engagement letters, and they came to
 3 us with questions, if they had questions.
 4 Q They had questions. And did you tell them that there
 5 were other G.A.A.P. exceptions that weren't disclosed in this
 6 statement?
 7 A Not that I recall, at this moment.
 8 Q You were aware, with the financial statements of the
 9 Trump Organization; were you not?
 10 A Yes, sir.
 11 Q Okay. And you were very familiar with the books and
 12 records. You prepared tax return for hundreds of entities; did
 13 you not?
 14 A Yes, I was.
 15 Q You closed their ledgers every year; did you not?
 16 A I gave them trial balances. I did not close their
 17 books.
 18 Q You were paid over a million dollars a year from the
 19 period of 2011 to 2020, and in some instances more than
 20 \$2 million a year to provide accounting services for the Trump
 21 Organization?
 22 A That sounds possible.
 23 Q That sounds possible. And you were the only certified
 24 public accountant that was involved in any of this; were you
 25 not, Mr. Bender?

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1 MR. WALLACE: Objection, your Honor.
 2 "Any of this," is unclear.
 3 THE COURT: Thank you.
 4 Sustained.
 5 Q You were the only certified public accountant that was
 6 involved in determining which exceptions to G.A.A.P. existed.
 7 MR. WALLACE: Objection, your Honor. That wasn't
 8 his testimony.
 9 THE COURT: I'm sorry. Say again?
 10 MR. WALLACE: I'm saying that determining which
 11 exceptions to G.A.A.P. existed was not Mr. Bender's
 12 testimony.
 13 Q You were the only certified public accountant that was
 14 involved in 2016 in connection with the presentation of this
 15 engagement letter in determining which exceptions to G.A.A.P.
 16 existed?
 17 MR. WALLACE: Same objection.
 18 THE COURT: Overruled.
 19 A I did not determine the G.A.A.P. exceptions. The
 20 Trump Organizations determined the G.A.A.P. --
 21 Q The Trump Organization determined the G.A.A.P.
 22 exceptions, is your testimony, Mr. Bender?
 23 A Yes.
 24 Q Mr. Weisselberg? Is he the one who determined the
 25 G.A.A.P. exceptions?

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1 A He is the ultimate one responsible.
 2 Q Not my question. I didn't ask who is responsible. I
 3 asked who determined what G.A.A.P. exceptions applied?
 4 A The Trump Organization.
 5 Q What individual? The Trump Organization, we agree, is
 6 a corporate entity. It doesn't make determinations. It acts
 7 through people; right?
 8 A Excuse me?
 9 Q Trump Organization acts through people. Companies
 10 don't make decisions.
 11 THE COURT: I'll take judicial notice that
 12 corporations and businesses generally have to act through
 13 their personnel.
 14 Q So, who was the person at the Trump Organization that
 15 determined what departures from G.A.A.P. were appropriate to
 16 list in the Statements of Financial Condition?
 17 A Ultimately, Mr. Weisselberg.
 18 Q Ultimately, Mr. Weisselberg. And who did
 19 Mr. Weisselberg consult with?
 20 A You would have to ask him that.
 21 Q Did Mr. Weisselberg consult with you?
 22 A On certain G.A.A.P. exceptions, he might have.
 23 Q Because you were a CPA?
 24 A You would have to ask him. That's the reason he
 25 consulted with me.

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1 Q You are a CPA?
 2 A Yes, sir.
 3 Q You were a CPA when you prepared this?
 4 A Yes, sir.
 5 Q Mr. Weisselberg was not a CPA?
 6 A No, sir.
 7 Q So, when you and Mr. Weisselberg had a discussion
 8 about what departures from G.A.A.P. existed, you had the
 9 knowledge of a certified public accountant that Mr. Weisselberg
 10 did not?
 11 A He had the knowledge of speaking to us, if he had any
 12 questions.
 13 Q And did you ever advise Mr. Weisselberg that there
 14 were any other disclosure that should have been included as
 15 departures from G.A.A.P.?
 16 A Some of these ones, we did suggest to him.
 17 Q You did? Which ones?
 18 A We had discussions on, as I think I stated yesterday,
 19 about the G.A.A.P. exception for cash and marketable securities.
 20 When he made that change to the financial statement, we agreed
 21 it would have to be a G.A.A.P. exception.
 22 Q You agreed that it was a G.A.A.P. exception?
 23 A Yes, I did.
 24 Q You recommended that it should be a G.A.A.P.
 25 exception?

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1 A I don't know if we recommended it. It could have been
 2 prepared, they prepared the statement without a G.A.A.P.
 3 exception.
 4 Q It was changed to your satisfaction; was it not?
 5 A The -- what was changed to my satisfaction?
 6 Q The manner in which they presented it.
 7 A With the G.A.A.P. exception, it met the -- it was
 8 appropriate.
 9 Q So, you suggested, to Mr. Weisselberg, a G.A.A.P.
 10 exception, and it was accepted, and it was incorporated in the
 11 Statement of Financial Conditions?
 12 A That's not what I'm saying. I'm saying, based on
 13 discussions we would have had with them, we told them we agreed
 14 that this G.A.A.P. exception would be required, if they wanted
 15 the financial statement presented the way they had drafted it.
 16 Q And they agreed?
 17 A They agreed.
 18 Q On your advice?
 19 A Not on our advice.
 20 Q Not your advice.
 21 A They --
 22 Q -- independently, that's your testimony?
 23 A They determined that.
 24 Q Okay.
 25 A They drafted the financial statement, and one of those

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1 wanted at the time -- there was a discussion --

2 MR. WALLACE: I would just like to note my

3 objection, that if he could let the witness answer the

4 questions before he starts the next question, we would

5 appreciate it.

6 THE COURT: That is the proper way to proceed.

7 MR. SUAREZ: I will try. I will do.

8 Q In fact, when you suggested other changes to the Trump

9 Organization, when you had discussions about things that you

10 believed were appropriate, they generally heeded your advice?

11 A I didn't suggest changes, but there was one other

12 change that they -- they wanted -- they did, in the preparation

13 of their financial statements that I recall, that would have

14 required a G.A.A.P. exception, and there was a discussion about

15 it.

16 Q There was a discussion about it?

17 A Yes.

18 Q So, when you raised an issue with the Trump

19 Organization's compliance with G.A.A.P., there was a discussion

20 about it?

21 A We talked to them about the G.A.A.P. exception. Yes,

22 sir.

23 Q And it was resolved to your satisfaction?

24 A It was resolved to my satisfaction.

25 Q In fact, I believe yesterday you testified that

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1 whenever you resolved a G.A.A.P. exception, whenever you raised

2 a G.A.A.P. exception to the Trump Organization, it was general

3 resolved to your satisfaction; was it not?

4 A I only recall these two G.A.A.P. exceptions, at this

5 point, that I ever had discussions with them.

6 Q You brought up G.A.A.P. exceptions yesterday, that you

7 had a conversation with the Trump Organization about, and they

8 were resolved to your satisfaction?

9 A They agreed that the G.A.A.P. exception would have to

10 be shown in the independent compilation report, and to the notes

11 to the financial statement.

12 Q Because if you would have -- I'm sorry. If it

13 wouldn't have been resolved your satisfaction, you would have

14 been required to withdraw?

15 A We. Would not have issued a financial statement, if

16 it was not resolved.

17 Q But you did, because the concerns that you raised were

18 resolved, to your satisfaction?

19 A Yes, sir.

20 Q Okay.

21 MR. SUAREZ: Let's bring up the management

22 representation letter from that same year, previously

23 marked plaintiff's Exhibit 741.

24 (Whereupon, a document was displayed, and handed

25 to the witness.)

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1 Q Mr. Bender, who drafted this letter?

2 A Mazars.

3 Q Mazars prepared the management representation letter

4 that's here on the screen?

5 A We drafted it. Yes, sir.

6 Q Okay. And you drafted it, because this is something

7 that you wanted; correct?

8 A Yes, sir.

9 Q You wanted this piece of paper?

10 A Yes, sir.

11 Q And you are the one that put the words on the page

12 here; correct?

13 A A member of Mazars. Yes.

14 Q A member of Mazars. And that would be a member of

15 Mazars working under your supervision; would it not be?

16 A Yes.

17 Q And that member of Mazars working under your

18 supervision, in the year 2017, would have typed out this letter?

19 A Somebody in typing would have typed it. Yes.

20 Q And it would have been sent over to the Trump

21 Organization?

22 A Yes.

23 Q And you would have asked the Trump Organization to

24 sign it?

25 A They would have reviewed it. If they had questions,

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1 they would have come back to us, and we would have discussed any

2 issues on the draft that would be necessary, and if there was a

3 change, we would discuss it.

4 Q Does this management representation letter that was

5 prepared at your direction contain the word appraisal anywhere

6 in it?

7 A I would have to read the whole letter.

8 Q Please read it. It was prepared at your direction.

9 THE COURT: Is there some way to short circuit

10 him reading three pages?

11 MR. SUAREZ: They're his words, your Honor, and

12 I'm asking -- I know --

13 Q The word appraisal, I don't believe, appears anywhere

14 here, Mr. Bender; does it?

15 A I have to read the letter.

16 THE COURT: Does anybody think that the word

17 appraisal appears in this letter?

18 Let's assume it doesn't.

19 Mr. Bender, are you comfortable with that?

20 THE WITNESS: I'm comfortable, your Honor.

21 THE COURT: We want you to be comfortable.

22 Q Nowhere in this letter does the Trump Organization

23 warrant to you that it's given you every appraisal that they

24 have.

25 A In item three, "We have made available to you all

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1 financial records and related data, and any additional
 2 information you requested from us, for the purpose of this
 3 compilation."
 4 Q Okay.
 5 A "We have not knowingly withheld from you any financial
 6 record or related data that, in our judgment, would be relevant
 7 to your compilation."
 8 Q It doesn't say they have given you appraisals.
 9 A It says they made available to us, "All financial
 10 records and related data, for the purpose of compilation. We
 11 have not knowingly withheld any financial records."
 12 In my opinion, that includes appraisals.
 13 Q That, in your opinion, includes appraisals. You wrote
 14 this letter. Why didn't you use the word, appraisals?
 15 A This is pretty much standard language.
 16 Q It's standard language. And this letter was signed
 17 by?
 18 A Allen Weisselberg and Donald Trump, Jr.
 19 Q Neither of which is a CPA?
 20 A No, sir.
 21 Q So they should have inferred, from the language that
 22 you wrote, in the letter that you wrote and sent to them, and
 23 asked them to sign, that that included that you wanted to see
 24 appraisals?
 25 A I think they should have understood that, yes.

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1 Q But you never said that to Allen Weisselberg?
 2 A I never discussed it with Allen Weisselberg.
 3 Q And you certainly never said it to Donald Trump,
 4 Junior; did you? But based on your own letter that you wrote,
 5 your words, and asked them to signed, you believe that they
 6 should have concluded that needed to give you appraisals?
 7 A Absolutely.
 8 Q Why didn't you tell them?
 9 A To me, financial data, I think it's included,
 10 appraisals.
 11 Q But that's not what it says. We can agree on that?
 12 A That's not what it says.
 13 Q Was Donald Trump, Jr. capable of determining which
 14 G.A.A.P. exceptions should have been included in a Statement of
 15 Financial Condition?
 16 A I think he would have needed to rely on Jeff McConney
 17 and Allen Weisselberg.
 18 Q So he should have relied on the two guys that weren't
 19 CPA's?
 20 A He should have relied on his CFO and his controller,
 21 yes.
 22 Q Should he have relied on their outside accounting
 23 firm?
 24 A It was not my job to -- they -- in-house reviewed it,
 25 and if they had any questions, they could have come back to us.

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1 Q This was not your job, to explain to them, that's
 2 something that you wanted?
 3 A Mr. Weisselberg understood what -- accounting.
 4 Mr. McConney has a lot of expertise in --
 5 Q But they weren't certified public accountants, and you
 6 never explained it to them, and you wrote this letter, not them.
 7 MR. WALLACE: Objection. Compound question.
 8 THE COURT: Sustained.
 9 And I hope that the reporter got that. Weren't,
 10 not, they were.
 11 MS. HABBA: She did.
 12 MR. SUAREZ: Let's pull up the Jeff Supporting
 13 Data for this particular year. That was PX 742. Is that
 14 right, PX 742? Yes. PX 742.
 15 (Whereupon, a document was displayed, and handed
 16 to the witness.)
 17 Q This was the Jeff Supporting Data spreadsheet. This
 18 was what was sent to you; correct, Mr. Bender?
 19 A This is the final version that we used for the
 20 compilation of Mr. Trump's 2016 Statement of Financial
 21 Condition.
 22 Q PBC. Prepared by client?
 23 A Yes.
 24 Q True or not true?
 25 A Yes.

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1 Q Okay. That's what you said that meant; right?
 2 A Yes, sir.
 3 Q All right. So, this is what they sent you?
 4 A This is -- they may have made changes, as I previously
 5 stated. They sent it to us, and then they would send us updated
 6 copies, and updated copies, and this is what their final version
 7 would have been.
 8 Q Okay. So this is the supporting data that you used to
 9 prepare your compilation report; correct?
 10 A This is the supporting data I used to compile the
 11 compilation.
 12 Q Okay. To compile the compilation?
 13 A Yes.
 14 Q Which is different, in your mind, from preparing the
 15 compilation report?
 16 A Yes.
 17 Q How is that different?
 18 A A preparation is a different level of accounting
 19 services than a compilation. I just want to make sure that I
 20 was using the right language.
 21 Q Okay.
 22 MR. SUAREZ: Now, scroll up here. Can we just
 23 scroll through this compilation report, from top to bottom,
 24 so we can see all the facts and figures that are included?
 25 Q You would agree, Mr. McConney, that you were required

D. Bender - Cross by Mr. Suarez Page 331

1 to review all of these notes in connection with preparing your
 2 compilation report?
 3 A I'm Mr. Bender, not Mr. McConney.
 4 Q I'm sorry. Bender.
 5 A We were not hired to review this. We were hired to
 6 compile these.
 7 Q All right.
 8 A These financial statements.
 9 Q Were you required to read it?
 10 A We did read it.
 11 Q Not we, Mr. Bender. You did you read this document?
 12 A Did I read the whole document? I presumably -- I
 13 can't answer if I read the whole document.
 14 Q You can't answer whether you read the whole document?
 15 A Yes.
 16 Q Okay. The Statement of Financial Condition of the
 17 President of the United States, and you can't answer if you read
 18 the whole document. Is that right?
 19 A I can't answer, today, that I read every line.
 20 Q So let's scroll down to the triplex.
 21 (Continued on the next page.)
 22
 23
 24
 25

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1 MR. SUAREZ: Let's go back to the other side
 2 here.
 3 Q Do you see here where it goes from "triplex based on
 4 comps from TIR sales office 30,000 square feet @ 10,900 a
 5 square foot?"
 6 A Yes.
 7 Q Triplex based --
 8 THE COURT: Triplex.
 9 Q Triplex based on comps from 432 Park?
 10 A Yes.
 11 Q Did you read that?
 12 A I don't know if I read that.
 13 Q You don't know if you read that? This is for the
 14 2017 Statement of Financial Condition when were you compiling
 15 the Statement of Financial Condition for the President of the
 16 United States, Mr. Bender; is that not the case?
 17 A Yes, sir.
 18 Q The square footage of the triplex changes?
 19 THE COURT: What is a triplex?
 20 MR. SUAREZ: The triplex, sorry, your Honor.
 21 The triplex.
 22 A Yes.
 23 Q Did you see that it changes there?
 24 A I see it changed.
 25 Q You see that it changed?

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1 MR. SUAREZ: May I approach the screen?
 2 THE COURT: Ten-minute warning.
 3 Q See where it says here "triplex based on comps from
 4 TIR sales office 30,000 SF @ \$10,900 a square foot?"
 5 A Yes.
 6 Q Is that something you read?
 7 A I couldn't tell you if I read it back then, no.
 8 Q Is that something you understood?
 9 A I understand it today.
 10 Q You understand it today but you can't tell me if you
 11 read it back when you were preparing the Statements of
 12 Financial Condition report? Yes or no?
 13 Did you read it back then?
 14 A I did not. I was not the person. I did not do all
 15 the work in 2016 financial statement. I had staff working on
 16 it. I do not know if I read every word of the worksheet.
 17 Q Okay. Let's pull up the 2017 compilation report.
 18 Let's pull up the supporting data. Jeff Supporting Data from
 19 2017 PX-758. Let's go down to the triplex again.
 20 THE COURT: I think it's pronounced tri-plex.
 21 MR. SUAREZ: In Florida, it's try-plex
 22 MR. WALLACE: There's a dispute from plaintiff's
 23 team.
 24 MS. HABBA: It's tri-plex.
 25 MR. WALLACE: This divides many people.

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1 A Today I see it changed.
 2 Q Did you ever pick up the phone and say, to the
 3 President of the United States, your triplex just got cut by
 4 2/3?
 5 A I did not. I have no independent memory -- we
 6 missed it.
 7 Q You missed it?
 8 A Yes.
 9 Q You missed it?
 10 A Yes.
 11 Q President Trump hired you to prepare a compilation
 12 from the Statement of Financial Condition for the Leader of
 13 the Free World and you missed it?
 14 A Yes, sir.
 15 Q You never picked up the phone and said, sorry, I
 16 missed it?
 17 A Didn't have his phone number but we missed it.
 18 Q You missed it. You never said, hey, there's an error
 19 here or, hey, 2/3 of your triplex just disappeared, did you?
 20 A No, sir.
 21 Q Do you think that's something President Trump would
 22 have wanted to know?
 23 A I can't answer what --
 24 Q Do you think that's something --
 25 THE COURT: Let him answer.

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1 A I can't tell you what Mr. Trump wanted to know.
 2 Q Do you think that is something that President Trump,
 3 who relied on you, who relied on Mazars, who was loyal to you
 4 for all those years, would have wanted to know?
 5 MR. WALLACE: Objection at this point.
 6 Testifying about what Mr. Trump relied on and wanted.
 7 THE COURT: Overruled. I'll allow it one more
 8 time. Go ahead. You want to ask it again?
 9 MR. SUAREZ: Yes.
 10 THE COURT: Go ahead.
 11 Q Do you think the Leader of the Free World would have
 12 wanted to know that you had been given information that his
 13 triplex apartment had been stated at a different square
 14 footage and reduced by 2/3 in the year 2017?
 15 Do you think that is something that the man who
 16 paid you millions of dollars a year would have wanted to know?
 17 A I can't speak for Mr. Trump.
 18 Q Okay. Let me ask you, if we go back to 753,
 19 Exhibit 753. In Exhibit 753, you made a promise to Mr. Trump
 20 in your engagement letter, were you promised that your
 21 engagement cannot be relied upon to identify or disclose any
 22 financial misstatements, including those caused by fraud or
 23 error, or to identify or disclose any wrongdoing or
 24 noncompliance with laws and regulations. However, we will
 25 inform you of material errors and any evidence or information

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1 that comes to our attention during the performance of our
 2 procedures that fraud may have occurred.
 3 Do you think that 2/3 of his townhouse
 4 disappearing, of the triplex disappearing, from 2017 to 2018
 5 is not something that you should have said to the Leader of
 6 the Free World?
 7 A Did not come to our attention.
 8 Q It did not come to your attention? Oops. Sorry, I
 9 screwed it up?
 10 MR. WALLACE: Objection at this point. That's
 11 not a question.
 12 Q Mr. Bender --
 13 THE COURT: Just questions, not commentary.
 14 A We didn't screw it up. The Trump Organization made
 15 a mistake, and, we didn't catch it.
 16 Q You didn't catch it?
 17 A The Trump Organization --
 18 Q You didn't catch it in '18. You didn't catch it in
 19 '19. You didn't catch it in '20. All those years, you didn't
 20 catch it, you never came to him and said, sorry,
 21 Mr. President. I made a mistake. I didn't catch it.
 22 All of those years, millions of dollars in fees
 23 later and you didn't catch it?
 24 MR. WALLACE: Objection. We covered this ground
 25 multiple times now.

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1 THE COURT: We only have four more minutes.
 2 Q It goes to the heart of the case. This was someone
 3 that -- I am emotional about it because it's not funny because
 4 the Leader of the Free World, who was keeping us safe, who was
 5 keeping this county safe, relied on you, Mr. Bender, not to
 6 screw this up, and, you screwed it up?
 7 A No, I did not.
 8 Q Okay. You just missed it?
 9 A We were engaged to do a compilation and the
 10 compilation, as we discussed earlier, does not require us to
 11 outline the compilations and we met our compilation, what was
 12 required for a compilation.
 13 Q You met all that was required for the compilation and
 14 that includes missing 20,000 square feet is something that was
 15 not required for you to disclose to your client?
 16 A If you-- we missed it.
 17 Q You missed it. Now, he's sitting here today, his
 18 company is going through hell. Tens of thousands of employees
 19 are going through hell because you missed it?
 20 MR. WALLACE: Objection.
 21 A No, because they put the wrong number. They
 22 misrepresented the numbers on their data.
 23 Q You never called and told him about it?
 24 A We did not.
 25 Q When you went to the White House -- you went to the

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1 White House, right? He invited your son to the White House.
 2 You mentioned to him, hey, we missed it?
 3 MR. WALLACE: At this point, can he please let
 4 the witness answer the question he is asking?
 5 THE COURT: He's already answered it. So, I
 6 don't know if that matters. Counselor, I think he's
 7 already said he did not tell them. So, you don't have to
 8 ask him whether he did not tell them when he was at The
 9 White House. He said he didn't tell them.
 10 Q Was making this mistake the reason Mazars forced you
 11 to retire?
 12 A No.
 13 Q You were planning to retire anyway?
 14 A The partnership agreement of Mazars requires you to
 15 retire at 65.
 16 Q That's why you went to the President mortified?
 17 That's why you went and apologized for having made this
 18 mistake?
 19 MR. WALLACE: Objection. If he wants to include
 20 something about a conversation of Mr. Bender and the
 21 President, he can ask a question about it. He cannot
 22 testify.
 23 THE COURT: Considering this is
 24 cross-examination, obviously -- I'll leave it at that.
 25 MR. WALLACE: Can I at least raise a foundation

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1 objection?

2 THE COURT: Overruled.

3 Q So, Mr. Bender.

4 MR. SUAREZ: Yes, sir?

5 THE COURT: So, you'll ask it again or you'll --

6 MR. SUAREZ: It's been asked. Overruled. I

7 don't know. Does he have anything to say for himself?

8 MR. WALLACE: Objection.

9 THE COURT: You can't ask him does he have

10 anything to say for himself.

11 MR.SUAREZ: In response to the last question,

12 you overruled the objection. He's sitting there.

13 Q You missed it.

14 A I never went to Mr. Trump mortified. I was never

15 mortified.

16 Q You lost your biggest client, the client that

17 literally made your entire professional reputation, Mr.

18 Bender. Your entire identity was being the big accountant for

19 the powerful Trump Organization for the President of the

20 United States and you blew it.

21 MR. WALLACE: Objection.

22 THE COURT: Sustained.

23 Q Let's get into 2017 then.

24 THE COURT: Two-minute warning.

25 Q PX-755 let's see what else. This is the compilation

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1 A I'm just checking. Yes, they are.

2 Q Yes, they are.

3 THE COURT: Okay. We're going to break for the

4 day. We'll resume tomorrow at 10:00 we have to take

5 care of some housekeeping matters right now and my law

6 clerk has a question.

7 MS. GREENFIELD: Sorry. To make sure we're on

8 track, which witnesses, besides continuing with Mr.

9 Bender, do we intend to call tomorrow?

10 MR. WALLACE: I believe the next witness is

11 Cameron Harris from the Whitley Penn accounting firm and

12 then, I believe, Jeff McConney will come after him.

13 MR. GREENFIELD: Thank you.

14 MR. KISE: To be clear, we don't need Mr.

15 McConney here tomorrow morning? We'll continue with the

16 cross tomorrow.

17 MR. WALLACE: Up to you guys. I don't think

18 Mr. Harris will be here very long for our direct but on

19 the cross-examination of Mr. Harris and the continued

20 cross-examination of Mr. Bender --

21 MR. KISE: We'll work that out. We want to make

22 sure your witnesses are here.

23 THE COURT: Okay. Thanks, everyone.

24 (Whereupon, the trial is continued October 4,

25 2023 at 10:00 a.m.)

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1 report for 2017, Mr. Bender. Mazars, that's your logo on the

2 front page, right?

3 A Yes, sir.

4 Q Okay. It's not the Trump Organization logo?

5 A No, sir.

6 Q They're not the ones taking credit for this, you are?

7 A Mazars compiled the financial statement.

8 Q You know, Mr. Bender, what I think bears repeating

9 for the Court. The Jeff spreadsheets weren't attached to this

10 document that went between the two Mazars logos, right?

11 A No, sir.

12 Q No. It was just the Statement of Financial Condition

13 and your compilation report, correct?

14 A Yes, sir.

15 Q And the notes?

16 A Notes are considered part of the accountant's --

17 notes are considered part of the Statement of Financial

18 Condition.

19 Q The notes that are considered part of the Statement

20 of Financial Condition are also discussed in your accountant's

21 compilation report, correct?

22 A Repeat the question, please.

23 Q The notes that form part of a Statement of Financial

24 Condition are also referenced in your independent accounting

25 compilation report; are they not?

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In The Matter Of:
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DONALD J. TRUMP ET AL

October 4, 2023

SUPREME COURT - NY COUNTY

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 COUNTY OF NEW YORK - CIVIL TERM - PART 37
 2 -----X
 3 PEOPLE OF THE STATE OF NEW YORK, BY LETITIA JAMES, ATTORNEY GENERAL OF THE STATE OF NEW YORK,
 4 Plaintiff,
 5 -against-
 6
 7 DONALD J. TRUMP; DONALD TRUMP, JR.; ERIC TRUMP; IVANKA TRUMP; ALLEN WEISSELBERG; JEFFREY McCONNERY; THE DONALD J. TRUMP REVOCABLE TRUST; THE TRUMP ORGANIZATION, INC.; TRUMP ORGANIZATION, LLC; DJT HOLDINGS, LLC; DJT HOLDINGS MANAGING MEMBER; TRUMP ENDEAVOR 12, LLC; 401 NORTH WABASH VENTURE, LLC; TRUMP OLD POST OFFICE, LLC; 40 WALL STREET, LLC; AND SEVEN SPRINGS, LLC;
 12 Defendants.
 13 -----X
 14 60 Centre Street
 New York, New York
 15 BENCH TRIAL October 4, 2023
 16
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Proceedings

1 THE COURT: If this was Broadway, we'd be having
 2 a long run here. I think we're getting the photographers.
 3 (Photos taken.)
 4 THE COURT: They do this every day. I mean,
 5 they look the same.
 6 Is the defense going to recall Donald Bender?
 7 MR. SUAREZ: Yes, sir.
 8 THE COURT: It's a little confusing. There are
 9 two Donald's. Okay, let's get him in.
 10 MR. SUAREZ: Good morning, your Honor.
 11 THE COURT: Good morning.
 12 MR. SUAREZ: I've taken heed to a request to
 13 speak more slowly today. I also understand that it's
 14 pronounced, in the great State of New York, triplex.
 15 MR. KISE: In the south, it's just called
 16 apartment.
 17 THE COURT: Chris, do you have triplexes down
 18 there?
 19 MR. KISE: That's why it's called an apartment,
 20 no.
 21 THE COURT: Welcome to New York City.
 22 (Whereupon, the witness enters the courtroom.)
 23 THE COURT: I'll remind the witness, as I always
 24 do, that he's still under oath.
 25 THE WITNESS: Thank you, your Honor.

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 LISA CASEY,
 OFFICIAL COURT REPORTERS
 24
 25

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D. Bender - Cross/Suarez

1 THE COURT: Counselor, whenever you're ready,
 2 please proceed.
 3 CROSS-EXAMINATION (Cont'd)
 4 BY MR. SUAREZ:
 5 Q Mr. Bender, good morning.
 6 A Good morning.
 7 Q Yesterday we were taking a look at Plaintiff's
 8 Exhibit 758; and, I just wanted to thank you for acknowledging
 9 the mistake, the change in value of the triplex from 327
 10 million to 116 million.
 11 MR. SUAREZ: If you can please pull up the 2016
 12 and 2017 Statements of Financial Condition.
 13 Q I just wanted to walk you, Mr. Bender, through both
 14 statements, the June 30, 2016 statement, Plaintiff's
 15 Exhibit 756 with Mazars and WeiserMazars logo on the front
 16 page and then Plaintiff's Exhibit 755, which is the Statement
 17 of Financial Condition, Mazars USA logo on the bottom.
 18 Mr. Bender, between 2016 and 2017, I take it,
 19 Mazars stopped using the WeiserMazars and just started
 20 referring to Mazars?
 21 A Yes, our name changed many times over the years.
 22 Q If you can please go to the next page, on both
 23 documents. The 2016 Statement of Financial Condition was
 24 dated March 10, 2017; is that correct?
 25 A Yes, sir.

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D. Bender - Cross/Suarez Page 346

1 Q Just a few months later, in October of 2017, the same
2 year, the 2017 Statement of Financial Condition was issued.
3 Is that your signature there on October 30,
4 2017?
5 A It's either mine or electronic copy thereof.
6 Q Okay. This was a particularly interesting year
7 because President Trump assumed the Presidency on January of
8 2017, correct?
9 A Yes, sir.
10 Q And for that reason, there was an understandable
11 delay producing the compilation report for the 2016 Statement
12 of Financial Condition?
13 A You'd have to confirm that with the Trump
14 Organization. It was just a guess yesterday.
15 Q You would agree the Trump Organization, on its own,
16 changed the value of the triplex. It wasn't prompted by
17 anybody to do it?
18 A It wasn't prompted by Mazars.
19 Q Okay. Moving on. Did you have an opportunity last
20 night to speak to anybody about your testimony?
21 A I spoke to counsel last night.
22 Q Did you speak to anyone from the New York Attorney
23 General's Office?
24 A No, sir.
25 Q Did your counsel speak to anyone from the New York

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1 Attorney General's Office?
2 A You'd have to speak to them.
3 Q Are you aware if your counsel spoke to anyone from
4 the New York Attorney General's Office?
5 A I don't recall any conversation with counsel last
6 night.
7 Q All right. Moving on. Yesterday --
8 MR. SUAREZ: Let's pull up the testimony from
9 yesterday.
10 Q We had a discussion about whether you were the
11 relationship partner in charge of the Trump Organization when
12 Weiser merged into Mazars, correct?
13 A Yes, sir.
14 Q You told me there was a gentleman named Gerry
15 Rosenblum that was the partner in charge for a period of time?
16 A For a number of years.
17 Q Okay, for a number of years.
18 MR. SUAREZ: Let's pull up the 2011 engagement
19 report.
20 MR. KISE: Just to make a record observation.
21 Sorry. I want to be clear, the fact they were pointing
22 to documents that are in evidence now doesn't waive our
23 objection as to the Statute of Limitations. I mean,
24 we're working with the record as it exists.
25 THE COURT: All right. I understand and I

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1 agree.
2 MR. KISE: Thank you, Judge.
3 MR. SUAREZ: Your Honor, we're providing the
4 Attorney General's Office a copy of an exhibit we're
5 going to use solely for impeachment. It bears the Bates
6 labeled Mazars DANY GJS 0003106, and, I'd like to ask Mr.
7 Bender if he recognizes this document.
8 THE WITNESS: Are we finished with this one?
9 MR. SUAREZ: You can set that down.
10 THE WITNESS: Thank you. Thank you.
11 A Yes, I recognize it.
12 Q All right. You see this is a Weiser Engagement
13 Continuance Form?
14 A Yes, sir.
15 Q What does this document represent?
16 A This is a part of our client acceptance process,
17 client continuance process in this case.
18 Q This was for Statement of Financial Condition
19 prepared June 30, 2011. You see on the right-hand corner date
20 of financial statement?
21 A I guess so, yes.
22 Q Okay. Do you see where it says "partner"?
23 A Yes.
24 Q Is that your name, Donald Bender?
25 A Yes.

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1 Q Is Mr. Rosenblum's name on there?
2 A No, sir.
3 MR. SUAREZ: Let's pull up the 2012. Your Honor,
4 I will move this document into evidence solely for
5 impeachment purposes.
6 THE COURT: Granted. It's in evidence solely
7 for impeachment purposes.
8 MR. WALLACE: As we're evaluating whether this
9 comes in for impeachment, what is the testimony this was
10 impeaching? Can you give us a specific date?
11 THE COURT: And who was the partner?
12 MR. SUAREZ: At the time, Gerry Rosenblum.
13 MR. WALLACE: I wanted to see the date.
14 MR. SUAREZ: He said at the time of the Mazars
15 transition and we'll move now to Mazar's years when Gerry
16 Rosenblum --
17 MR. WALLACE: I'm not sure that it established
18 how this impeaches his testimony.
19 MR. SUAREZ: Mr. Bender testified yesterday that
20 at the time that Weiser merged into Mazars, Gerry
21 Rosenblum was the partner in charge of the Trump
22 Organization. The Engagement Continuance Reports showed
23 that Mr. Bender is the only person listed as a partner in
24 connection with the engagement in these reports for the
25 Trump Organization.

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1 MR. WALLACE: I guess I wasn't aware of when
 2 this merger was or what the date is and so how this is
 3 impeaching --
 4 MR. SUAREZ: We're getting there. It's got
 5 Weiser. I'm showing 2012, which will show the dates that
 6 Mr. Bender is the only one on there. 2016 will show only
 7 Mr. Bender on there.
 8 MR. WALLACE: I understand it's impeaching the
 9 statement at the time, I guess, of the merger. I'll
 10 confess for the record, I did not know when that merger
 11 occurred and why this document impeaches his prior
 12 testimony.
 13 THE COURT: Just to give perspective on this,
 14 there's no jury here. I don't think it matters that much
 15 whether somebody was the lead partner or is not the lead
 16 partner, who signed it. I think it's easiest just to
 17 move on.
 18 MR. WALLACE: I'm happy to move on. My objection
 19 is overruled, I guess, your Honor.
 20 THE COURT: Take a hint.
 21 MR. SUAREZ: This is now WeiserMazars engagement
 22 continuance report, your Honor; and, the Engagement
 23 Continuance Report that I would like to show the witness
 24 for impeachment purposes, relates to the financial
 25 statement dated June 30, 20127, and I'd like to ask the

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1 name and we merged about 23 years ago.
 2 At that time we merged, I was a junior partner
 3 in the firm, and, Gerry Rosenblum was the senior partner at
 4 the firm.
 5 Q At what time was Mr. Rosenblum the partner in charge
 6 of President Trump's account?
 7 A I couldn't tell you -- it started, he was
 8 probably -- he was. I was not senior partner of the firm
 9 until 13, 14 years ago. He was still more the senior than me
 10 in the firm, but, I would say I probably took over somewhere
 11 about 20 years ago as the lead partner from -- I was still
 12 considered the lead partner on the account but he was the
 13 senior partner, and I was still junior partner in the firm.
 14 Q You were the lead partner in the account and
 15 Mr. Rosenblum was senior to you?
 16 A Mr. Rosenblum, when we merged, was senior partner
 17 and in charge of the account. A number of years later, he
 18 transferred a lot of the work to me, but, he was still senior
 19 partner, and I was junior partner of the firm.
 20 Q But you were the partner in charge?
 21 A We shared it together for a number of years, but, it
 22 was, you know, we co-shared the work.
 23 Q You co-shared the client, but, to be sure, in 2011,
 24 Mr. Rosenblum wasn't your copartner on this engagement?
 25 A No, sir.

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1 witness if he recognizes this document.
 2 THE COURT: You're being asked if you recognize
 3 that document.
 4 THE WITNESS: I don't have the document in front
 5 of me.
 6 (Handing.)
 7 A Thank you. Yes, I do.
 8 Q Do you see who the partner that's listed for this
 9 engagement is?
 10 A Yes.
 11 Q You see where the client is?
 12 A Yes, I do.
 13 Q Who is the client?
 14 A Donald J. Trump.
 15 Q Who is the partner?
 16 A I am.
 17 Q Okay. Does this refresh your recollection as to
 18 whether you or Mr. Rosenblum were in charge of the account at
 19 the time that Weiser merged into Mazars?
 20 A Okay. So, to make everybody understand, Weiser has
 21 had five different names. We merged about 22 to 25 years
 22 ago. I think about 23 years ago. Our original name-- excuse
 23 me if I miss any-- was MRWeiser then I think we became Weiser
 24 LLP, then we became WeiserMazars, and then we did Mazars USA.
 25 It's all the same firm. We just changed our

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1 Q Nor was he in 2012?
 2 A No.
 3 MR. SUAREZ: Let's pull up 2016. Your Honor, I
 4 would move this into evidence for impeachment purposes
 5 solely.
 6 THE COURT: The Attorney General just told me
 7 they have no objection.
 8 MR. WALLACE: Certainly not on Statute of
 9 Limitations, your Honor.
 10 Q Do you recognize this document, Mr. Bender?
 11 A Can I see the original, please?
 12 MR. SUAREZ: This document has been premarked by
 13 defendants as Exhibit 949.
 14 Q The Mazars logo up top?
 15 A Please let me read it.
 16 Q Take your time.
 17 A Thank you.
 18 Q Do you recognize this document?
 19 A Yes, I do.
 20 Q What is this document?
 21 A This is the Engagement Continuance Form for the
 22 Trump Organization for 2016.
 23 Q Okay. Who's the partner in charge here?
 24 A I am.
 25 Q Who's the manager?

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1 A Jennifer Safran.
 2 Q Who's Jennifer Safran?
 3 A My senior manager and later became partner.
 4 Q Then she became your partner?
 5 A Yes.
 6 THE COURT: Counsels, let's have a real quick
 7 side-bar. As I like to call it, front bar.
 8 (Side-bar discussion held off the record.)
 9 Q Mr. Bender, in connection with this document, I'd
 10 just like to give you an opportunity to refresh your
 11 recollection. The page bearing Mazars DANY GKS 01201998.
 12 What you have in front of you.
 13 Do you see that, 01998?
 14 A Yes, sir.
 15 MR. WALLACE: We want to note our objection is
 16 that he's refreshing his recollection for a document that
 17 he hasn't established that he doesn't have a recollection
 18 to be --
 19 THE COURT: That is the rule. You can't refresh
 20 a recollection if the person doesn't recollect.
 21 Q Mr. Bender, yesterday I asked you how many
 22 engagements the Trump Organization-- you had done for the
 23 Trump Organization over the years and you weren't quite sure
 24 if it was 11,000 or another number?
 25 A Yes, sir.

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1 A That's fair.
 2 Q Then I'd like to scroll through so the Court can see
 3 and see if we can refresh your recollection, Mr. Bender.
 4 Over the first 16 pages, there's about two dozen
 5 entities on each page, maybe more. These were all entities
 6 that you and WeiserMazars provided accounting services for
 7 just in the year on 2016; is that correct?
 8 A Yes, sir.
 9 Q So, would you agree with me, roughly, that over, I
 10 don't know-- what's the math? Twenty-five, twenty-four
 11 entities per page, over 16 pages?
 12 A Approximately.
 13 Q Do you know what that math works out to?
 14 A 203.
 15 Q 203?
 16 A Could be. I'm on my phone. Roughly, 200.
 17 Q Roughly, 200 entities. All right, 200 entities in
 18 one year that you provided engagements for; is that correct?
 19 A Yes, sir.
 20 Q You provided work for the Trump Organization for a
 21 period of 30 years?
 22 A Yes, sir.
 23 Q Does that refresh your recollection as to how many
 24 separate individual engagements you may have undertaken for
 25 the Trump Organization?

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1 Q I'd like to run through the WeiserMazars LLP work in
 2 process realization, by client, for the Trump Organization
 3 from January 1, 2016, to December 31, 2016, which starts on
 4 page one of sixteen.
 5 I'd like you, Mr. Bender, to note the number of
 6 entities, different entities controlled by the Trump
 7 Organization that are listed here in the first page. I would
 8 ask you if these were all entities that you provided services
 9 for in the year 2016?
 10 A These are all entities that Mazars provided services
 11 for. Some of them on this page might be independent
 12 condominium associations that were not controlled by the
 13 Trump Organization but these are all entities that were work
 14 that Mazars worked on or somebody worked on in 2016.
 15 Q These were all grouped here January 11, 2017 DJT-1,
 16 Donald J. Trump, Bender.
 17 That grouping would mean that these were all the
 18 entities that you considered were part of the client group for
 19 President Trump, correct?
 20 A These are all clients that we considered as one
 21 billing group for accounting purposes.
 22 Q As one billing group. You'd agree with me on this
 23 page there's at least-- and by no means do I want to spend the
 24 Court's time counting each of these, but, there's at least two
 25 dozen entities on this page?

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1 A In the early years, I only worked on one engagement,
 2 Trump Equitable Fifth Avenue. I didn't work on these other
 3 engagements.
 4 When Mr. Trump's business was strong, the
 5 number of entities that were being performed, I don't
 6 remember, somewhere between 50 to 100 entities a year.
 7 So, I didn't work on earlier years. Earlier
 8 years most of these entities didn't exist.
 9 Q So, in 2016 you did your work for over 200
 10 entities --
 11 MR. ROBERT: I'm having a difficult time
 12 hearing. I can't understand.
 13 THE COURT: Mr. Bender, right into it. Slowly.
 14 Q In the year 2016 there were, at least, over 200
 15 entities that you were performing services for President Trump
 16 and the Trump Organization?
 17 A Yes, sir. Including outside entities but he didn't
 18 control.
 19 Q That were all grouped under --
 20 A For billing purposes.
 21 Q All right. We'll continue going through there all
 22 the way to page 16.
 23 So, Mr. Bender, and the Court, can see all of
 24 the different entities that Mr. Bender provided work for
 25 grouped under President Trump's billing code. We can stop

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1 here.

2 This is for the period of January 1, 2016 to

3 December 31, 2016, Mr. Bender?

4 A Yes, sir.

5 Q There you can see that, at the bottom, the partner

6 total, partner total would be for you, correct, Mr. Bender?

7 A Most of it, maybe not all of it.

8 Q There's no other partner listed in this engagement,

9 correct?

10 A Some of the partners might have billed more.

11 Q No other partner's name appears there where it says

12 "Bender"?

13 A Yes.

14 Q Not some other partner?

15 A No.

16 Q So, you're the partner on this document?

17 A Yes, sir.

18 Q "Partner: 2.77 million." You see that down there,

19 "production"?

20 A Yes, sir.

21 Q Then you see "Billing: 1.9 million?"

22 A Yes, sir.

23 Q Does this refresh your recollection as to how much

24 money you billed the Donald J. Trump billing group in the year

25 2016?

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1 A It appears that would be 1.95 million. 1,952,850.

2 Q What percentage of your work in 2016 was reflected by

3 the Trump Organization with respect to your billable clients?

4 A I don't recall.

5 Q If you can move to the page ending in 2017. Do you

6 see this here?

7 A Yes, I do.

8 Q Do you see where it says: "Controller, Jeff McConney

9 formally worked for Spahr Lacher & Berk?"

10 A Yes, I do.

11 Q Then is this something you would have written, Mr.

12 Bender?

13 A Did I write it or a member of my team wrote it? I

14 can't tell.

15 Q You can't tell me?

16 A If I wrote it or a member of my team wrote it.

17 Q Can you turn to page 2015. Do you see who it's from?

18 A Yes.

19 Q Does this refresh your recollection as to who wrote

20 it?

21 A It may not have been me anyway. Could have been

22 members of my team could have worked on it.

23 Q So, if something says it's from you, it doesn't

24 necessarily mean it's from you?

25 A I would have to see the sign-off in the binder to

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1 see who prepared it.

2 MR. WALLACE: At this point, can we note an

3 objection to relevance. I'm not sure how this relates to

4 any issue that needs to be decided in this case.

5 THE COURT: Offer of proof. What is this

6 showing?

7 MR. SUAREZ: Your Honor, this is showing that

8 Mr. Bender, who signed all 12 however many Statements of

9 Financial Condition that were introduced by the Attorney

10 General on Monday may not have seen or done all the work.

11 Just because it has his signature on it, doesn't

12 mean that he's actually the person that prepared it.

13 MR. WALLACE: I believe he's already testified

14 to that. So, I'm not sure how this is impeachment. It

15 sounds like maybe he is trying to refresh his

16 recollection about the details of engagement but I still

17 fail to see the relevance.

18 THE COURT: I'll be charitable and let-- give

19 him some latitude but I see the plaintiff's point.

20 MR. SUAREZ: All right.

21 THE COURT: Let me just say, I think you said

22 just because it says it's from him, doesn't mean it's

23 from him.

24 That's not his testimony, as I understand it.

25 Just because it says it's from him, he wasn't the only

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1 person that worked on it. Is that correct, Mr. Bender?

2 THE WITNESS: Yes, these forms would have been

3 submitted in certain years to the Executive Committee.

4 So, people could help me prepare. A partner doesn't

5 normally do client acceptance continuance. There's staff

6 that prepares these forms.

7 THE COURT: If it says it's from you, it's still

8 from you?

9 THE WITNESS: The final responsibility is mine,

10 your Honor.

11 Q The final responsibility is yours?

12 A Yes.

13 Q Okay. So, the final responsibility is yours. We got

14 that. Okay.

15 MR. SUAREZ: Your Honor, I would ask to move in

16 D-949 in evidence.

17 THE COURT: There's no objection. So, yes.

18 It's in evidence.

19 MR. SUAREZ: 2017. Pull 2017, the Engagement

20 Continuance Form, if we have it. We'll come back to that

21 later. That's fine. Okay, let's pull up premarked

22 Defendant's 27.

23 Q Do you see here what this document is, Mr. Bender,

24 and we'll certainly give the Attorney General a copy.

25 A This copy -- can I have a paper copy, please? Yes,

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1 sir.

2 Q Do you recognize this document?

3 A It appears to be an FASB.

4 Q I think you would agree that the Statements of

5 Financial Condition were prepared in accordance with ASC 274?

6 A I would have to check with experts to see. I'm not

7 an expert on these matters, so I would have to check.

8 Somebody -- it's a matter that I'd reach out to inhouse

9 experts on.

10 Q So, whether ASC 274-- when determining whether ASC

11 274 applies to the President's Statement of Financial

12 Condition, that's a subject matter you'd have to check with an

13 expert?

14 A I'm not on top of these FASB's today in my

15 retirement mode.

16 Q Okay. If we can please move to page 10 of this

17 document. Excuse me. Page 13.

18

19 (Continued on following page..)

20

21

22

23

24

25

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1 Q Do you see at the top where it says estimated current

2 value, Mr. Bender. Is that a concept you are familiar with?

3 A Somewhat. Again, I'm not an expert on --

4 Q You are not an expert on estimated current value?

5 A Not today; no.

6 Q Were you ever an expert on estimated current value?

7 A I wouldn't say I was ever an expert on it, no.

8 Q Now, this section on estimated current value, this

9 lays out the implementation guidelines; correct?

10 A It appears so.

11 Q Can you read what 55-3 says?

12 A "In determining estimated current value of some

13 assets," parenthesis -- thank you, "for example, works of art,

14 jewelry, restricted security investments, and closely held

15 company -- closely held businesses and real estate," close

16 parenthesis, "the person may need to consult a specialist."

17 Q Okay. So in determining estimated current values, the

18 implementation guidance considers that you may need to consult a

19 specialist; correct?

20 A It's saying that you may need to consult a specialist,

21 but this was a compilation that did not require me to -- I was

22 not engaged to do that type of work.

23 Q And in connection with preparing a compilation report

24 for a Statement of Financial Condition, did you need to have an

25 understanding as to what estimated current value was?

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1 A I had an understanding of what it was.

2 Q Did you have an understanding as to how estimated

3 current value applied to real estate?

4 A I had somewhat of an understanding, yes.

5 Q Did you consult with specialists to inform your

6 understanding as to how estimated current value applies to real

7 estate?

8 A I may have discussed matters over the years with Andy

9 Cohen. I don't recall.

10 Q Well yesterday, Mr. Bender, you said that you had

11 discussed, with Andy Cohen, I believe it was the NikeTown lease.

12 A You are right. Among other things.

13 Q Okay. But at your deposition, when we asked you about

14 whether you had ever consulted with a specialist on estimated

15 current values, you said you did not recall.

16 A I don't -- I didn't recall at that time, and I didn't

17 say -- I said I may have consulted with Andy Cohen, over the

18 years.

19 Q Okay.

20 MR. SUAREZ: Your Honor, may I play a clip from

21 his deposition?

22 THE COURT: Sure.

23 Q Do you recall your deposition on April 7, 2023?

24 A Yes, I do.

25 MR. SUAREZ: Can you please play the Andy Cohen?

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1 (Whereupon, a video was played.)

2 MR. WALLACE: I'm just going to object. That

3 doesn't impeach. It's a different question than he was

4 just asking.

5 THE COURT: The rule is, you can only refresh

6 your recollection if the person doesn't recall. I think I

7 said it the opposite, last time. So again, there's no

8 jury. Tell me what the point is.

9 MR. SUAREZ: Your Honor, he didn't recall at his

10 deposition whether he had discussed estimated current

11 values with Andy. Yesterday he agreed that he had

12 consulted Andy Cohen for estimated current values. Today,

13 he is not a specialist in determining what estimated

14 current value is, despite the fact that ASC 274 requires

15 him to consult with a specialist if he doesn't know it, and

16 today he doesn't recall if he consulted with a specialist

17 or not.

18 MR. WALLACE: The testimony that he showed was a

19 question about whether he consulted with an expert on the

20 difference between estimated current value and fair value.

21 It was not on current estimated value, standing alone,

22 which is the question he has been asking Mr. Bender this

23 morning, so it's not impeachment. If he want to probe that

24 area, we have no objection.

25 THE COURT: This is starting to sound like, how

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1 many angels can dance on the head of a pin.
 2 Objection overruled. Let's just keep moving.
 3 Q Is there a difference between estimated current value
 4 and fair value?
 5 A There is a difference. Yes.
 6 Q And are you familiar with the differences?
 7 A Estimated current value delineates -- there's five
 8 standards, five or six methodologies, that are suggested here --
 9 MS. HABBA: I'm sorry. I have to say, I can't
 10 understand anything Mr. Bender says.
 11 A There are five or six methodologies that are
 12 delineated here that can be used to estimate a current value.
 13 Q And are you an expert in those different areas?
 14 A No, I'm not.
 15 Q All right. Do you understand how estimated current
 16 value is different than fair value?
 17 A I understand it, to a certain extent.
 18 Q Okay. What is your understanding, to a certain
 19 extent, of what the difference is?
 20 A Estimated current value would use these five, A
 21 through E, items. Their value, fair market value, would be what
 22 a willing buyer or seller would use. That would be fair market
 23 value, and that's the main difference I can think of, right now.
 24 Q So in your mind, there's a difference?
 25 A Excuse me?

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1 Q In your mind, there is a difference?
 2 A Between fair market value and estimated current value?
 3 Yes.
 4 Q And is estimated current value more flexible than fair
 5 value?
 6 A I would say so.
 7 Q And is it correct that there's no one generally
 8 accepted way to determine the estimated current value of an
 9 asset?
 10 A I believe so.
 11 Q And would you have consulted a specialist in
 12 determining whether it was appropriate to use any particular
 13 basis for establishing estimated current value of an asset?
 14 A The 57th Street example I gave yesterday would be an
 15 example that I can think of today, that we consulted.
 16 Q Any others?
 17 A I'm just going through a balance sheet in my head.
 18 Q That's President Trump's balance sheet?
 19 A Statement of Financial Condition.
 20 Not that I can think of, off the top of my head.
 21 Q You have the statement, President Trump's Statement of
 22 Financial Condition in your head?
 23 A No, but I saw parts of it yesterday. I know what
 24 assets he owned, generally.
 25 Q All right. Let's turn to 55-6, on page 14.

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1 Do you see where, 55-6b, it says, "Information that
 2 may be used in terminating -- in determining estimated current
 3 values of investments in real estate, including lease holds
 4 includes any of the following," and b says that, "Discounted
 5 amounts of projected cash receipts and payments relating to the
 6 property, or the net realizable value of the property, based on
 7 planned courses of action, including lease holds whose current
 8 rental value exceeds the rent in the lease."
 9 Do you see that?
 10 A Yes, sir.
 11 Q Do you know what realizable value of the property,
 12 based on planned courses of actions, means?
 13 A I would need to consult an expert, before I gave
 14 testimony.
 15 Q In connection with preparing President Trump's
 16 Statement of Financial Condition, did you ever consult an expert
 17 to understand what that meant?
 18 A I don't recall, at this moment.
 19 Q Okay. Moving on.
 20 MR. SUAREZ: If we could pull up page 293 from
 21 yesterday's testimony.
 22 Q Do you see when I asked you yesterday, Mr. Bender:
 23 "They --" referring to the Trump
 24 Organization "-- would give you an opportunity to review
 25 loan agreements before they entered into them?"

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1 And you responded:
 2 "Many years ago they might have, certain
 3 paragraphs."
 4 A Yes, sir.
 5 Q And I said:
 6 "Certain paragraphs?"
 7 And you said:
 8 "Yes."
 9 And you responded -- and I continued to ask you:
 10 "They wouldn't send you loan agreements and ask
 11 you, Hey, Mr. Bender, can you review these for us and let
 12 us know if this is something you can enter into?"
 13 A Yes.
 14 Q And you responded:
 15 "I don't think they sent full agreements. I do
 16 remember seeing certain paragraphs, from time to time."
 17 A Yes.
 18 Q All right. I would like to show you a document to see
 19 if it refreshes your recollection as to whether documents were
 20 sent to you by the Trump Organization while they were still
 21 being negotiated for your review, and we have marked, or we
 22 have -- and we'll offer, for impeachment, a document bearing
 23 Bates label Mazars DANYGJS704 -- excuse me -- 01432223.
 24 A Are we finished with this document?
 25 Q You can set it aside.

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1 MR. WALLACE: I'm sorry. That was a production
 2 number you were reading? You said Bates. I thought you
 3 said documents --
 4 MR. SUAREZ: No. Just a Bates label. Mazars
 5 DANYGJS.
 6 (Whereupon, a document was handed to the
 7 witness.)
 8 Q Do you recognize this document?
 9 A Not particularly.
 10 Q Do you see where it says, "From Allen Weisselberg to
 11 Donald Bender," at the top?
 12 A Yes.
 13 Q Would Mr. Weisselberg send you emails?
 14 A Excuse me?
 15 Q Would Mr. Weisselberg send you emails?
 16 A Yes, sir.
 17 Q And they would have documents attached to them?
 18 A Yes. From time to time.
 19 Q Do you see here, "Forward OPO loan agreement?"
 20 A Yes, sir.
 21 Q Do you see where it says, "JDG notes on BL final Doral
 22 loan agreement to OPO loan agreement?"
 23 A Excuse me. Say that again, please?
 24 Q Do you see where the attachments up top --
 25 A Yes.

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1 Q -- say, "GDG notes -- JDG notes on BL final Doral loan
 2 agreement to OPO loan agreement?"
 3 A Yes.
 4 Q Does this document refresh your recollection on being
 5 shown loan agreements prior to their being entered into?
 6 And you can review the attachment to the document. We
 7 can pull it up on the screen and scroll through.
 8 A I remember from time to time, looking at certain pages
 9 or paragraphs. I remember Jason Greenblatt, chief counsel for
 10 Trump, would drive me nuts. He would send me only two or three
 11 pages of a loan agreement. I never reviewed any full loan
 12 agreements, prior to them being signed, to the best of my
 13 recollection.
 14 Q Okay. But after they were signed, did you have an
 15 opportunity to review the loan agreement?
 16 A We would look at the loan agreement, if it would be
 17 required information for a footnote disclosure on a financial
 18 statement.
 19 Q And what would you do with the loan agreement, when
 20 you had to review a footnote disclosure on a financial
 21 statement?
 22 A Certain sections of the -- of the loan agreement would
 23 be looked at to discuss things like terms of a loan, payment,
 24 interest rates, information that we would need to write a
 25 footnote.

D. Bender - Cross by Mr. Suarez Page 372

1 Q Okay. So you would look at the whole loan agreement,
 2 and it wasn't in your possession?
 3 A Excuse me?
 4 Q You would see the whole loan agreement, and it would
 5 be sent to you?
 6 A I would have the whole loan agreement. I wouldn't
 7 review the whole loan agreement.
 8 Q Okay. So, just because something was sent to you
 9 doesn't mean you reviewed it?
 10 A That is correct.
 11 Q Okay. Yesterday, I asked you, the Trump
 12 Organization -- if you were the in-house accountant at the Trump
 13 Organization.
 14 A Yes, sir.
 15 Q And I think we discussed whether you were the only
 16 certified public accountant.
 17 A I'm not --
 18 MR. WALLACE: Objection.
 19 Q Whether you were the only certified public accountant
 20 that interacted with the folks that prepared the Statements of
 21 Financial Condition.
 22 THE COURT: Overruled.
 23 A I believe you did ask me that, yesterday.
 24 Q And we established that, in fact, I believe you were?
 25 A No. In hindsight, I do realize that they may have had

D. Bender - Cross by Mr. Suarez Page 373

1 some CPAs in the Trump Organization who worked on portions of
 2 the financial statement, from year to year.
 3 Q Do you recall who they were?
 4 A I know some schedules were prepared by Mark Hawthorne
 5 from the Hotel Group, so they did have a CPA in house. At
 6 least, he did it, I think. He's all I remember ever discussing
 7 a schedule with.
 8 MR. SUAREZ: Let's pull up a document bearing
 9 Mazars DANYGJS01487514.
 10 (Whereupon, a document was displayed, and handed
 11 to the witness.)
 12 Q And first, Mr. Bender, do you recognize this document?
 13 A No, I do not.
 14 Q From Mazars, DANYGJS01487514?
 15 A Yes.
 16 Q Is this a document that was sent to you?
 17 A Yes.
 18 MR. SUAREZ: Can you turn to the last page of
 19 this document?
 20 Q Do you see where it says intraoffice memorandum?
 21 A Yes.
 22 Q Within the office?
 23 A Yes.
 24 Q And who is the first person there, that's listed?
 25 A I guess the Trump Organization doesn't know I'm not on

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D. Bender - Cross by Mr. Suarez Page 374

1 their payroll.

2 Q Okay. And it says, To Donald Bender?

3 A I wasn't on the Trump Organization payroll.

4 Q Well, \$2.1 million in fees, and you were listed, to

5 Donald Bender?

6 A I guess they have an internal problem they need to

7 address.

8 Q Did you ever correct them and say, I'm not inside?

9 A I didn't. I probably would not have read it.

10 Q You would not have read it?

11 A No.

12 Q All right. So, this is something you would not have

13 read, a copy of the term loan agreement by and between Trump

14 Endeavor 12, LLC borrower, and Deutsche Bank Trust Company

15 Americas, lender.

16 A I may not have been required to read it, no.

17 Q Okay. So, if it would have been sent to you, we

18 shouldn't assume that you were required to read it?

19 A I may not -- I would have no need to read it for

20 the -- we were not engaged to do any work that would have

21 required me to read the whole document.

22 Q You were engaged to prepare audits for Trump Endeavor

23 12?

24 A No, sir.

25 Q You were engaged you were engaged to prepare

D. Bender - Cross by Mr. Suarez Page 375

1 compilations for Trump Endeavor 12?

2 A Compilation, I believe, without footnotes.

3 Q And you wouldn't have reviewed the loan agreement in

4 connection with the Trump Endeavor 12 loan from Deutsche Bank?

5 A I can't say if I did or I didn't.

6 Q Okay. Moving on.

7 MR. SUAREZ: If we could please put up PX729,

8 which was marked yesterday. Or, on Monday. Or, perhaps

9 yesterday.

10 Q Do you recognize this document, WeiserMazars?

11 A Yes, sir.

12 Q And it's got both the Mazars and the WeiserMazars

13 logo, and if you could turn over to the next page -- and this is

14 the independent accountant's compilation report; is that

15 correct?

16 A Yes, sir.

17 MR. SUAREZ: Turn over to the next page.

18 Q WeiserMazars, LLP. Is that either your signature or

19 your digital signature?

20 A Yes, sir.

21 Q Okay.

22 MR. SUAREZ: And if you could, turn over to the

23 next page.

24 Q I would like to walk you through the Jeff Supporting

25 Data that relates to this Statement of Financial Condition.

D. Bender - Cross by Mr. Suarez Page 376

1 MR. SUAREZ: And we'll pull that up. I think

2 that was introduced as PX731.

3 (Whereupon, a document was displayed, and handed

4 to the witness.)

5 Q And Mr. Bender, in connection with the Statement of

6 Financial Condition, is this something that you saw?

7 A The schedule?

8 Q Did you see it?

9 A Yes, I did.

10 Q Did you review it?

11 A I did not review it.

12 Q Did not review it?

13 A Review is -- the job was a compilation.

14 Q Okay. Did you read it?

15 A I read -- may not have read every line, but I did look

16 at it.

17 Q You did look at it.

18 MR. SUAREZ: And if we could, scroll down and

19 start with Trump Tower.

20 Q Do you see there where it lists the basis of valuation

21 for Trump Tower?

22 A Yes, sir.

23 Q When you prepared the compilation report --

24 A When I compiled the compilation report --

25 Q You compiled, produced the compilation report -- when

D. Bender - Cross by Mr. Suarez Page 377

1 you produced the compilation report, did you see this?

2 A Yes, I did.

3 Q And what did you do with it?

4 A I -- me or a member of my team appears to have cross

5 referenced it to worksheet 4800.01 and 4800.01a. It appears

6 they also did some math checks.

7 Q Okay. So you did see it?

8 A Me or a member of my team. I would have to check the

9 sign-offs.

10 Q Sitting here today, do you recall if you saw it?

11 A Did I see the schedule? I'm sure I saw the schedule.

12 Q Did you see the basis for valuing Trump Tower when you

13 prepared the compilation report?

14 A I believe so.

15 Q Okay.

16 MR. SUAREZ: Scrolling down to the next asset.

17 Stop.

18 Q Do you see there, NikeTown, when you prepared the

19 compilation report for NikeTown, did you see the basis for the

20 asset value ascribed to NikeTown?

21 A I can't say if I saw every one, without looking at the

22 sign-offs, but it -- I need to confirm the sign-offs, but I

23 believe I would have seen it.

24 Q You believe you would have seen --

25 A I believe I would have seen it. I can't say I looked

D. Bender - Cross by Mr. Suarez Page 378

1 at every line in this worksheet, no.
 2 Q Okay. So you didn't look at every line of the
 3 spreadsheet, and you are not sure if you saw it.
 4 A I would need to see the sign-offs in the binder to
 5 confirm who worked on it.
 6 Q But you took responsibility for everything that was in
 7 the compilation report; correct?
 8 A Yes, sir.
 9 Q All right. So either you or a member of your team
 10 would have seen this?
 11 A Yes.
 12 Q But you don't recall if you saw it?
 13 A I don't recall if I saw it, in 2015, line-by-line.
 14 No.
 15 Q Okay. Line-by-line. Let's go to the next asset. Do
 16 you see where it lists the basis of valuation for 40 Wall Street
 17 in this document?
 18 A Let me just adjust my chair, so everybody is happy.
 19 Yes, I do.
 20 Q Did you see it at the time that you prepared the
 21 compilation report, in 2015?
 22 A I can't say if I looked at every line of it, but I'm
 23 sure I saw a portion of it.
 24 Q Okay. What portion of it might you have seen?
 25 A I don't recall, today.

D. Bender - Cross by Mr. Suarez Page 379

1 Q Okay. Would you have seen where the asset value was
 2 calculated, based on an NOI?
 3 A Yes, sir.
 4 Q Would you have seen where a cap rate was applied?
 5 A I presume so, but I would have to check the sign-offs
 6 on my work papers to confirm who worked on the work.
 7 Q So you are not sure if you saw it or not?
 8 A I would have to double check, but I believe I would
 9 have probably seen it.
 10 Q You probably did see it. Okay.
 11 Let's go to the next asset, Trump Park Avenue. Did
 12 you see that?
 13 A Again, I would have to confirm who worked on it, and I
 14 would have to check the sign-offs in the binder.
 15 Q So, you are not sure if you saw it in 2015?
 16 A I can't be sure what lines I looked at on the
 17 worksheet, or what lines I did not look at on the worksheet.
 18 Q How about the club facilities, there. I think the
 19 first one is the Mar-A-Lago club. Do you see that.
 20 A I can't tell you which exact lines I looked at on this
 21 worksheet, and which lines I looked at as part of my compilation
 22 procedures.
 23 Q So you might have looked at some, and not others?
 24 A I may not have looked at every line in the worksheet.
 25 Q You may not have looked at every line on the

D. Bender - Cross by Mr. Suarez Page 380

1 worksheet. Okay.
 2 Can you tell me how you would --
 3 MR. SUAREZ: Withdrawn.
 4 Q So, you may not have looked at every line on this
 5 worksheet for club facilities?
 6 A No, sir.
 7 Q All right. Let's keep going.
 8 Would you have looked at every line on the worksheet
 9 for the Trump International Golf Club, Florida?
 10 A I'm not sure which lines I would have looked at and
 11 didn't look at.
 12 Q Okay. So you might have looked at some, and not
 13 others?
 14 A Yes, sir.
 15 Q And the Trump National Golf Club in Briarcliff, do you
 16 recall which lines you saw and which you didn't?
 17 A No, I do not recall, today, which lines I looked at
 18 and which lines I didn't.
 19 Q So you may have looked at some, and not others?
 20 A That is possible.
 21 Q All right. And the Trump National Golf Club in
 22 Bedminster, the next line, right there. Do you recall which of
 23 those you looked at, and which you didn't?
 24 A No, sir. I do not.
 25 Q So, it's possible you may have looked at some and not

D. Bender - Cross by Mr. Suarez Page 381

1 others?
 2 A Yes, sir.
 3 Q All right. The Trump National Golf Club, Colts Neck,
 4 do you recall which of those lines you looked and which you
 5 didn't?
 6 A No, sir. I do not.
 7 Q May have seen some, and not others?
 8 A That's correct.
 9 Q The Trump National Golf Club, Washington D.C. Do you
 10 see that?
 11 A Yes, sir.
 12 Q Do you recall which lines you looked at when you were
 13 compiling the Statement of Financial Condition in 2015?
 14 A No, I do not.
 15 Q Okay. The Trump National Golf Club, Philadelphia.
 16 Which of those would you have reviewed? Which lines of those
 17 would you have reviewed, in connection with preparing the
 18 compilation?
 19 A I couldn't tell you which lines I looked at and which
 20 lines I didn't look at, today.
 21 Q So you would have looked at some and not others?
 22 A I'm not sure what I looked at, today, and what I
 23 didn't look at.
 24 THE COURT: Can we just agree that the questions
 25 will be the same, and the answers will be the same, for

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D. Bender - Cross by Mr. Suarez Page 382

1 each one of these? We have gone through, I don't know,
 2 eight, ten. It's always the same.
 3 I would ask Mr. Bender, you are more familiar
 4 with this document than I am: Will your answers be the
 5 same, if the questions are the same, as to each particular
 6 property?
 7 THE WITNESS: I believe so, your Honor.
 8 THE COURT: All right. Then, let's move on.
 9 MR. ROBERT: Your Honor, if I could just have
 10 30 seconds to talk to my colleague, your Honor?
 11 THE COURT: Sure.
 12 (Whereupon, the witness spoke to the Court, off
 13 the record.)
 14 THE COURT: You can get off the stand, but you
 15 can't talk about the case.
 16 (Whereupon, there was a pause in the
 17 proceedings.)
 18 Q Let's keep going through, here.
 19 THE COURT: Not the same way.
 20 MR. SUAREZ: Your Honor, may I get through the
 21 spreadsheet, and I won't do it for every year. Just, I
 22 would like to get through one spreadsheet, as an example.
 23 THE COURT: Fine.
 24 MR. SUAREZ: Thank you.
 25 Q The Trump National Golf Club, Hudson Valley. Did you

D. Bender - Cross by Mr. Suarez Page 384

1 different assets that are -- you would agree that the basis for
 2 valuation was disclosed to you?
 3 A I would have to look at -- I would say their
 4 methodology was disclosed. To the best of my recollection, that
 5 would be true.
 6 Q The methodology was disclosed. Okay.
 7 MR. SUAREZ: If we can keep scrolling down.
 8 Q The methodology with respect to these assets would
 9 have been disclosed to you in the Jeff Supporting Data, from
 10 year to year; correct?
 11 A To the best of my recollection that -- I believe that
 12 is true.
 13 Q Okay.
 14 MR. SUAREZ: Keep scrolling. Keep scrolling.
 15 Stop.
 16 Q Trump National Golf Club, Charlotte. Would you have
 17 seen this information?
 18 A I don't recall, today, if I looked at every line in
 19 the worksheet.
 20 Q All right. So it's not your testimony that you looked
 21 at every line on this worksheet?
 22 A It is not my testimony that I looked at every line in
 23 this worksheet.
 24 (Continued on the next page.)
 25

D. Bender - Cross by Mr. Suarez Page 383

1 review every line here?
 2 A I couldn't tell you, today, if I looked at every line
 3 or I didn't look at every line.
 4 Q For the assets that were on the Statement of Financial
 5 Condition, did you draw an understanding as to how they were
 6 valued?
 7 A Generally. So, I may not have known every asset, but
 8 I would have known a significant portion of them.
 9 Q Okay. And that was possible, without reviewing every
 10 line?
 11 A Yeah, because it was a lot of -- it was -- let me take
 12 it back. The footnotes of the financial statement disclosed
 13 certain methodologies that are included, so to that extent, I
 14 would have known. I may not have recalled if I looked at every
 15 one or not, today.
 16 Q And would you have looked at every one at the time?
 17 A I can't recall, today, what I did in 2015. Or 2016.
 18 Whenever the report was issued.
 19 Q But you may have seen some, but not others?
 20 A I don't recall today, but I would have definitely seen
 21 some, yes.
 22 Q And there are some that you wouldn't have?
 23 A I didn't say that. I don't recall, today, what I look
 24 at in 2015, or '16.
 25 Q You don't recall. All right. So, for all of these

D. Bender - Cross/Suarez Page 385

1 Q Excellent.
 2 A My testimony is that I don't recall.
 3 Q You don't recall if you looked at it?
 4 A I don't.
 5 Q You may have looked at it and relied --
 6 A I don't remember at this moment. I don't think I
 7 looked at every line on this spreadsheet.
 8 Q You don't think you looked at every line?
 9 A No.
 10 Q Would that be true of the Jeff Supporting Data for
 11 each of the different years, you wouldn't have looked at every
 12 line on the spreadsheet?
 13 A I can't recall today if it would be true every year.
 14 Q Was it your practice to look at every line on the
 15 spreadsheet?
 16 A I don't recall if I looked at every line every year.
 17 Q You may have looked at some lines and may not have
 18 looked at others?
 19 A I don't recall today.
 20 Q Did you ever express any disagreement-- did you ever
 21 bring up any disagreement on the basis of valuation of any
 22 asset?
 23 A Yes.
 24 Q Which assets?
 25 A We discussed the Nike building yesterday. I don't

In The Matter Of:
People of the State of New York v.
Donald J. Trump, et al

October 5, 2023

Page 505a

1 SUPREME COURT OF THE STATE OF NEW YORK
 2 COUNTY OF NEW YORK: CIVIL TERM: PART 37
 3 -----X
 3 PEOPLE OF THE STATE OF NEW YORK, BY LETITIA
 3 JAMES, ATTORNEY GENERAL OF THE STATE OF NEW
 4 YORK,
 5
 5 Plaintiff,
 6
 6 - against - INDEX #
 6 452564-2022
 7 DONALD J. TRUMP; DONALD TRUMP, JR.; ERIC TRUMP;
 8 IVANKA TRUMP; ALLEN WEISSELBERG; JEFFREY
 8 McCONNAY; THE DONALD J. TRUMP REVOCABLE TRUST;
 9 THE TRUMP ORGANIZATION, INC; TRUMP ORGANIZATION,
 9 LLC; DJT HOLDINGS, LLC; DJT HOLDINGS MANAGING
 10 MEMBER; TRUMP ENDEAVOR 12, LLC; 401 NORTH WABASH
 10 VENTURE, LLC; TRUMP OLD POST OFFICE, LLC; 40 WALL
 11 STREET, LLC; AND SEVEN SPRINGS, LLC,,
 11
 11 Defendants.
 12 -----X
 12 October 5, 2023
 13 60 Centre Street
 14 New York, New York 10007
 15 B E F O R E: THE HONORABLE ARTHUR S. ENGORON,
 16 Justice of the Supreme Court
 17
 18 A P P E A R A N C E S:
 19
 19 OFFICE OF THE ATTORNEY GENERAL
 20 OF THE STATE OF NEW YORK - LETITIA JAMES
 20 Attorneys for Plaintiff
 21 28 Liberty Street
 21 New York, New York 10005
 22 BY: KEVIN WALLACE, ESQ.
 22 COLLEEN K. FAHERTY, ESQ.
 23 ANDREW AMER, ESQ.
 23 ERIC HAREN, ESQ.
 24 LOUIS M. SOLOMON, ESQ.
 24
 24 (Continued.)
 25

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D. Bender - Cross by Mr. Suarez

1 THE COURT: So, I understand some members of the
 2 press are coming in. Photographers. We are ready.
 3 Get your best smile.
 4 (Photographs taken.)
 5 THE COURT: Okay. Let's start, but I'm going to
 6 stay off the record for a minute.
 7 (Whereupon, an off-the-record discussion took
 8 place.)
 9 DONALD BENDER, after having been previously duly
 10 sworn, was examined and continued his testimony as follows:
 11 THE COURT: All right counselor whenever you are
 12 ready please proceed.
 13 MR. SUAREZ: Thank you your Honor.
 14 CONTINUED CROSS EXAMINATION
 15 BY MR. SUAREZ:
 16 Q Mr. Bender, good morning.
 17 A Good morning.
 18 Q Did you discuss your testimony with anyone since you
 19 left the stand yesterday?
 20 A No, sir.
 21 Q Mr. Bender, I would like to show you a document that
 22 was previously identified as Exhibit D 950.
 23 (Whereupon, a document was displayed, and handed
 24 to the witness.)
 25 Q It's an audit guide for personal financial statements.

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1
 2 A P P E A R A N C E S: (Continued.)
 3
 3 CONTINENTAL PLLC
 4 Attorneys for Defendants
 4 101 North Monroe Street, Suite 750
 5 Tallahassee, Florida 32302
 5 BY: CHRISTOPHER M. KISE, ESQ.
 6 LAZARO P. FIELDS, ESQ.
 6 JESUS M. SUAREZ, ESQ.
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 8 526 RXR Plaza
 9 Uniondale, New York 11556
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 11 Attorneys for Defendants
 11 1430 US Highway 296, Suite 240
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 13 MORAN LAW, PLLC
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 15 BY: ARMEN MORIAN, ESQ.
 16
 17
 18
 19
 20
 21
 22
 23
 24 LISA M. DE CRESCENZO
 24 LISA A. CASEY
 25 Senior Court Reporters

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D. Bender - Cross by Mr. Suarez

1 Do you recognize that document?
 2 MR. SUAREZ: Can we turn to the second page?
 3 Q It's an audit and accounting guide; right?
 4 A Second page?
 5 Q Yes. Do you see where it says, Personal financial
 6 statement audit guide?
 7 A Okay. This copy doesn't -- it's on the third page.
 8 Yes. Yes, sir.
 9 Q Is this a document that you would have reviewed, prior
 10 to preparing a compilation report for the Statements of
 11 Financial Condition for President Donald Trump?
 12 A I may not have reviewed it every year, but I probably
 13 have seen it, in my career.
 14 Q You have probably seen it?
 15 A Yes.
 16 Q And the audit guide for personal financial statements
 17 published by the American Institute of Certified Public
 18 accountants is this something that you would have endeavored to
 19 make yourself familiar with, prior to preparing compilation
 20 reports for President Trump's Statements of Financial Condition?
 21 A I was familiar with standard, at the time I
 22 prepared -- I compiled Mr. Trump's personal financial
 23 statements.
 24 Q Sitting here today, do you have a recollection of
 25 having reviewed this audit guide prior to preparing compilation

D. Bender - Cross by Mr. Suarez Page 509

1 reports for the president's Statement of Financial Condition?
 2 A I have no independent memory of when I -- if I did it,
 3 at that time.
 4 MR. WALLACE: We would like to just renew our
 5 objection to this exhibit, which, the first time I objected
 6 to this coming in -- it's been superseded. It was not in
 7 place at the time of 2011, or any engagement going forward.
 8 THE COURT: Well, I have a more fundamental
 9 issue. It says, blah, blah, blah, Audit guide. There was
 10 no audit here.
 11 MR. SUAREZ: Your Honor, I'm more than happy to
 12 respond with two comments. Number one, I'm simply trying
 13 to establish if Mr. Bender has looked at it or relied upon
 14 it; and number two is, it does, in fact, address the
 15 compilation standards within the guide. A compilation is a
 16 form of attestation, like an auditor review. I know your
 17 Honor --
 18 THE COURT: Okay. You have answered my
 19 objection. I'll overrule the plaintiff's objection.
 20 MR. SUAREZ: Thank you.
 21 I would like to move Exhibit D 950 into evidence.
 22 THE COURT: Granted. It's in evidence.
 23 (Whereupon, Defendant's Exhibit 950 was received
 24 in evidence.)
 25 Q Mr. Bender, is this a document that you looked at,

D. Bender - Cross by Mr. Suarez Page 510

1 prior to doing the compilation reports? Yes or no?
 2 A I looked at it, but I may not have looked at it every
 3 year.
 4 Q You may not have looked at it every year. Did you
 5 look at it prior to 2011?
 6 A I don't have any independent memory of which years I
 7 looked at it.
 8 Q Okay. Would you have relied on the audit guide?
 9 A It would have been something that we would have -- we
 10 would have, with help of members of Mazars, we would have used
 11 to rely on to compile the personal financial statements, as
 12 applicable.
 13 Q This is something that would have been from Mazars'
 14 library?
 15 A I don't know if we had libraries in those days,
 16 anymore, but it would have been available online.
 17 Q In the online collection of reference materials,
 18 Mr. Bender?
 19 A We would have to check that, specifically.
 20 Q You wouldn't be sure?
 21 A I don't remember how things worked, back then.
 22 Q Okay. Mr. Bender, if you could please turn to page 9
 23 of this document? And that's 9 of the compilation guide. It
 24 might not be the ninth page that's right in front of you.
 25 MR. SUAREZ: Keep going.

D. Bender - Cross by Mr. Suarez Page 511

1 Q Chapter two. Do you see where this document reads,
 2 compilation of financial statements?
 3 A Yes, sir.
 4 Q All right. Do you see, in section 2.03, in the second
 5 line, where it says, "At a minimum, however the accountant
 6 should obtain an understanding of the methods by which the
 7 individual determined estimated current values of significant
 8 assets, and the estimated current amounts of significant
 9 liabilities, and consider whether the methods are appropriate,
 10 in light of the nature of each asset or liability?"
 11 A Yes, sir.
 12 Q Okay.
 13 MR. SUAREZ: I would like to pull up Plaintiff's
 14 Exhibit 786.
 15 I'm sorry. 787.
 16 (Whereupon, a document was displayed.)
 17 Q Mr. Bender, you would agree that this is a Statement
 18 of Financial Condition for the year ending June 30, 2011?
 19 A I'm just waiting for him to give it to me.
 20 (Whereupon, a document was handed to the
 21 witness.)
 22 A Yes, sir.
 23 Q Did the 2011 Statement of Financial Condition disclose
 24 the method used to determine the value of each asset?
 25 A I believe it did.

D. Bender - Cross by Mr. Suarez Page 512

1 Q Yes or no, Mr. Bender.
 2 A I would have to read the whole statement.
 3 Yes, I do believe it did.
 4 Q So that's a yes; right?
 5 A I believe so.
 6 Q The 2011 Statement of Financial Condition disclosed
 7 the method used to determine the amount of each liability;
 8 correct?
 9 A Yes, sir.
 10 THE COURT: Let me just interrupt a second.
 11 I often say, If you are asked -- to the witness,
 12 directed to witnesses -- If you are asked a yes or no
 13 question, answer it yes or no unless you can't, in which
 14 case, "I believe," "I think so," is acceptable, if that's
 15 the truthful answer.
 16 Q The 2011 Statement of Financial Condition did not
 17 present any asset or liability of an obviously inappropriate
 18 value or amount, Mr. Bender; is that correct?
 19 A At the time of the compilation procedures, we were not
 20 aware of any potential inappropriate valuations.
 21 MR. SUAREZ: Your Honor, that's not the question.
 22 I want to be mindful of the instructions you just gave us,
 23 but that's not the question that I asked, and I understand
 24 if the witness wishes to qualify a yes or a no, I have no
 25 problem with that, but the question was whether it presents

D. Bender - Cross by Mr. Suarez Page 513

1 and asset or liability at an obviously inappropriate value
 2 or amount. Mr. Bender produced the compilation report.
 3 THE COURT: I agree with you. Okay.
 4 So, do you want to read back; you want to just
 5 ask it one more time? Up to you.
 6 Q Mr. Bender, did the 2011 Statement of Financial
 7 Condition present any asset or liability at an obviously
 8 inappropriate value or amount?
 9 A Not at the time we issued the compilation report.
 10 Q Did the compilation report change, after you issued
 11 it?
 12 A No, sir.
 13 Q Mr. Bender, if you could, please turn to Plaintiff's
 14 Exhibit 815?
 15 A Are we finished with these?
 16 Q You can set it aside.
 17 A Thank you.
 18 (Whereupon, a document was displayed, and handed
 19 to the witness.)
 20 Q Mr. Bender, the 2012 Statement of Financial Condition
 21 is on the screen; correct?
 22 A Yes, sir.
 23 Q And the 2012 Statement of Financial Condition
 24 disclosed the method used to determine the value of each asset;
 25 correct?

D. Bender - Cross by Mr. Suarez Page 514

1 A Yes, sir. I believe so.
 2 Q And the 2012 Statement of Financial Condition
 3 disclosed the method used to determine the amount of each
 4 liability correct; sir?
 5 A Yes. Yes, I believe so.
 6 Q And the 2012 Statement of Financial Condition did not
 7 present any asset or liability at an obviously inappropriate
 8 value or amount; correct, Mr. Bender?
 9 A That is correct as of the date, at the time we issued
 10 the compilation report. Report. Yes. Report.
 11 Q And the 2012 compilation report did not change, after
 12 it was issued; correct.
 13 A We did not change the report.
 14 Q And the 2012 Statement of Financial Condition did not
 15 change after it was issued; correct?
 16 A Mazars did not recall the statement -- let me take
 17 that back. The report did not change.
 18 Q Did the statement change?
 19 A The statement did not change.
 20 Q Because the report traveled with the statement;
 21 correct?
 22 A Yes, sir.
 23 Q All right. Let's turn to Plaintiff's Exhibit 707.
 24 (Whereupon, a document was displayed, and handed
 25 to the witness.)

D. Bender - Cross by Mr. Suarez Page 515

1 Q Mr. Bender, is this the Statement of Financial
 2 Condition for the year ending June 30, 2013, of President Donald
 3 J. Trump?
 4 A This is the compilation of Donald J. Trump's Statement
 5 of Financial Condition as of June 30, 2013.
 6 Q The first page includes your compilation report;
 7 correct, Mr. Bender.
 8 A The first page?
 9 Q Second page, after the cover. The first page of the
 10 document.
 11 A Includes Mazars independent accountant's compilation
 12 report. Yes, sir.
 13 Q Okay. And the 2013 Statement of Financial Condition,
 14 Mr. Bender, disclosed the methods used to determine the value of
 15 each asset; correct?
 16 A I believe so.
 17 Q You believe that?
 18 A Yes. I'm sorry. I left the word "yes" out.
 19 Q And the 2012 Statement of Financial Condition,
 20 Mr. Bender, disclosed the method used to determine the amount of
 21 each liability; correct?
 22 A Yes. I believe so.
 23 MR. WALLACE: I'm just going to note an objection
 24 to that question, because he said 2012.
 25 I'm also just going to note an objection to this

D. Bender - Cross by Mr. Suarez Page 516

1 as cumulative. We covered this ground yesterday, and if we
 2 are just going to go through, year-by-year, to get the same
 3 answer, this is exactly the issue we objected to yesterday.
 4 THE COURT: And I'm not going to change the
 5 ruling I made in the sidebar, but I accept the premise of
 6 it.
 7 Mr. Suarez, how long do you think you will need,
 8 to finish cross examining this witness?
 9 MR. SUAREZ: Your Honor, I've formulated,
 10 following your Honor's direction, last night --
 11 THE COURT: All I did was ask you how long. How
 12 long?
 13 MR. SUAREZ: I believe I can be done within the
 14 next hour and a half.
 15 THE COURT: Plaintiff?
 16 MR. WALLACE: I would like it to be faster, but
 17 if that is a hard cap, I would just as soon move along.
 18 THE COURT: All right. In my discretion, you
 19 have an hour and a half. Until noon, basically. And then,
 20 whatever it is. And, if you want, you can finish earlier.
 21 MR. SUAREZ: Understood.
 22 MR. ROBERT: As we discussed yesterday, your
 23 Honor, I have about ten minutes or so.
 24 THE COURT: Okay.
 25 MR. SUAREZ: Thank you for clarifying.

D. Bender - Cross by Mr. Suarez Page 517

1 MR. AMER: I am also suggesting that if there's
 2 some way that we can say, If I asked you the same questions
 3 with respect to the statements from 2013 to 2020 that I
 4 just asked you on the statements for 2011 and 2012, would
 5 your answers be the same, I mean maybe we can get there a
 6 little sooner.
 7 THE COURT: That's sustained, as a suggestion.
 8 Yes.
 9 MR. SUAREZ: And I did follow your direction.
 10 I'm down to three or four questions, per statement. I'm
 11 moving quickly.
 12 THE COURT: Okay.
 13 Q Mr. Bender, with respect to the 2013 Statement of
 14 Financial Condition, is it correct that it disclosed the method
 15 used to determine the amount of each liability?
 16 A Yes. I believe it is so.
 17 Q Mr. Bender the 2013 Statement of Financial Condition
 18 did not present any asset or liability at an obviously
 19 inappropriate value or amount; correct?
 20 A Not as of the date that we issued the compilation
 21 report, independent compilation report.
 22 Q And Exhibit 707 did not change after it was issued;
 23 correct?
 24 A It did not change, sir.
 25 Q Moving to Exhibit 730, Mr. Bender.

D. Bender - Cross by Mr. Suarez Page 518

1 (Whereupon, a document was displayed, and handed
 2 to the witness.)
 3 Q Is this the Statement of Financial Condition dated
 4 June 30, 2014, of Donald J. Trump?
 5 A Give me a second, please.
 6 Yes, sir. It is.
 7 Q And Mr. Bender, the 2014 Statement of Financial
 8 Condition disclosed the method used to determine the value of
 9 each asset; correct?
 10 A Yes. I believe so.
 11 Q The 2014 Statement of Financial Condition disclosed
 12 the method used to determine the amount of each liability;
 13 correct?
 14 A Yes. I believe so.
 15 Q The 2014 Statement of Financial Condition did not
 16 present any asset or liability at an obviously inappropriate
 17 value or amount; correct?
 18 A Not as of the date we issued our independent
 19 compilation report.
 20 Q And Mr. Bender, Exhibit 730 did not change after it
 21 was issued; correct?
 22 A No, sir.
 23 Q Moving on to Plaintiff's Exhibit 729.
 24 (Whereupon, a document was displayed, and handed
 25 to the witness.)

D. Bender - Cross by Mr. Suarez Page 519

1 Q Mr. Bender, is this the Statement of Financial
 2 Condition of President Donald J. Trump for the year ending
 3 June 30, 2015?
 4 A This is the compilation of the Donald J. Trump
 5 Statement of Financial Condition, as of June 30, 2015.
 6 Q The 2015 Statement of Financial Condition disclosed
 7 the method used to determine the value of each asset; correct?
 8 A Yes. I believe so.
 9 Q The 2015 Statement of Financial Condition disclosed
 10 the method used to determine the amount of each liability;
 11 correct?
 12 A Yes. I believe so.
 13 Q The 2015 Statement of Financial Condition did not
 14 present any asset or liability at an obviously inappropriate
 15 value or amount; correct?
 16 A Not as of the date the independent compilation report
 17 was issued.
 18 Q Did Exhibit -- did Plaintiff's Exhibit 729 change,
 19 after it was issued?
 20 A No, sir.
 21 Q Thank you. Moving on to Plaintiff's Exhibit 756.
 22 (Whereupon, a document was displayed, and handed
 23 to the witness.)
 24 Q Mr. Bender, do you recognize Plaintiff's 756 as the
 25 Statement of Financial Condition of Donald J. Trump for the year

D. Bender - Cross by Mr. Suarez Page 520

1 ending --
 2 MR. WALLACE: Objection, at this point. A
 3 disclaimer. Mr. Bender viewed and identified it
 4 previously, and it was entered into evidence. I think we
 5 can just say what the document is that he has identified,
 6 and ask questions. I don't know that he needs to review it
 7 and identify it again.
 8 THE COURT: No need to reinvent the wheel.
 9 MR. SUAREZ: If there's an easier way to do it,
 10 I'm happy to do it, your Honor. Just for the witness's
 11 benefit.
 12 MR. AMER: I thought I suggested an easier way
 13 that the judge sustained as a suggestion. Why can't we do
 14 that?
 15 THE COURT: I'm torn. On the one hand, it is
 16 deja vu all over again. On the other hand, I gave him an
 17 hour and a half. So, let's try not to go over the same
 18 ground that we have already gone over, and any way you can
 19 think to save time, please do it.
 20 MR. SUAREZ: We are already halfway through, your
 21 Honor.
 22 (Continued on the next page.)
 23
 24
 25

D. Bender - Cross/Suarez Page 521

1 THE COURT: Objection. Overruled without
 2 prejudice.
 3 A Yes, sir. What was your question?
 4 Q I believe my question was whether it was a Statement
 5 of Financial Condition of President Donald J. Trump for the
 6 year ending June 30, 2016?
 7 A This is the accountant's compilation of Donald J.
 8 Trump's Statement of Financial Condition as of June 30, 2016.
 9 Q The 2016 Statements of Financial Condition disclosed
 10 the method used to determine the value of each asset, correct,
 11 Mr. Bender?
 12 A Yes, I believe so.
 13 Q The 2016 Statement of Financial Condition disclosed
 14 the method used to determine the amount of each liability,
 15 correct?
 16 A Yes.
 17 Q The 2016 Statement of Financial Condition did not
 18 present any asset or liability at an obviously inappropriate
 19 amount right, Mr. Bender? Correct?
 20 A Not as of the date the Independent Compilation
 21 Report was issued.
 22 Q Plaintiff's Exhibit 756 did not change after it was
 23 issued, Mr. Bender?
 24 A No, sir. It did not.
 25 Q Moving on to Plaintiff's Exhibit 755. Do you

D. Bender - Cross/Suarez Page 522

1 recognize this document, Mr. Bender?
 2 A Yes, sir.
 3 Q Is this the 2017 Statements of Financial Condition of
 4 President Donald John Trump?
 5 A This is the compilation of Donald J. Trump's
 6 Statement of Financial Condition as of June 30, 2017.
 7 Q The 2017 Statement of Financial Condition disclosed
 8 the method used to determine the value of each asset, correct,
 9 Mr. Bender?
 10 A Yes, I believe so.
 11 Q The 2017 Statement of Financial Condition disclosed
 12 the method used to determine the amount of each liability,
 13 correct, Mr. Bender?
 14 A Yes, I believe so.
 15 Q The 2017 Statement of Financial Condition did not
 16 present any asset or liability at an obviously inappropriate
 17 value or amount, correct, Mr. Bender?
 18 A Not as of the date the Independent Compilation
 19 Report was issued.
 20 Q Did Plaintiff's Exhibit 755 change after it was
 21 issued?
 22 A No, sir.
 23 Q Moving on to Plaintiff's Exhibit 773. Do you
 24 recognize this document, Mr. Bender?
 25 A Yes, sir.

D. Bender - Cross/Suarez Page 523

1 Q Is this the 2018 Statement of Financial Condition of
 2 President Donald John Trump?
 3 A This is the Independent Compilation Report for
 4 Donald J. Trump's Statement of Financial Condition as of
 5 June 30, 2018.
 6 Q Does the 2018 Statement of Financial Condition
 7 disclose the method used to determine the value of each asset,
 8 Mr. Bender?
 9 A Yes, I believe so.
 10 Q Does the 2018 Statement of Financial Condition
 11 disclose the method used to determine the amount of each
 12 liability, Mr. Bender?
 13 A Yes, I believe so.
 14 Q Does the 2018 Statement of Financial Condition not
 15 present any asset or liability at an obviously inappropriate
 16 value or amount?
 17 A As of the date the Independent Compilation Report
 18 was issued, that is correct.
 19 Q And Plaintiff's Exhibit 773 has not changed since it
 20 was issued, correct?
 21 A No, sir.
 22 Q Moving on to Plaintiff's Exhibit 842. Do you
 23 recognize this document, Mr. Bender?
 24 A Yes, I do.
 25 Q Is it the Statement of Financial Condition for Donald

D. Bender - Cross/Suarez Page 524

1 J. Trump for the year ending June 30, 2019?
 2 A The first question is yes, I do. What was the
 3 second question?
 4 Q Is this the Statement of Financial Condition for
 5 President Donald J. Trump for the year ending June 30, 2019?
 6 A This is the compilation of Donald J. Trump's
 7 Statement of Financial Condition as of June 30, 2019.
 8 Q Does the 2019 disclose-- excuse me. Withdrawn.
 9 Does the 2019 Statement of Financial Condition
 10 disclose the method used to determine the value of each asset,
 11 Mr. Bender?
 12 A Yes, I believe so.
 13 Q Does the 2019 Statement of Financial Condition
 14 disclose the method used to determine the amount of each
 15 liability, Mr. Bender?
 16 A Yes, I believe so.
 17 Q Does the 2019 Statement of Financial Condition not
 18 present any asset or liability at an obviously inappropriate
 19 value or amount?
 20 A As of the date of the Independent Compilation Report
 21 was issued, yes, that is correct.
 22 Q Yes, it's correct that it does not present any asset
 23 or liability at an obviously inappropriate value or amount
 24 correct?
 25 A As of the date of the Independent Compilation

D. Bender - Cross/Suarez Page 525

1 Report.

2 Q Plaintiff's Exhibit 842 did not change after it was

3 issued?

4 A No, sir. It did not.

5 Q Okay. Moving on to 2020. Plaintiff's Exhibit 856.

6 Do you recognize this document, Mr. Bender?

7 A Yes, sir.

8 Q Is this the Statement of Financial Condition for

9 President Donald J. Trump for the year ending June 30, 2020?

10 A This is the Compilation Report of Donald J. Trump's

11 Statement of Financial Condition as of June 30, 2020.

12 Q Does the 2020 Statement of Financial Condition

13 disclose the method used to determine the value of each asset,

14 Mr. Bender?

15 A Yes, I believe so.

16 Q Does the 2020 Statement of Financial Condition

17 disclose the method used to determine the amount of each

18 liability, Mr. Bender?

19 A Yes, I believe so.

20 Q Does the 2020 Statement of Financial Condition not

21 present any asset or liability at an obviously inappropriate

22 value or amount?

23 A As of the date the Independent Compilation Report

24 was issued, that is correct.

25 Q Exhibit -- Plaintiff's Exhibit 856 did not change

D. Bender - Cross/Suarez Page 526

1 after it was issued, correct?

2 A No, sir, it did not.

3 Q Mr. Bender, you never spoke with Eric Trump about his

4 father's Statement of Financial Condition, correct?

5 A I may have had -- nothing with the actual

6 compilation of the report.

7 Q What does that mean?

8 A I may have had a side conversation with him once

9 about something. I don't recall.

10 Q You don't recall?

11 A Yes.

12 Q Is there any conversation you do recall having with

13 Eric Trump about his father's Statement of Financial

14 Condition?

15 A There was one conversation in a conference room

16 about one asset once but I don't recall what it was. Many

17 years ago, I believe.

18 Q How many years ago, Mr. Bender?

19 A I know within the last ten years.

20 Q Within the last ten years?

21 A Yes.

22 Q All right. Can we bring up-- do you recall having a

23 discussion with me about this at your deposition, Mr. Bender?

24 A I do not recall that.

25 Q Would it be helpful to refresh your recollection if I

D. Bender - Cross/Suarez Page 527

1 showed you a clip from your deposition transcript?

2 A You can show me a clip.

3 MR. SUAREZ: Please play transcript 237, page

4 237 line 7 to 238 line 18.

5 (Video played.)

6 Q Why is it that you have any better recollection

7 today, Mr. Bender?

8 A I remember one conversation maybe when he asked me a

9 question in the conference room once about an asset but I

10 don't remember which asset it was. It wasn't the actual

11 preparation, but, I do remember one question one time.

12 Q Mr. Eric Trump asked you a question?

13 A There was one conversation for a minute or two. I

14 don't remember what it was about.

15 Q You responded to Mr. Eric Trump's question?

16 A The issue was resolved. I don't remember what the

17 issue was.

18 Q Whatever the issue was, it was resolved to your

19 satisfaction?

20 A Yes, sir.

21 Q An issue that you can't remember what it was?

22 A Yes, sir.

23 Q Mr. Bender, did you ever speak with Donald Trump, Jr.

24 about his Statement of Financial Condition?

25 A Not that I recall.

D. Bender - Cross/Suarez Page 528

1 Q Mr. Bender, you never spoke with Ivanka Trump about

2 her father's Statement of Financial Condition, correct, Mr.

3 Bender?

4 A Not that I recall.

5 Q Mr. Bender, in fact, with respect to Ms. Trump, are

6 you aware she invested over \$7.5 million under the terms of a

7 lease into penthouse 20 at the Trump Park Avenue?

8 A Say that again, please.

9 Q Are you aware of Ms. Trump, Ms. Ivanka Trump ever

10 invested \$7.5 million under the terms of the lease into

11 penthouse 20 at the Trump Park Avenue?

12 MR. WALLACE: Objection.

13 THE COURT: Ground?

14 MR. WALLACE: No foundation for that question.

15 THE COURT: I don't think the way it's worded

16 needs a foundation. Let's just get an answer. Go ahead.

17 A I don't recall.

18 Q Mr. Bender, you described Mr. McConney, several

19 times, as someone for whom you have a tremendous amount of

20 respect?

21 A I said he was a good accountant.

22 Q Do you have a tremendous amount of respect for Mr.

23 Bender?

24 THE COURT: For Mr.?

25 MR. SUAREZ: I'm sorry.

D. Bender - Cross/Suarez Page 529

1 Q For Mr. McConney?

2 A Not really, no.

3 Q Do you recall your testimony from Monday?

4 A I do not.

5 MR. SUAREZ: I'd like to bring that up, if I may

6 use it to refresh the witness's recollection, your Honor.

7 Your Honor, may I have a second?

8 THE COURT: Sure.

9 (Brief pause.)

10 MR. SUAREZ: I apologize. We're having

11 technical difficulties.

12 THE COURT: These things happen but it's part of

13 your hour and a half.

14 MR. SUAREZ: I understand.

15 Q I apologize. October 3rd, it was Tuesday. You say,

16 Mr. Bender, where I asked you:

17 "You and Mr. McConney were close friends at one

18 point; were you not."

19 You said: "We didn't have a relationship

20 outside of work but we get long well."

21 I said: "You got along well?"

22 And you said: "I had a tremendous respect for

23 him. He is a very good accountant."

24 A That's past tense. You asked me if I have

25 tremendous respect today.

D. Bender - Cross/Suarez Page 530

1 Q You lost your respect for Mr. McConney?

2 A It's a little different today than it was back when

3 we were younger.

4 Q When you were younger?

5 A When I had hair and he had hair too, and, his hair

6 was blond back then, not white.

7 Q Is that Mr., Bender, because-- withdrawn.

8 Did you ask Mr. McConney to provide you

9 everything that he had relied upon in coming up with the

10 supporting data for the Statements of Financial Condition?

11 A He was supposed to get us all information that he

12 had to -- he was giving us a full package of what he thought

13 was necessary.

14 Q Of what he thought was necessary?

15 A He gave us all his supporting data.

16 Q His supporting data for things he used to prepare the

17 Statement of Financial Condition supporting data, correct?

18 A Say that again, please.

19 Q Information that he used to prepare the supporting

20 data spreadsheets?

21 A Yes, and, I'd ask for supplemental things, like

22 appraisals, that we previously discussed, if any.

23 Q Did he ask you to provide you things that he didn't

24 use in preparing the Statement of Financial Condition?

25 A Say that again, please.

D. Bender - Cross/Suarez Page 531

1 Q Did he-- withdrawn.

2 Did you ask Mr. McConney to provide you with

3 things that he didn't use in preparing his supporting data

4 spreadsheets?

5 MR. WALLACE: Objection. Asked and answered.

6 THE COURT: It's a strange question. Can you

7 read back that question? Maybe I missed something.

8 (Read back.)

9 THE COURT: Well, again, I'm not an accountant

10 but I don't know why you'd ask for things he didn't use.

11 You'd ask for things he did use.

12 MR. SUAREZ: If it's that he didn't ask him,

13 then he didn't ask him to give him things he didn't use.

14 THE COURT: I'm overruling the objection. I'm

15 just telling you how I see things.

16 A I did ask him for things like appraisals that he did

17 not use.

18 Q You asked him?

19 A From-- not in every year, as I previously testified.

20 I did ask a number of years for appraisals.

21 Q The only thing you asked him to produce to you, to

22 send you, were appraisals that he didn't use in preparing the

23 Statement of Financial Condition; is that correct?

24 A That is the only thing I can recall at this time.

25 Q That is the only thing you can recall. The only

D. Bender - Cross/Suarez Page 532

1 thing you can recall.

2 You never sent Mr. McConney an e-mail?

3 A I don't recall.

4 Q You never sent Mr. McConney an e-mail asking him to

5 send you every appraisal, correct?

6 A I never sent him an e-mail asking for every

7 appraisal, no, sir. To the best of my recollection, no.

8

9 (Continued on the following page..)

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D. Bender - Cross by Mr. Suarez Page 533

1 Q Did you send him an email saying, I never asked,
 2 please send me every appraisal you didn't use in preparing your
 3 supporting data?
 4 A No, sir.
 5 Q Did you send him a text message asking him to send you
 6 every appraisal he didn't use in preparing his supporting data?
 7 A I don't use text that much. No, sir.
 8 Q Did you ever send him an email asking him to send you
 9 any appraisals?
 10 A I don't recall.
 11 Q Did you ever ask him to provide you with appraisals in
 12 the presence of anyone else?
 13 A I don't recall.
 14 Q Did you ever ask him to send you any appraisals in
 15 writing?
 16 A Can you clarify that question, please?
 17 Q Did you ever ask Jeff McConney to send you any
 18 appraisals in writing?
 19 A In writing?
 20 Q Did you ever write Mr. McConney and say, Please send
 21 me any appraisals?
 22 A Not that I recall.
 23 Q Not that you recall.
 24 Did you ever have this discussion with Mr. McConney
 25 asking him to provide you with appraisals he didn't use, while

D. Bender - Cross by Mr. Suarez Page 535

1 A No, sir.
 2 Q Was that an important thing for you to look at?
 3 A Say that again, please.
 4 Q Were appraisals an important thing for you to look at?
 5 A I would have liked to have had all information
 6 available.
 7 Q Okay. You knew that the Trump Organization had loans
 8 on its books; correct?
 9 A Yes, sir.
 10 Q And you knew that those loans were backed by real
 11 estate, right; Mr. Bender?
 12 A Many of them.
 13 Q Many of them. And you knew that you typically, in
 14 real estate, can't get a loan backed by real estate if there's
 15 no appraisal that the bank orders; right?
 16 A That is sometimes correct, yes.
 17 Q Okay. So you would have known that the Trump
 18 Organization had appraisals in its records?
 19 A I didn't know that the Trump Organization had access
 20 to any appraisals the banks had.
 21 Q It's not a staggering concept to understand that a
 22 company that owns insane amounts of real estate all over the
 23 world had appraisals in its books?
 24 A I didn't know the Trump Organization had any access to
 25 appraisals they did not give me.

D. Bender - Cross by Mr. Suarez Page 534

1 anyone else was present?
 2 A I don't recall.
 3 Q You knew that the Trump Organization had appraisals in
 4 their possession; correct?
 5 A Not necessarily.
 6 Q You had no idea that the Trump Organization had
 7 appraisals in his possession?
 8 A I knew there were certain appraisals that had been
 9 given. I don't recall any other appraisals that I --
 10 Q Are you familiar with the real estate industry?
 11 A Somewhat.
 12 Q Somewhat. You are not an expert in real estate;
 13 right?
 14 A I'm a real estate accountant.
 15 Q A real estate accountant?
 16 A Amongst other areas.
 17 Q And a real estate accountant couldn't be expected to
 18 know that a company that owns massive amounts of real estate
 19 would have appraisals in its files?
 20 A I asked for, if they have any appraisals.
 21 Q You asked?
 22 A Yes.
 23 Q In passing?
 24 A As a question.
 25 Q Did you ever make that request, in writing?

D. Bender - Cross by Mr. Suarez Page 536

1 Q Okay. And how many appraisals did the Trump
 2 Organization give you, Mr. Bender?
 3 A I don't recall.
 4 Q You don't recall. Do you remember on Monday when you
 5 talked about learning that there were appraisals that you didn't
 6 know about after meeting with the District Attorney of New York?
 7 A Say that again, please?
 8 Q Do you recall on Monday what you testified in response
 9 to a question from Mr. Wallace about first learning that the
 10 Trump Organization had appraisals that you didn't know about,
 11 when you met with the District Attorney of New York?
 12 A Not particularly. That's what I said.
 13 Q I'm sorry?
 14 A Not particularly.
 15 Q You don't recall your testimony, or you don't recall
 16 learning that from the District Attorney of New York?
 17 A I don't remember my exact testimony.
 18 Q You don't recall your exact testimony --
 19 MR. SUAREZ: This is what happens when I try to
 20 go fast.
 21 Q And you generally remember testifying on Monday that
 22 in your meeting with the District Attorney of New York, you
 23 learned, or you testified that that was when you learned, that
 24 the Trump Organization had appraisals that you hadn't seen?
 25 A Yes. That, I do recall.

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D. Bender - Cross by Mr. Suarez Page 537

1 Q Okay. And that, just so I understand your testimony

2 Mr. Bender, that was the first time you learned that the Trump

3 Organization had appraisals that it hadn't given you?

4 A Yes, sir.

5 Q Okay. And you couldn't really remember what year that

6 meeting took place; is that right?

7 A The first meeting with the District Attorney?

8 Q Yeah.

9 A I believe of was in the spring of -- that was 20 --

10 the last time -- I believe it was in the spring of '21.

11 Q Okay. And you remembered having a Zoom meeting with

12 him, and that's when he showed you these appraisals?

13 A It was. It was a Zoom -- we were on Zoom with the

14 District Attorney, so this is the first time -- I don't know if

15 we were saw them physically, but this was the first time I was

16 informed of it.

17 Q And then all of a sudden, you remember having made a

18 request, back in 2013, that appraisals -- that you had made a

19 request for appraisals from Mr. McConney; is that right,

20 Mr. Bender?

21 A No, sir. I remember it because I requested it.

22 Q You remembered that, over a number of years. Did you

23 ask in 2013?

24 A I don't remember specifically which years, but I know

25 I asked the question numerous sometimes.

D. Bender - Cross by Mr. Suarez Page 538

1 Q Oh you asked the question numerous times?

2 A Most of my years I did ask, yes. And starting around,

3 I believe -- I thought I testified yesterday -- when we -- the

4 appraisals first appeared for TIHT Commercial, LLC or Trump

5 Plaza, LLC, I asked -- that's when I starting asking, Do you

6 have any other appraisals.

7 Q And that's when you first learned that the Trump

8 Organization had access to appraisals?

9 A Say that again, please?

10 Q That is what you first learned that the Trump

11 Organization had access to appraisals?

12 A That's the first time that it came to my attention,

13 during the compilation procedure, that I asked the question.

14 Q You told me at one point that you were the head of the

15 Long Island Real Estate Group for Mazars; is that correct?

16 A Yes, sir.

17 Q The Long Island Real Estate Group for a big fancy

18 accounting firm and you didn't know that a real estate developer

19 would have appraisals on its real estate available to them?

20 A I asked the client the question. They made a

21 representation. They gave it to me, and they told me they

22 didn't have any other appraisals.

23 Q You asked -- well, your testimony is that you made a

24 request to Mr. McConney that was never documented.

25 A I asked them for appraisals -- let me finish. I

D. Bender - Cross by Mr. Suarez Page 539

1 asked. The representation letter said that they gave me all

2 relevant -- whatever we pulled. I don't want to say what the

3 representation letter said, off the top of my head. We can

4 bring one up. But they represented they gave me everything I

5 needed.

6 Q The representation letter that you drafted, and didn't

7 request appraisals?

8 A The representation letter asked for all relevant data.

9 We can get the exact language, if you would like to.

10 Q And do you think, Mr. Bender, that all relevant data

11 includes things that people don't rely on, in preparing

12 documents? Is that relevant data?

13 A I felt -- yes, I do.

14 Q Okay. So, the head of the Long Island Real Estate

15 Practice Group at Mazars, the big fancy accounting firm that the

16 president hired to compile their Statements of Financial

17 Condition, thinks that it's relevant to review appraisals that

18 weren't relied on in preparing spreadsheets, but never puts it

19 in writing, doesn't put it as part of his representation letter

20 that he drafted for his client of 30 years to sign, and all of a

21 sudden this becomes an issue when you are in front of the

22 District Attorney?

23 A No, sir. I asked them, at the time.

24 Q Oh. At the time. Never followed up. Never said to

25 Weisselberg, Hey, send your appraisals. Never sent the

D. Bender - Cross by Mr. Suarez Page 540

1 president an email saying, Hey, I don't have a single appraisal

2 for your massive, giant real estate holding company that we have

3 done over 280 engagements for, that you prepare tax returns,

4 that you know have books and records and loans, it never crossed

5 your mind that is an entity that could have appraisals?

6 MR. WALLACE: Objection to form.

7 THE COURT: That's not what he's testifying to.

8 Objection sustained.

9 Q Mr. Bender, did the District Attorney of New York

10 threaten you with prosecution?

11 A No, they did not.

12 Q Did they threaten Mazars with prosecution?

13 A Not to my knowledge.

14 Q Do you know that Mr. Pomerantz, the gentlemen that you

15 met with when you met with the district attorney, put in his

16 book that Mazars sent you there to meet without your own lawyer?

17 A You informed me of that.

18 Q Yes. And is that the case, that Mazars sent you in

19 there to meet with the District Attorney of New York without

20 your own lawyer?

21 A I had counsel with me.

22 Q Counsel from Mazars?

23 A I believe they were my counsel.

24 Q You thought Mazars lawyers were your lawyers?

25 A I had my own counsel.

D. Bender - Cross by Mr. Suarez Page 541

1 Q Okay. From Mazars?

2 A Mazars and I had counsel.

3 Q So is Mr. Pomerantz lying, in his book?

4 A I never saw Mr. Pomerantz's book, but --

5 Q Okay.

6 A Let me finish. I had counsel with me, and I was

7 satisfied that I had appropriate counsel at all times.

8 Q And was that when Mr. Pomerantz informed Mazars of the

9 precarious legal position that they were in, if they didn't play

10 ball?

11 A I have no knowledge of that.

12 Q You have no knowledge of that. The lawyers Mazars

13 provided you when they met with the District Attorney told you

14 nothing about that?

15 A I have no knowledge of that.

16 Q Okay. And it was in this meeting when, all of a

17 sudden, it dawns on you that you had made a request for

18 appraisals?

19 A No, sir. I knew I had made the request, beforehand.

20 Q Right. And you never got it?

21 A Never received it. Requesting additional -- when the

22 question came up, Do you have any official appraisals to give

23 me, they never supplied me with any additional appraisals.

24 Q Mr. Bender, in the last three days, Monday, Tuesday,

25 Wednesday, you testified, "I don't know," or, "I don't

D. Bender - Cross by Mr. Suarez Page 542

1 remember," over 89 times in response to questions, both from me

2 and Mr. Wallace.

3 A Mr. who?

4 Q Wallace.

5 A Okay. Sorry. My apologies.

6 THE COURT: It was his birthday yesterday.

7 THE WITNESS: Mr. Wallace's birthday?

8 MR. WALLACE: The nightmare continues.

9 THE WITNESS: Happy birthday.

10 Q But that, you do remember?

11 A What was the question again, please?

12 Q You do remember requesting appraisals from

13 Mr. McConney?

14 A Numerous times. Yes, sir.

15 Q Numerous times. Numerous times, and you never

16 received them?

17 A I never received any -- I did not receive any

18 additional appraisals, that they didn't supply as part of his

19 package.

20 Q And you said, Oh, okay. The Trump Organization must

21 not have appraisals.

22 THE COURT: That's not his testimony.

23 Q Did you conclude that the Trump Organization didn't

24 have appraisals?

25 A I didn't need to make a conclusion. I asked the

D. Bender - Cross by Mr. Suarez Page 543

1 question; they gave me an answer; and they made representations

2 that they gave me all relevant data.

3 Q Okay. And in your --

4 A I don't know the exact words. We can pull it up on

5 the screen.

6 Q We are happy to pull them up.

7 In your mind, relevant data is documents that you

8 didn't rely on?

9 A We can pull it up.

10 Q Okay. Mr. Bender, I have to ask you the question, are

11 there any mental health reasons that you can't testify here

12 today?

13 A No, sir.

14 MR. WALLACE: Objection.

15 THE COURT: Overruled.

16 Q Let me show you Defendant's Exhibit 729.

17 (Whereupon, a document was displayed, and handed

18 to the witness.)

19 A Do you want me to read this?

20 Q Have you seen it before?

21 A I have to read it.

22 Q Okay.

23 (Whereupon, there was a pause in the

24 proceedings.)

25 Q I can draw your attention to the specific part of the

D. Bender - Cross by Mr. Suarez Page 544

1 document I intend to ask you about. On page two of the

2 document, a document prepared by Mazars and sent to the Trump

3 Organization concerning the transition away from Mazars to a new

4 accounting firm.

5 MR. WALLACE: Just, objection. What is the basis

6 for that? I'm just not familiar with the basis for the

7 statement that this was drafted on Mazars and to the Trump

8 Organization.

9 THE COURT: Well, I'll give counsel a little

10 leeway.

11 So, where we are going?

12 Q It talks about Mazars' transition being contingent on

13 the physical and mental health of Donald Bender.

14 A I see that.

15 Q Okay. Did you disclose to Mazars that you had a

16 mental health condition that precluded them from terminating --

17 from continuing their transition to a new accounting entity?

18 A No, sir.

19 Q Then why would Mazars imply to us, to the Trump

20 Organization, that your mental health was a consideration in

21 whether they could continue to transition and comply with their

22 professional obligations in assisting to transitioning to a new

23 accounting firm?

24 MR. WALLACE: Objection to the implication part.

25 THE COURT: Overruled.

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D. Bender - Cross by Mr. Suarez Page 545

1 A You would have to ask Mazars.

2 Q Okay. Was there ever a physical or mental condition

3 that should have been disclosed to the Trump Organization?

4 A Any health issues I had, they were aware of.

5 Q The Trump Organization was aware?

6 A Mr. Weisselberg knew I had certain health issues, over

7 the years, but nothing serious.

8 Q Okay. So you discussed your personal health issues

9 with Mr. Weisselberg?

10 A We had some common health issues over the years.

11 Q Okay. But you never said to Mr. Weisselberg, someone

12 that you could talk to about your health issues, you never said

13 to him, Let me see your appraisals?

14 A I don't recall if I ever asked Mr. Weisselberg for his

15 appraisals.

16 Q All right. I'm sorry?

17 A I don't recall if I spoke to Mr. Weisselberg about

18 appraisals.

19 Q Okay. You don't recall, you don't recall, you don't

20 recall.

21 So, for specific questions you don't recall, other

22 than you do remember, you do recall, asking Jeff McConney for an

23 appraisal, but everyone else, you don't recall anything else --

24 MR. SUAREZ: Withdrawn.

25 Q Is there any reason here, based on this document that

D. Bender - Cross/Robert Page 547

1 MR. ROBERT: May I proceed, your Honor?

2 THE COURT: Please proceed.

3 CROSS-EXAMINATION

4 BY MR. ROBERT:

5 Q Good morning, Mr. Bender. It's still morning?

6 A Good morning.

7 Q So, in order to-- when I was sitting there yesterday

8 I had a little bit of difficulty hearing you. So, what I'm

9 going to ask you to do is speak into the mic, and, following

10 the Judge's admonition, or statement, a while ago, I'm going

11 to ask you to give me yes or no answers to my questions.

12 To the extent you feel you can't, I know the

13 Judge said you can say it's not able to be answered. So, ask

14 me, and, I'll be happy to rephrase the question so we can have

15 a dialogue and it's easier for the reporter to write it down.

16 Fair enough, sir?

17 A We'll do our best.

18 Q So, over the last couple of days where Mr. Suarez

19 left off --

20 THE COURT: Wait a minute. That was supposed to

21 be a yes or no question.

22 MR. ROBERT: I'm starting out that way. It's

23 going to wind up with a yes or no, I promise.

24 Q In Mr. Suarez's last few minutes of his questioning

25 of you, he brought to your attention, correct, that over the

D. Bender - Cross by Mr. Suarez Page 546

1 we received from Mazars, that your testimony shouldn't be relied

2 on because of your mental or physical health?

3 A This memo was drafted by Mazars, no, I have no

4 physical or mental health issues that you have to be worried

5 about, today.

6 Q You disclosed no physical or mental health issues to

7 Mazars?

8 A I have had some health issues, and Mazars is aware of

9 them, and nothing serious?

10 Q Did any of them impair your ability to do your job for

11 the Trump Organization, Mr. Bender?

12 A My physical issues have been the last few months, and

13 they were resolved within two weeks.

14 Q And were there any mental health issues that

15 challenged your memory when you conducted your engagements for

16 the Trump Organization?

17 A No, sir.

18 Q Okay. That, you do recall; correct?

19 A I have no mental health issues.

20 MR. SUAREZ: No further questions on cross

21 examination, your Honor.

22 THE COURT: Thank you. Will there be --

23 MR. ROBERT: Me, sir.

24 THE COURT: That's right. You wanted ten

25 minutes, I believe.

D. Bender - Cross/Robert Page 548

1 last few days you answered "I don't know" and "I don't recall"

2 approximately 90 times.

3 Do you remember that?

4 A I believe he said 89, but you can check the court

5 record.

6 Q So, that you remember, and I'm glad you do. You're

7 an accountant, and I'm a lawyer. So, you're good with

8 numbers. So, about 89 times, right?

9 A I believe that's what he said.

10 Q Okay. Do you recall a couple of days ago, actually

11 Wednesday morning, which would have been yesterday morning,

12 Mr. Suarez asked you the following:

13 "Question: Did your counsel speak to anyone

14 from the New York Attorney General's Office?"

15 You said:

16 "Answer: You have to speak with them."

17 Then the question was:

18 "Are you aware if your counsel spoke to anyone

19 from the New York Attorney General's Office?"

20 "Answer: I don't recall any conversation with

21 counsel last night.

22 So, is your testimony that when you were here

23 yesterday morning testifying, you don't remember if you

24 had a conversation with your counsel the night before?"

25 A Say that again, please.

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D. Bender - Cross/Robert Page 549

1 Q Yesterday morning you testified that you couldn't
 2 recall if you had a conversation with your counsel Tuesday
 3 night.
 4 So, you don't remember yesterday morning whether
 5 your lawyer spoke with the Attorney General Tuesday night?
 6 A I don't remember Wednesday morning if I had a
 7 consult Tuesday night? I do not know what conversations my
 8 client -- my counsel had -- my counsel had with the Attorney
 9 General.
 10 Q Did you speak to your lawyer Tuesday night, yes or
 11 no? I don't want to know the contents of it, but, did you
 12 speak with your lawyer Tuesday night?
 13 A I believe I did.
 14 Q As you sit here today, on Thursday morning, you don't
 15 remember if, on Tuesday night, after your first day of
 16 testimony, you spoke could your lawyer; is that your
 17 testimony?
 18 A Say that again, please.
 19 Q Is it your testimony, as you sit here today, on
 20 Thursday morning, that you don't remember if on Tuesday night
 21 you spoke to your lawyer or not?
 22 A I spoke to my lawyer because they wanted --
 23 Q Don't tell me what you spoke about, please.
 24 A You're right.
 25 Q Now, you remember you spoke to him Tuesday night?

D. Bender - Cross/Robert Page 550

1 A Yes.
 2 Q Did you speak to him last night?
 3 A Yes.
 4 Q Do you know if he spoke to the Attorney General last
 5 night?
 6 A I do not know.
 7 Q During the course of Mr. Suarez's examination of you,
 8 you said that during the course of your engagement for the
 9 Trump Organization there were two or three times that you had
 10 a question about how they were handling certain GAAP issues in
 11 the Statement of Financial Condition.
 12 Do you remember that?
 13 A No, I do not remember that being my testimony. I
 14 believe, if we're talking about the same matter, I believe
 15 there were two or three times where we discussed GAAP
 16 exceptions.
 17 Q There were two or three times, during the course of
 18 your engagement, where you discussed GAAP exceptions, correct?
 19 Yes or no?
 20 A There were two or three times where we discussed it,
 21 newer GAAP exceptions. I believe my testimony was two times,
 22 not three times.
 23 Q So, there were two times you talked to the Trump
 24 Organization about issues of GAAP exceptions, correct?
 25 A That's all I recall at this moment.

D. Bender - Cross/Robert Page 551

1 Q That is all you recall at this moment, that there
 2 were two times, correct?
 3 A That is all I can recall right now.
 4 Q Will you agree with me GAAP exceptions are an
 5 important part of a Statement of Financial Condition?
 6 A Yes, sir.
 7 Q As a matter of fact, at the beginning of the
 8 Statement of Financial Condition is where it's listed what
 9 those GAAP exceptions are, correct?
 10 A Yes, sir.
 11 Q And I know you testified you're --
 12 A Let's take it back. There are two or three times
 13 where I discussed new GAAP exceptions with him.
 14 Q New GAAP exceptions and every time you had a
 15 conversation, the Trump Organization agreed with what your
 16 assessment was and either-- it changed the GAAP exceptions to
 17 reflect something that you and Mazars were comfortable with,
 18 correct?
 19 A Yes, sir.
 20 Q So, every time you, as the accountant, go to the
 21 Trump Organization, you have a discussion about a concern you
 22 have about GAAP, they comply with what you're suggesting,
 23 correct?
 24 It's a simple question, sir. Please.
 25 A We came to a --

D. Bender - Cross/Robert Page 552

1 MR. ROBERT: Your Honor, please.
 2 THE COURT: I believe it's capable of a yes or
 3 no.
 4 A Yes.
 5 Q Yes. Then the period of those times, you were the
 6 partner in charge of the Statement of Financial Condition
 7 project, correct?
 8 A I was a partner in charge of the compilation, yes.
 9 Q Okay. We talked about, or Mr. Suarez talked to you
 10 the other day about ASC 274. You remember that?
 11 A I don't remember the exact questions, no, sir.
 12 Q Do you remember that the words ASC 274 were discussed
 13 over the last few days?
 14 A Yes.
 15 Q I'll be honest with you, before this trial, I would
 16 have thought it was a motor oil. I wouldn't have known it has
 17 anything to do with accounting, but, you know ASC 274 has to
 18 do with accounting, correct?
 19 A Yes, sir.
 20 Q I think your testimony was if you had specific
 21 questions about it, you'd go next door or talk to somebody
 22 else at Mazars, correct?
 23 A Yes, sir.
 24 Q Can we at least agree you have the requisite
 25 knowledge and experience and training to know that ASC 274 is

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1 the governing principles behind what needs to be in a
 2 Statement of Financial Condition?
 3 Would you agree with that?
 4 A At the time I was doing the engagement, I had the
 5 appropriate knowledge, correct.
 6 Q So --
 7 THE COURT: Wait a minute. That didn't answer
 8 the question.
 9 MR. ROBERT: Can we have the question read back?
 10 THE COURT: Please read back and listen
 11 carefully.
 12 MR. ROBERT: Thank you.
 13 (Read back.)
 14 A Yes, sir.
 15 Q Okay. During the time that you were in charge of the
 16 Statement of Financial Condition assignment from-- on behalf
 17 of Mazars for the Trump Organization, you had that knowledge,
 18 correct?
 19 A Yes.
 20 Q To the extent you had specific questions about it,
 21 you would go to other people within Mazars to ask specific
 22 questions, correct?
 23 A Yes, sir.
 24 Q That you remember, correct?
 25 A Yes, sir.

D. Bender - Cross/Robert Page 554

1 Q Okay. But as you sit here today, you also remember
 2 now that you asked Jeff McConney every year for appraisals; is
 3 that what your testimony is?
 4 A I said most years.
 5 Q So --
 6 A Started in, approximately, I believe, you can check
 7 my testimony. I thought I said something like 2013.
 8 Q Can you speak into the microphone?
 9 A Can't get much closer without kissing it.
 10 Q I don't think it wants that. Don't worry.
 11 A It's the first time I've had one without a cover
 12 since I've testified in the last few years. I believe my
 13 testimony is, I asked most years. I could have missed one
 14 but I did ask most years and I believe my testimony was 2013.
 15 I believe, but, we can pull that up, if you'd like to confirm
 16 that.
 17 Q So, your testimony today, under oath, is that you,
 18 specifically, recall, on one or more occasions, Jeff McConney
 19 to give you every appraisal that he had. Is that your
 20 testimony?
 21 A My testimony is --
 22 Q Yes or no, sir, please.
 23 A My testimony is that I asked for -- do you have any
 24 other appraisals.
 25 Q That is not my question, sir. Did you or did you

D. Bender - Cross/Robert Page 555

1 not, as you sit here today under oath, ask Jeff McConney, on
 2 one or more occasions, give me all the appraisals you have.
 3 Yes or no?
 4 A That's not the words I used. My words were, do you
 5 have any other appraisals.
 6 Q So, is your testimony then that it was only on a year
 7 that you got one appraisal, you'd ask him if he had more
 8 appraisals? Yes or no, sir?
 9 A No. My testimony is that when the Trump Plaza LLC,
 10 Trump Plaza LLC, and TIHT Commercial LLC appraisal appeared,
 11 I asked: Do you have any-- that's when I started asking: Do
 12 you have more appraisals.
 13 Q Mr. Bender, please. You keep saying when you
 14 started. I'm trying to make it clear for the record because
 15 in a little while, Mr. McConney will raise his right hand and
 16 will be asked these very same questions by Mr. Wallace and his
 17 colleagues, because I want to tee this up now because I,
 18 respectfully submit, there is going to be a difference. So,
 19 let's be clear.
 20 So, is it your testimony now that on specific
 21 years, you told Jeff McConney: Give me all the appraisals you
 22 have. Yes or no?
 23 A My --
 24 Q Please, sir. Mr. Wallace can --
 25 THE COURT: Yes or no. If you want it read

D. Bender - Cross/Robert Page 556

1 back, read it back or --
 2 THE WITNESS: Read it back.
 3 THE COURT: Let's have a read back.
 4 (Read back.)
 5 A I would submit that's the word "ask" not "told" but
 6 the answer would be yes.
 7 THE COURT: Is that sufficient?
 8 MR. ROBERT: I'm going to probe a little, sir.
 9 Q So, you asked Jeff McConney every year to give you
 10 appraisal's to the extent he had any appraisals. That's your
 11 testimony under oath?
 12 A Say that question again, please.
 13 Q Your testimony under oath today is that every year
 14 you asked Jeff McConney to provide you with any appraisal he
 15 may have had; yes or no, sir?
 16 A I never said every year.
 17 Q You don't recall. Let's take a step back.
 18 On the years that you did, is that question-- is
 19 that the way you phrased it to Mr. McConney?
 20 A The way I phrased it to Mr. McConney is: Do you
 21 have any other appraisals.
 22 Q Mr. Bender, we're having a disconnect here, because,
 23 when you say: Do you have any others, that presupposes there
 24 was one. So, since you don't remember what year it was, I was
 25 trying to help jog your memory.

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1 So, is it your testimony then that only on the
2 years when you got one appraisal, you said: Hey, Jeff, do you
3 have any more?
4 A My testimony is when I got THIT Commercial and Trump
5 Plaza Commercial's appraisals, I said: Are there any more
6 appraisals.
7 Q So, that is one time?
8 A No, that is when it started, and, I asked most
9 years.
10 Q You asked-- so, on a year that there were no other
11 appraisals given to you as backup for the SOFC, you said:
12 Hey, Jeff, do you have any other appraisals?
13 A I asked him: Do you have appraisals, at the time
14 the first ones appeared.
15 Q So, your testimony is, after the first one appeared
16 in the year, you don't know every year, you would say to Jeff
17 McConney, do you have any other appraisals, even if he didn't
18 give you any appraisals for that year? Yes or no, sir?
19 Please.
20 A Say that, again, please.
21 MR. ROBERT: Can I have it read back, please?
22 THE COURT: Read back.
23 A Yeah.
24 MR. WALLACE: I'm going to object at this point.
25 His testimony has been clear. Mr. Robert keeps

D. Bender - Cross/Robert Page 558

1 rephrasing it in different forms.
2 THE COURT: Overruled. I hope we don't need
3 another read back. Let me see.
4 MR. ROBERT: I'm trying to do it in as tight a
5 way I can, Judge.
6 THE COURT: You seem to be asking if there
7 weren't any, would he ask for any others, and, logically,
8 you can't say are there any others, if there weren't any.
9 MR. ROBERT: That is what I'm going to get at.
10 I respectfully submit you're going to here diametrically
11 opposed testimony, either today or tomorrow, from Mr.
12 McConney, because, in my opening, I told it's all about
13 credibility, and, I stand before you today saying the
14 same thing.
15 So, I want to figure out exactly what it is you
16 say you said because that is not the way we see things.
17 MR. WALLACE: I will object to the
18 representation about what other people will testify to
19 that have not appeared in court.
20 THE COURT: Sustained. You should not do that.
21 I think I have it fairly simple.
22 MR. ROBERT: Please try, Judge.
23 THE COURT: If you didn't receive any appraisals
24 for a given year, would you actually say: Do you have
25 any others?

D. Bender - Cross/Robert Page 559

1 THE WITNESS: Do you have any appraisals. Do
2 you have any others. I apologize to the Court if I had
3 the wrong word, but, starting at the point when he
4 started giving me appraisals, I started asking: Do you
5 have any other appraisals or you have any appraisals --
6 or have any appraisals. I started asking for appraisals
7 at the point when the first appraisal appeared.
8 Q That is different from what you've been saying. So,
9 let's be clear.
10 Are you saying that you would either say to him:
11 Now, do you have any appraisals, or, do you have any other
12 appraisals, or, to you, does it mean the same thing?
13 A To me, it's the same thing.
14 Q So, you don't remember exactly what it is you said to
15 Mr. McConney on the years you don't remember what the years
16 were?
17 A I don't remember word for word but I know I asked
18 for appraisals.
19 Q You know you asked Jeff McConney for appraisals. You
20 don't remember the words you used?
21 A I --
22 Q Correct? Yes or no?
23 A No, I do not remember the exact words.
24 Q No one was witnessing when you asked for these,
25 correct?

D. Bender - Cross/Robert Page 560

1 A I don't recall.
2 Q You didn't send him any e-mails about it?
3 A No, I don't recall.
4 Q You didn't send him any text messages about it?
5 A I don't text, generally.
6 Q You don't recall texts. You don't recall e-mails.
7 You don't recall if anyone is in the room, but, you have a
8 specific recollection today that you asked him for it, but,
9 you still don't remember if you even spoke to your lawyer two
10 nights ago, right?
11 A I said I did speak to my lawyer two nights ago.
12 Q You don't really know what you asked Jeff McConney
13 for. Do you, sir?
14 A Yes, I do.
15 Q Sir, you're aware of the accepted standards of
16 practice for an accountant, correct? Generally speaking?
17 A Generally speaking, yes, sir.
18 Q You know that if you depart from generally accepted
19 accounting standards, liability can be imposed, correct?
20 A Yes.
21 Q It can be liability in terms of accounting
22 malpractice, correct?
23 A I believe so.
24 Q And there can be regulatory and criminal obligations
25 that flow from it, correct?

D. Bender - Cross/Robert Page 561

1 A Yes, sir.

2 Q You know, as you sit here today, that, to the extent

3 you give any admission that shows you departed from general

4 and accepted accounting standards, that potentiality you and

5 Mazars will be sued by our clients, correct?

6 A I never really thought about that.

7 Q You never thought about the fact that there was

8 liability? Perhaps, that our client would sue Mazars or you?

9 A It wasn't my biggest concern, no, sir.

10 Q You just went from it wasn't a concern to it wasn't

11 your biggest concern. Can we at least agree it was a concern

12 of yours?

13 A Not really sir, no. I wasn't worry about it.

14 Q You didn't worry about that. You're not worried your

15 testimony today will be scrutinized by regulator, or are you?

16 A Never thought about it.

17 Q What about the authorities?

18 A Which authorities?

19 Q The District Attorney's Office, US Attorney. You're

20 not concerned your testimony will be scrutinized by them?

21 A No, sir.

22 Q Okay. That, you're certain of?

23 A Yes, sir.

24 Q You know, another thing you weren't too sure about

25 over the last few days is how big a client our clients were to

D. Bender - Cross/Robert Page 562

1 you.

2 Do you remember, generally, that testimony?

3 A I don't remember the exact revenue stream, if that's

4 what you're talking about.

5 Q I think we established pretty clearly that in any

6 given year for the last ten years, the fees generated by

7 Mazars was over a million dollars?

8 A Yes.

9 Q Some years, as high as 2.6 million?

10 A I don't recall the exact number.

11 Q Can we at least agree they were your biggest client?

12 A My biggest client, yes.

13 Q Can we agree they were a cache client to have?

14 A Me, personally?

15 Q Yes.

16 A I wasn't really into-- it wasn't a cache thing for

17 me.

18 Q Do you think, as you sit here today, you would have

19 been made a partner at a large firm like Mazars but for the

20 fact the Trump Organization and affiliated members were your

21 clients?

22 A I can't speak to what Mazars would have done or

23 didn't do.

24 Q How much of your business, percentage-wise, is not

25 Trump related-- withdrawn.

D. Bender - Cross/Robert Page 563

1 From 2010 to 2020, on average --

2 MR. ROBERT: And I'm not going year by year,

3 Judge. I promise.

4 Q For those ten years, on average, the Trump

5 Organization was your largest clients, right?

6 A Yes, sir.

7 Q More than 50 percent of your revenue was generated by

8 them, correct?

9 A Yes, sir.

10 Q If we added up all the other clients you had, it was

11 going to be less than the amount of money the Trump

12 Organization generated for fees for you, correct, in any given

13 year? True?

14 A Yes, sir.

15 Q Okay. You know, there was also some testimony about

16 your-- and I'm going to use the word, and then I'll change it.

17 Your review of the McConney spreadsheets. You remember?

18 A I don't remember using the word "review".

19 Q There was a whole back and for you and Mr. Suarez

20 using the word "review." It dawned on me, to accountants,

21 review means something different than it means to the rest of

22 us, right?

23 A Yes.

24 Q We have three levels to review. Financials, right?

25 We have an audit?

D. Bender - Cross/Robert Page 564

1 A You're using the word "review" inappropriately, but,

2 I understand where you're going.

3 Q That's great because during the break, since we were

4 allowed to bring in our iPads, I was looking for a synonym for

5 review so I can use a word we both agree on.

6 Can we use the word inspect?

7 A Look at.

8 Q Well, it's funny. You have a different-- I looked at

9 the definition of look because you had a different definition

10 of "look" yesterday. When you said "look" is kind of

11 skimming. You remember that?

12 A No.

13 Q When you look at something. When you look at

14 something are you comprehending what's in there?

15 THE COURT: This is starting to sound like the

16 interrogation of Bill Clinton. It depends upon what the

17 definition of "is" is.

18 Q I want to ask some questions about the McConney

19 spreadsheets and I know if I used the word "review," the

20 answer will be I didn't, and, I appreciate it wasn't a review,

21 and, I can't say did you compile the spreadsheet. So, I'm

22 trying to come to a term we can agree on.

23 THE COURT: He's suggested looked at and

24 inspect.

25 A Worked on.

D. Bender - Cross/Robert Page 565

1 Q Worked on? Okay.

2 A Use. Use. Whatever you prefer.

3 Q So, you worked on?

4 A Used, I like but go ahead.

5 Q Used is a better word?

6 A Yes, sir.

7 Q Okay. So, my English will be a little bad for the

8 record because I'll use the word "use". You used the McConney

9 spreadsheets?

10 A Mazars used the McConney spreadsheets, yes.

11 Q So did you?

12 A I'm part of Mazars. Yes, sir. I was part of

13 Mazars.

14 Q When this was discussed the other day, the Judge took

15 judicial notice the other day that companies act through

16 people.

17 So, can we agree that Mazars acted through you

18 as the primary liaison with the defendants in this case? Fair

19 enough?

20 A Yes, sir.

21 Q Okay.

22 A For a number of years.

23 Q I'm sorry?

24 A For the last --

25 Q Last ten years. Before 2020. 2010 to 2020?

D. Bender - Cross/Robert Page 566

1 A Yes, sir.

2 Q We can agree on that? Okay.

3 When you used the McConney spreadsheets, you

4 made a very big point of saying you didn't go through them

5 line by line. Remember that?

6 A Yes, sir.

7 Q I want to be clear. I'm not suggesting -- we can

8 take a step back.

9 Do you think you had an obligation to go through

10 them line by line?

11 A No, sir.

12 Q We can agree, in a world of levels of seniority in an

13 organization, you may not be looking line by line, like I

14 might not be looking at citations in a brief. Somebody else

15 may be doing it but I'm signing my name to it, like you're

16 signing your name to Statements of Financial Condition?

17 A Yes, sir.

18 Q I don't want to waste the Court's time putting it on

19 the screen, but, in addition to their being a line-by-line

20 Excel spreadsheet, there was descriptions under each category

21 of how Mr. McConney came to his valuations, correct?

22 A I don't know if there's each category.

23 Q Sorry?

24 A I'm not sure if there were descriptions in each

25 category.

D. Bender - Cross/Robert Page 567

1 Q Well, sir, again in trying to do this quickly, can we

2 agree as to the main assets held by the Trump Organization

3 when we come to a value, whether it was Trump Tower, seven

4 Springs, one of the other-- 40 Wall. On the McConney

5 spreadsheet, he would explain how he came to the valuation?

6 We can put it on the screen but I want to save

7 time.

8 A There is a detailed cross-reference, but, for

9 instance, cash-- I don't know if there is a description.

10 Q I didn't ask about cash. Did you call the bank to

11 verify how much money was in the bank?

12 A No, sir.

13 Q But I'm not asking you about cash. I'm asking you

14 about the major real estate assets. Let's take three, for

15 example. 40 wall, Trump Tower, and Seven Springs. You're

16 familiar with the three assets owned by the defendants?

17 A Yes, sir.

18 Q Can we at least agree that underneath those, on the

19 McConney spreadsheet, it explained the way Jeff came up with

20 the value?

21 A Yes, sir.

22 Q Okay. In your use of the McConney spreadsheets, did

23 you use that information? Did you look at that?

24 A Personally?

25 Q Yes.

D. Bender - Cross/Robert Page 568

1 A I don't know if I looked at it every year.

2 Q So, you didn't personally even look at the highlights

3 that show how a valuation was come from -- where a valuation

4 came from?

5 A I don't recall if I looked at every line, if that's

6 what you're asking.

7 Q I'm not asking about every line. I'm trying to make

8 it simple. I don't think everyone in the courtroom thinks

9 you'd be looking at every line of a 40-page spreadsheet.

10 What I'm asking is: Did you, as a partner in

11 charge of this multimillion-dollar account, your biggest

12 client at Mazars, did you at least look at the valuation

13 methods that were used by the Trump Organization for its

14 largest assets?

15 A I looked at those assets, yes, sir.

16 Q You looked at those assets and you looked at the

17 description as to how the valuation was determined, correct?

18 A I believe --

19 Q Yes or no, sir?

20 A I believe I did, yes.

21 Q Okay, you did. You didn't have a problem --

22 THE COURT: He said: "I believe I did." You

23 can't say, oh, then you did.

24 MR. ROBERT: Fair enough.

25 Q So, you don't know, one way or the other, whether you

D. Bender - Cross/Robert Page 569

1 looked the it?
 2 A To the best of my recollection, I did.
 3 Q Let me ask this. When we talk about generally
 4 accepted-- acceptable accounting standards, do you think it
 5 would have been appropriate, yes or no, for Mazars to sign off
 6 on the Statement of Financial Condition and you, as the
 7 primary partner in charge of the account, to have not looked
 8 at how the valuations came, how the valuations came about
 9 before you signed off on it?
 10 A So, I did look at the largest assets. You're
 11 correct, sir.
 12 Q Okay. You didn't have a problem with them?
 13 A I had no problem with them. At the time we issued
 14 the compilation report, I had no problem with it. No, sir.
 15 Q At the time you issued the compilation report, you
 16 had no problem in the methods Mr. McConney used in coming to
 17 the valuations, correct?
 18 A I had no problem with the methodology the Trump
 19 Organization came up with. What's the rest of the sentence?
 20 To-- substitute the Trump Organization for Mr. McConney.
 21 Q Fair enough, sir. It wasn't until the time that
 22 after you sat down with the New York County District
 23 Attorney's Office that you then had a change of this opinion;
 24 yes or no? Please, sir. Yes or no?
 25 A I do not --

Page 571

1 Q That-- you seem to be very precise, right? That's a
 2 compliment, sir. You can take it.
 3 A I'm not very precise but I'm trying to listen to
 4 your questions and give you honest answers.
 5 Q And I appreciate that, sir. So, being precise. So,
 6 now we just spent a few minutes and thank you.
 7 So, it was not until the Zoom meeting with the
 8 Manhattan District Attorney's Office that you first had any
 9 concern about the work you had done for the Trump
 10 Organization, correct?
 11 A That is correct.
 12 MR. ROBERT: I have no further questions.
 13 Judge. Thank you.
 14 THE COURT: I think it's time for a break. As
 15 usual, we'll have a ten-minute break but take 15 minutes,
 16 and I will be strict about that.
 17
 18 (Continued on the following page..)
 19
 20
 21
 22
 23
 24
 25

D. Bender - Cross/Robert Page 570

1 Q Yes or no, please. It's a very simple question?
 2 A I can't answer that question.
 3 Q So, you can't answer the question?
 4 A I can't answer it yes or no.
 5 Q You can't answer the question yes or no that it-- let
 6 me ask -- I'll withdraw the question.
 7 Prior to your meeting with the New York County
 8 District Attorney's Office, you did not notify, you, The Trump
 9 Organization that you had any problem with that, did you?
 10 A Say that again, please.
 11 Q Prior -- withdrawn.
 12 You testified earlier today --
 13 MR. ROBERT: And this is my last point. I'm not
 14 going to belabor it, Judge.
 15 Q You testified earlier today that it wasn't until you
 16 sat down in the Manhattan District Attorney's Office, with
 17 Mazars' lawyers by your side, up until that point in time, you
 18 were not aware of these additional appraisals, correct?
 19 A That's not what I testified.
 20 Q You didn't testify that you-- that this was-- your
 21 first foray into knowing there were these additional
 22 appraisals was when you met with the Manhattan District
 23 Attorneys by Zoom?
 24 A That is a different question. You said when I was
 25 in the Manhattan District Attorney's Office.

D. Bender - Re-Direct by Mr. Wallace Page 572

1 THE COURT: Mr. Wallace and your team, any
 2 re-direct of the previous witness?
 3 MR. WALLACE: I have exceedingly brief re-direct.
 4 It will just be a couple minutes. So, if we could get
 5 Mr. Bender back.
 6 (Whereupon, there was a pause in the
 7 proceedings.)
 8 (Whereupon, the witness resumed the witness
 9 stand.)
 10 THE COURT: Okay please proceed with re-direct.
 11 RE-DIRECT EXAMINATION
 12 BY MR. WALLACE:
 13 Q Welcome back, Mr. Bender. I assure you, I will try to
 14 be exceedingly brief.
 15 MR. WALLACE: Could we please pull up Defendant's
 16 Exhibit 950.
 17 (Whereupon, a document was displayed.)
 18 Q Mr. Bender, up on the screen we have defendant's
 19 Exhibit 950. It's a document entitled Personal Financial
 20 Statements Guide with Conforming Changes as of May 1, 2008,
 21 audit and accounting guide. Do you remember discussing this
 22 document with Mr. Suarez?
 23 A Yes, sir.
 24 Q Okay. I'm just going to note that this document comes
 25 from the University of Mississippi, and over here we can see

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D. Bender - Re-Direct by Mr. Wallace Page 573

1 that it's from the American Institute of Certified Public
 2 Accountants, AICPA, Historical collection. Do you know why this
 3 document came from the historical collection?
 4 A Not off the top of my head.
 5 Q Do you recall that in 2009, U.S. G.A.A.P. was replaced
 6 by the FASB, with the release of the FASB Accounting Standards
 7 Collection?
 8 A I don't remember the date, but that's approximately
 9 correct. Yes, sir.
 10 Q Okay. Let me show you a document, see if I can
 11 refresh you on the date.
 12 (Whereupon, a document was displayed, and handed
 13 to the witness.)
 14 Q It's a long document. I'm not going to ask you to
 15 look at the whole thing. I would just like to direct your
 16 attention to the header at the top of the page which states -- I
 17 will represent to you, this is a copy of the same document we
 18 were just looking, at that Mr. Suarez shared with you, but this
 19 version states at the top, "Notice to Readers, Executive
 20 Summary, U.S. G.A.A.P. was replaced by the FASB with the release
 21 of the FASB Accounting Standards Codification on July 1, 2009.
 22 The codification is effective for financial statements for
 23 interim or financial reporting periods ending after
 24 September 15, 2009. While the accounting guidance in this audit
 25 and accounting guide may be useful, only guidance that was

D. Bender - Re-Direct by Mr. Wallace Page 575

1 Q I believe you discussed this with Mr. Suarez, and it
 2 states, "Before commission, the accountant should read the
 3 compiled personal financial statements and consider whether such
 4 financial statements appear to be appropriate in form and free
 5 from obvious material errors. In this context, the term error
 6 refers to mistakes in the compilation of financial statements
 7 including arithmetical or clerical mistakes, and mistakes in the
 8 application of accounting principles, including inadequate
 9 disclosure. Misstatements that might occur in personal
 10 financial statements prepared in conformity with generally
 11 accepted accounting principles, G.A.A.P., include," and then
 12 there's series of four bullet points?
 13 A Yes, sir. I see that.
 14 Q Do you remember Mr. Suarez taking you through these
 15 bullet points?
 16 A Yes, sir.
 17 Q And I believe that earlier today he asked you a number
 18 of questions about whether the statements in each year complied
 19 with the bullet point at the bottom here which states,
 20 "Presentation of an asset or liability at an obviously
 21 inappropriate value or amount."
 22 Do you recall that testimony?
 23 A Yes, sir.
 24 Q Okay.
 25 MR. WALLACE: Could we put this up?

D. Bender - Re-Direct by Mr. Wallace Page 574

1 incorporated into the certification is considered
 2 authoritative."
 3 THE COURT: Codification. Not certification.
 4 MR. WALLACE: Codification. Thank you, your
 5 Honor.
 6 Q Does this refresh your recollection as to the dates
 7 that U.S. G.A.A.P. was replaced by the FASB?
 8 A Yes, sir.
 9 Q Okay. So, the guidance that you were shown by
 10 Mr. Suarez was no longer authoritative as of 2011?
 11 A That's correct.
 12 Q Okay. And if you were consulting with your colleague
 13 Mr. Cohen about what standards governed your work from the
 14 period of 2011 forward, it would not have been in reference to
 15 this guidance; is that correct?
 16 A It would have been with the superseded guidance.
 17 Mr. Cohen, or anybody else I consulted with.
 18 Q Okay.
 19 MR. WALLACE: If we can go back to Defendant's
 20 Exhibit 950, and go to D-950, 22.
 21 (Whereupon, a document was displayed, and handed
 22 to the witness.)
 23 MR. WALLACE: And if we can blow up item 2.05,
 24 please. I'll just read it into the record. This is
 25 section 2.05.

D. Bender - Re-Direct by Mr. Wallace Page 576

1 Actually, let's just pull up Defendant's
 2 Exhibit 25.
 3 (Whereupon, a document was displayed, and handed
 4 to the witness.)
 5 A Are we done with these?
 6 Q You can just put that to the side, for now.
 7 So Mr. Bender, I'll direct your attention to the top
 8 of the screen. It states, "AR-80, Compilation of Financial
 9 Statements." It states, "Issue date --"
 10 A AR section.
 11 Q AR section. Thank you?
 12 A Okay.
 13 Q "Compilation of Financial Statements. Issue date,
 14 unless otherwise indicated, December 2009. See section 9080 for
 15 interpretations of this section."
 16 Do you know if this is the section that replaced the
 17 guidance you had been looking at?
 18 A Yes, sir.
 19 Q So, this was in effect from 2009, forward?
 20 A I believe so. Yes, sir.
 21 Q And just to keep this moving along, I'll represent to
 22 you that this guidance was superseded, as of December 15, 2015,
 23 but I would like to take you to page 4 of this document, and if
 24 we could look at the item under, Reading Financial Statements,
 25 and this states, "Reading Financial Statements, before

D. Bender - Re-Direct by Mr. Wallace Page 577

1 submission, the accountant should read the financial statements
 2 and consider whether such financial statements appear to be
 3 appropriate in form, and free from obvious material errors. In
 4 this context, the term error refers to mistakes in the
 5 preparation of financial statements, including arithmetical or
 6 clerical mistakes, and mistakes in the application of accounting
 7 principles, including inadequate disclosure."
 8 Do you see that language?
 9 A Yes, sir.
 10 MR. WALLACE: I would like to put this up next to
 11 the language we looked at in Defendant's Exhibit 950-22, if
 12 we could.
 13 So, can we put that side by side, with the stuff
 14 we just looked at? Oh they're on top of each other.
 15 Q So you can see, the first two sentences are pretty
 16 close; correct? It states, especially in the second sentence --
 17 well, they're pretty close?
 18 A One refers to compilation.
 19 Q Right, but they say that before submission, it should
 20 consider whether such financial statements appear to be
 21 appropriate in form, and free from obvious material errors.
 22 They both state, in this context, "the term error refers to
 23 mistakes in the compilation of financial statements, including
 24 arithmetical or clerical mistakes and mistakes in the
 25 application of accounting principles, including inadequate

D. Bender - Re-Direct by Mr. Wallace Page 578

1 disclosure." But the version on the top that comes in at 209,
 2 it no longer has those bullet points does it?
 3 A No, but there's a little difference in wording.
 4 Q Right.
 5 A You said the same. They refer to -- the bottom one
 6 refers to compilation, I believe.
 7 Q Right. So this bullet, though, about the presentation
 8 of assets or liabilities, and obviously inappropriate value, or
 9 amount, had been removed from the guidance?
 10 A It appears so.
 11 Q Okay.
 12 A What you are showing me.
 13 Q So those would not have been authoritative guidance at
 14 the time you were discussing, with Mr. Cohen, what standards
 15 apply to the 2011 Statement of Financial Condition of Mr. Trump;
 16 is that correct?
 17 A I will have to confirm that with somebody in my
 18 technical group.
 19 Q Okay.
 20 A And it could have been Mr. Cohen, or somebody else in
 21 my firm.
 22 Q But the bullet point would not have governed your work
 23 on its financial statements for the leader of the free world; is
 24 that correct?
 25 A No, sir.

D. Bender - Re-Direct by Mr. Wallace Page 579

1 Q Okay.
 2 MR. WALLACE: Nothing more.
 3 THE COURT: Any re-cross?
 4 No. Okay. The witness is excused.
 5 THE WITNESS: Thank you, your Honor.
 6 THE COURT: And we need a five-minute break for
 7 technical reasons. I advise everybody to stay where you
 8 are.
 9 (Whereupon, the witness was excused from the
 10 courtroom.)
 11 (Whereupon, there was a pause in the
 12 proceedings.)
 13 THE COURT: Plaintiff, would you like to call
 14 your next witness?
 15 MR. AMER: Yes, your Honor. We call Jeffrey
 16 McConney.
 17 THE COURT: And where is Mr. McConney?
 18 (Whereupon, there was a pause in the
 19 proceedings.)
 20 THE COURT: Because Mr. McConney is a party, he
 21 has an absolute right to be sitting here the whole time.
 22 Maybe just he didn't think it would be exciting enough.
 23 MR. ROBERT: That must be what it is.
 24 JEFFREY MCCONNEY, after having first been duly
 25 sworn, was examined and testified as follows:

J. McConney - Direct by Mr. Amer Page 580

1 THE COURT OFFICER: Please have a seat.
 2 Please state your name and business or home
 3 address on the record.
 4 THE WITNESS: Jeffrey McConney, 390 First Avenue,
 5 New York, New York.
 6 THE COURT: You seem to have a nice, loud voice,
 7 but I will ask you to speak right into the microphone, nice
 8 and loud, slow, clear.
 9 THE WITNESS: I'll try. Thank you.
 10 DIRECT EXAMINATION
 11 BY MR. AMER:
 12 Q Good afternoon, Mr. McConney. My name is Andrew Amer.
 13 We have not met before. I'm with the Attorney General's office.
 14 Am I correct that you graduated with a Bachelor's of
 15 Business Administration from Baruch College in 1978?
 16 A Yes, sir.
 17 Q And your degree was in accounting; is that right?
 18 A Yes.
 19 Q And after you graduated, you worked for a small real
 20 estate company, and then went to an accounting firm; is that
 21 correct?
 22 A Yes.
 23 Q You worked at the accounting firm for about nine years
 24 before joining the Trump Organization in about April of 1987; is
 25 that right?

J. McConney - Direct by Mr. Amer Page 581

1 A That's correct.

2 Q And am I also correct that when you were at the

3 accounting firm, that's where you first met and worked with

4 Donald Bender?

5 A Correct.

6 Q And when you started with the Trump Organization, you

7 started as an assistant controller?

8 A Correct.

9 Q And at that time, Mr. Weisselberg, Allen Weisselberg,

10 he was the controller of the organization; is that right?

11 A Yes.

12 Q And it's when he was promoted to Chief Financial

13 Officer that you stepped into his role as Controller of the

14 organization; is that right?

15 A Yes.

16 Q And as controller, you reported to Mr. Weisselberg;

17 correct?

18 A Correct.

19 Q And during the entire time that you were controller,

20 he was your boss; correct?

21 A Correct.

22 Q Is it also correct that you basically had the same job

23 and same responsibilities when you your title changed from

24 Assistant Controller to Controller? Is that fair?

25 A That's correct.

J. McConney - Direct by Mr. Amer Page 582

1 Q And your responsibilities included making sure

2 interest payments were made on loans; is that right?

3 A Yes.

4 Q And you dealt with the general ledger; correct?

5 A Yes.

6 Q And you oversaw accounts payable and accounts

7 receivable; correct?

8 A Yes.

9 Q Are you still employed by the Trump Organization?

10 A No.

11 Q And when did you leave the Trump Organization?

12 A I retired February 25th. February of this year.

13 Q And did you receive a severance package when you left?

14 A Yes, I did.

15 Q And how much that was severance package.

16 A The total package was \$500,000.

17 Q And have you received all of your severance, as we sit

18 here today?

19 A As of today, no.

20 Q How much have you received, and how much is left to

21 go?

22 A 375,000 has been received. 125,000 is the last

23 payment.

24 Q And is that contingent on anything?

25 A No. Other than me being alive, no.

J. McConney - Direct by Mr. Amer Page 583

1 Q Let's talk about the Statements of Financial Condition

2 for Donald J. Trump. You became involved in the preparation of

3 Mr. Trump's annual Statement of Financial Condition and

4 eventually took over the whole processes, likely sometime in the

5 90s. Is that fair?

6 A Sometime in the 90s, I believe. Yes.

7 Q And you were primarily responsible for preparing

8 Mr. Trump's statement between 2011 and 2017; is that fair?

9 A We didn't -- we, being the Trump Organization, didn't

10 prepare the statement. Mazars, or whatever their name was at

11 that time, prepared the statement. I prepared the backup for

12 the statement.

13 Q And you prepared the valuations that went into the

14 statement; is that fair?

15 A Yes.

16 Q And you were primarily responsible for preparing the

17 valuations between 2011 and 2017; is that right?

18 A Yeah. I don't remember if it was the June of '16 or

19 the June of '17 statement when I walked away, but that's

20 correct.

21 Q And starting in around 2016 or 2017, you received

22 assistance from an employee named Patrick Birney, in the

23 preparation of the valuations; correct?

24 A Correct.

25 Q And is it fair to say that starting in 2017, after

J. McConney - Direct by Mr. Amer Page 584

1 Mr. Birney came on board, you played less of a role in preparing

2 the valuations that went into the statement; is that correct?

3 A Whenever that handoff was, I had little to very little

4 to do with the financial statement.

5 Q Around the time that Mr. Birney took over for you?

6 A Right. Once Mr. Birney took over, I had little to do

7 with the statement.

8 Q But you still reviewed Mr. Birney's work with him;

9 didn't you?

10 A I believe the first time we went through it, I'm not

11 too sure, or I don't remember, how much interaction I had with

12 him, after that.

13 MR. AMER: I'm going to put up, your Honor -- we

14 prepared a demonstrative. We labeled it PDX-2, and it

15 shows the sources, which I believe are all already in

16 evidence.

17 (Whereupon, a document was displayed.)

18 MR. AMER: I don't know your preference on

19 demonstratives. Do you want me to admit it into evidence,

20 or not?

21 THE COURT: Yes. I would like that.

22 MR. AMER: Okay. So, I would ask that this be

23 admitted into evidence.

24 MR. ROBERT: As a demonstrative exhibit,

25 obviously. Not -- I'm not used to having a

J. McConney - Direct by Mr. Amer Page 585

1 demonstrative -- I'm used to having a demonstrative
 2 document be marked, but not moved into evidence, so I would
 3 object that a demonstrative document be put into evidence.
 4 THE COURT: Well, I don't know that it matters,
 5 in a bench trial, but would plaintiff be willing to just
 6 have it marked as an exhibit, rather than it admitted into
 7 evidence, as of now?
 8 MR. AMER: I was asking your Honor how you would
 9 like to do it, and I'm fine either way. I would say we
 10 admit it -- I'm fine to say we are admitting it solely as a
 11 demonstrative, if that helps Mr. Robert's objection.
 12 MR. ROBERT: Let's mark it as demonstrative.
 13 We'll talk over the break. I think we are saying the same
 14 thing. We'll work it out.
 15 MR. AMER: Does your Honor want a copy?
 16 THE COURT: Yes.
 17 (Whereupon, a document was handed to the Court
 18 and to the witness.)
 19 THE COURT: It's on the screen, but I like
 20 souvenirs.
 21 Q This just puts in chart form, on a single page, the
 22 as-of date of the statements, and the actual date that the
 23 statement was issued, and as this indicates -- and you can
 24 confirm Mr. McConney -- the statements were all done as of
 25 June 30th of the year that they covered; correct?

J. McConney - Direct by Mr. Amer Page 586

1 A Yes.
 2 MR. ROBERT: Do they have a hard copy to give us?
 3 I see something was handed to the witness.
 4 (Whereupon, a document was handed to counsel.)
 5 Q And it looks as though, for all but three years, the
 6 statement is issued in October or November of the year that the
 7 statement covers; correct?
 8 A Yes.
 9 Q And for '15 and '16, it looks as though the statement
 10 was not issued until March of the year after the year that it
 11 covers. Do you see that?
 12 A Yes.
 13 Q And am I correct that in 2015, the statement issue
 14 date was delayed because Mr. Trump was campaigning for office?
 15 Is that right?
 16 A That's correct.
 17 Q And in 2016, the statement was delayed until March
 18 because of the transition to the oval office; correct?
 19 A Yes.
 20 Q There's one other year where the statement was delayed
 21 by a few months, and that's 2020. The judge alluded to this in
 22 his opinion, but I would like to confirm, was that due to the
 23 Covid pandemic?
 24 A I really don't remember. I didn't have much to do
 25 with --

J. McConney - Direct by Mr. Amer Page 587

1 Q Okay.
 2 A -- the June 30 of 2020 statement.
 3 Q Generally speaking, unless there were extenuating
 4 circumstances, the annual statement was due in October; is that
 5 right?
 6 A Yes.
 7 Q And that's because Mr. Trump's lenders required
 8 submission of an annual financial statement as part of the
 9 covenants in the terms of the loans that were made to Mr. Trump
 10 and the Trump Organization; is that right?
 11 A Yes.
 12 Q As a general matter, the due dates for those
 13 statements on those loans were October 31 of each year; is that
 14 right?
 15 A Yes.
 16 Q You knew every year that once June 30 passed, you
 17 would need to start working on the statement as soon as you
 18 could; right?
 19 A Yes.
 20 Q And you would start working on the statement in July
 21 or August; right?
 22 A Depending on the year, but yes.
 23 Q And the statements take a long period of time to work
 24 up and there's a lot of work involved in doing it; correct?
 25 A That's correct.

J. McConney - Direct by Mr. Amer Page 588

1 Q And to start the process of preparing the annual
 2 Statement of Financial Condition, you began with the years'
 3 prior Excel spreadsheet; is that right?
 4 A Yes.
 5 Q And that spreadsheet is something that was called,
 6 internally, Jeff Supporting Data; is that right?
 7 A Jeff supporting something. I don't remember the exact
 8 name.
 9 Q And the Jeff was you; correct?
 10 A Yes, sir.
 11 Q And the Excel spreadsheet would include two years'
 12 worth of information; is that right?
 13 A Correct.
 14 Q And the information in that spreadsheet included the
 15 valuation methodology and prior valuations for each of the
 16 assets valued in the statement; is that right?
 17 A Yes.
 18 Q And you would also go through the backup for assets,
 19 and determine what information you needed to prepare the next
 20 statement; correct?
 21 A Yes.
 22 Q You would gather that information and input the new
 23 information into the Jeff Supporting spreadsheet; right?
 24 A Yes.
 25 Q And different assets on the statement were valued

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J. McConney - Direct by Mr. Amer Page 589

1 differently; correct?
 2 A Yes.
 3 Q And so the valuation methodology dictated what new
 4 information you needed in each year; correct?
 5 A Yes.
 6 Q And is it correct that the meat and potatoes of the
 7 financial statement, in terms of preparing valuations and making
 8 decisions with respect to those valuations, would be done by
 9 Mr. Weisselberg and you, prior to Mr. Birney's involvement, and
 10 then you, Mr. Weisselberg, and Mr. Birney, once he started to be
 11 involved?
 12 A And then just Mr. Birney and Mr. Weisselberg.
 13 Q Can you put a year on it, when it became just
 14 Mr. Weisselberg and Mr. Birney?
 15 A It's been a while. It could have been the June of '17
 16 statement, the June of '18 statement. But it was a fairly quick
 17 process.
 18 MR. AMER: I would like to put up PX-717, which
 19 is the 2014 engagement letter, which has already been
 20 admitted into evidence.
 21 (Whereupon, a document was displayed, and handed
 22 to the witness.)
 23 Q Mr. McConney, you are familiar with this document;
 24 right?
 25 A Yes, sir.

J. McConney - Direct by Mr. Amer Page 590

1 Q This is a letter dated January 2nd, 2014 from Mazars
 2 to the Trump Organization; right?
 3 A Yes.
 4 Q And it's signed by Mr. Weisselberg; correct?
 5 A Yes.
 6 Q He has acknowledged the document by his signature, and
 7 accepted it; correct?
 8 A Yes.
 9 Q You reviewed this document before Mr. Weisselberg
 10 signed it; correct?
 11 A Yes.
 12 Q And is it correct to say that you continued to review
 13 these engagement letters, even after Patrick Birney started
 14 taking over your role in the preparation of the valuations?
 15 A I believe that's correct. Yes.
 16 Q And you understood the terms of the compilation
 17 engagement set forth in this letter, at the time that you
 18 reviewed this letter; correct?
 19 A Say that again, please? Can you ask that again?
 20 Q Sure. You understood the terms of this compilation
 21 engagement letter at the time that you reviewed it; correct?
 22 A Yes.
 23 Q If we go to page three of the letter, you will see
 24 there's a section entitled, Management Responsibilities; right?
 25 A Yes.

J. McConney - Direct by Mr. Amer Page 591

1 Q You understood that, pursuant to this engagement
 2 letter, Mr. Trump had an obligation to comply with these
 3 responsibilities set forth in A through F; right?
 4 A Yes.
 5 Q And I just want to highlight, in particular, item F,
 6 which says that, "It's management's responsibility for making
 7 all financial records and all related information available to
 8 us."
 9 Us being Mazars; correct?
 10 A Yes.
 11 Q And for the accuracy and completeness of that
 12 information; right?
 13 A Yes.
 14 Q So you understood at the time that this language
 15 placed the responsibility for providing complete and accurate
 16 information squarely on Mr. Trump's shoulders; correct?
 17 A Yes.
 18 Q And for 2016 through 2021, you understood, based on
 19 the engagement letters for those years, that the management
 20 responsibilities listed were the obligations that rested with
 21 the trustees of the revocable trust; correct?
 22 MR. ROBERT: Objection.
 23 THE COURT: Grounds?
 24 MR. ROBERT: Rested? I guess if the witness
 25 understands it, I withdraw the objection.

J. McConney - Direct by Mr. Amer Page 592

1 THE COURT: Okay.
 2 A I believe that's correct.
 3 Q And can we agree that your personal and professional
 4 relationship with Mr. Bender, going back decades, did not in any
 5 way relieve Mr. Trump or his trustees from having to comply with
 6 any aspect of these management responsibilities; correct?
 7 A Correct.
 8 Q You provided Mazars with financial information, in the
 9 form of the supporting data spreadsheets that we discussed, for
 10 use in compiling Mr. Trump's annual Statement of Financial
 11 Condition; correct?
 12 A The information we used to prepare my spreadsheet,
 13 yes.
 14 Q And you provided that information in order to comply
 15 with the obligation in item F of the engagement letter; correct?
 16 A Correct.
 17 Q And this letter explains that Mazars is performing a
 18 compilation, and not an audit or a review; correct?
 19 A Yes.
 20 Q And you understood the significance of that
 21 terminology; correct?
 22 A Yes.
 23 MR. AMER: And why don't we go to the compilation
 24 procedures paragraph, which is on page one.
 25 Q And this says, in the second paragraph, "A compilation

J. McConney - Direct by Mr. Amer Page 593

1 differs significantly from a review or an audit of financial
 2 statements."
 3 You certainly understood that at the time; correct?
 4 A Yes.
 5 Q A compilation does not contemplate performing inquiry,
 6 analytical procedures, or other procedures performed in a
 7 review. You understood that; right?
 8 A Yes.
 9 Q So you had no expectation that Mazars was going to
 10 perform inquiry, analytical procedures, or other procedures like
 11 those an accounting firm performs in a review; correct?
 12 A I wouldn't say that.
 13 Q You understand, though, that this was a compilation,
 14 and that the engagement letter sets forth that a compilation
 15 does not contemplate that the accounting firm would perform
 16 inquiry, analytical procedures, or procedures performed in a
 17 review; right?
 18 A I understood that.
 19 Q Okay. And additionally this says, "A compilation does
 20 not contemplate obtaining an understanding of the company's
 21 internal control;" correct?
 22 A Yes.
 23 Q And it does not contemplate the accounting firm
 24 assessing fraud risk; correct?
 25 A Correct.

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1 Q And it does not contemplate the accounting firm
 2 testing accounting records by obtaining sufficient appropriate
 3 audit evidence through inspection, observation, confirmation or
 4 the examination of source documents; correct?
 5 A Correct.
 6 Q And source documents would be the documents you just
 7 testified would go to Mazars, along with your supporting data
 8 spreadsheet; correct?
 9 A Yes. I believe that's correct.
 10 Q And it does not contemplate the accounting firm
 11 conducting any other procedures ordinarily performed in an
 12 audit; correct?
 13 A Correct.
 14 Q Now, you would send the supporting data spreadsheet
 15 and the backup material to Mazars on an annual basis; is that
 16 right?
 17 A If they didn't come to the office, yes, I would send
 18 it to them.
 19 Q And let's look at Plaintiff's Exhibit 03054.
 20 (Whereupon, a document was displayed, and handed
 21 to the witness.)
 22 (Continued on the next page.)
 23
 24
 25

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1 Q So, Mr. McConney, this first page is an e-mail from
 2 you to Mr. Bender, dated October 23, 2014, where you tell him:
 3 "Call me when you want to go over this," and this is sending
 4 Mr. Bender the prior year's Statement of Financial Condition
 5 that's been marked up. Is that right?
 6 A That's correct.
 7 MR. AMER: Okay, your Honor. I'd move this into
 8 evidence.
 9 THE COURT: Granted. It's in evidence.
 10 Q So, this you were sending in 2014 and the statement
 11 that you're attaching, if we can go to the second page. This
 12 was the statement for 2013 that you've marked up, correct?
 13 A Correct.
 14 Q And is all the handwriting in this document yours?
 15 MR. ROBERT: Your Honor, while the witness is
 16 reviewing, you've already ruled, but, I'm going to object
 17 on the Statute of Limitations ground just to continue
 18 preserving our objections.
 19 THE COURT: Agreed. Understood.
 20 A Can you ask me the question one more time?
 21 Q Sure. Is all the handwritten notations in the
 22 document yours?
 23 A Yes.
 24 Q If we turn to the assets page, which is page four,
 25 you've taken the prior year's statement asset sheet and you've

J. McConney - Direct/Amer Page 596

1 marked it up for 2014; is that right?
 2 A For June of '14, yes.
 3 Q Was this the normal procedure that you followed each
 4 year that you were the one handling the preparation of
 5 valuations?
 6 A I would say there was no normal procedure. If I had
 7 time, I would mark the statement up, I guess. If I didn't
 8 have time, I would just provide the spreadsheet to Mazars and
 9 they'd provide the updated statement.
 10 Q If we could just go back to the second page of the
 11 document, page two. I just want to ask you about the note
 12 you've written on the upper right-hand corner that says: "DJT
 13 to get final review."
 14 Do you see that?
 15 A Yes.
 16 Q That's your handwriting, yes?
 17 A Yes.
 18 Q DJT refers to Donald J. Trump, correct?
 19 A Correct.
 20 Q So, you're making a notation that you understood
 21 Mr. Trump was to get final review of the Statement of
 22 Financial Condition for 2014; is that right?
 23 A Yes.
 24 Q Was that also the procedure that you understood was
 25 followed in each year that you had responsibility for

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1 preparing the statement, that Mr. Trump would get final
 2 review?
 3 A I would get to the point where Allen Weisselberg and
 4 I would review the statement and then I would get an okay
 5 from Allen to let Mazars know if it was okay to finalize the
 6 statement.
 7 I don't want to assume what happened in between
 8 the time I gave it to Allen Weisselberg and the time Allen
 9 gave me the approval.
 10 Q My question is a little different. You testified
 11 your handwritten notation confirms your understanding that
 12 Mr. Trump was to get final review for this 2014 statement?
 13 A Correct.
 14 Q My question is simply whether you had the same
 15 understanding that Mr. Trump was to get final review for each
 16 financial statement that you were primarily responsible for
 17 preparing?
 18 A Yes.
 19 Q Okay. Did you have-- continue to have an
 20 understanding that Mr. Trump would get final review of the
 21 statements that Mr. Birney was primarily responsible for
 22 handling?
 23 A Once Mr. Trump became President Trump, I don't know
 24 what the process was on getting approvals. I think it was
 25 just the trustees, but, again, I didn't handle that or

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1 objection.
 2 THE COURT: I'm overruling that because that is
 3 not the law.
 4 MS. HABBA: No. No. I'm saying, your Honor, we
 5 actually agreed on this before. I put on the record -- I
 6 put on the record prior, and I'll reiterate it moving
 7 forward, so I don't have to object, as well, that if
 8 there's a document that references anything prior to
 9 February 2016, those items, as his objection stands, same
 10 line of questioning. I'm just putting an objection on
 11 the record.
 12 THE COURT: Okay. I'm sorry.
 13 MS. HABBA: Yes. It's okay.
 14 THE COURT: Also a continuing objection on
 15 behalf of your clients.
 16 MS. HABBA: Yes. Thank you.
 17 THE COURT: Sorry for the misunderstanding.
 18 Q Mr. McConney, this is the letter you sent to
 19 Christopher Drimack at Royal Bank of America relating to the
 20 seven Springs loan, correct?
 21 A Yes.
 22 Q You say in your letter that you are providing the
 23 June 30, 2015 Statement of Financial Condition pursuant to the
 24 promissory note on that loan, right?
 25 A Yes.

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1 remember that.
 2 Q You provided copies of the statements to lenders to
 3 comply with the loan covenants, correct?
 4 A Yes.
 5 Q You provided a copy of Mr. Trump's personal financial
 6 statement to, specifically, Royal Bank of America; is that
 7 right?
 8 A I don't remember. It's possible. I don't remember.
 9 Q Let me see if I can refresh your recollection. Let's
 10 look at PX-99.
 11 Do you recognize this letter as the letter you
 12 signed going to Royal Bank of America?
 13 A Yes, for the June 30, 2015 Statement of Financial
 14 Condition. Yes.
 15 MR. AMER: Your Honor, I ask that this be
 16 admitted into evidence.
 17 THE COURT: It's admitted into evidence.
 18 MR. ROBERT: Same objection as to Statute of
 19 Limitations.
 20 THE COURT: Okay. I'll consider that a standing
 21 objection to anything before the relevant dates in 2014
 22 and 2016.
 23 MS. HABBA: To make the record clear. Again,
 24 also anything that incorporates anything prior to that
 25 date, meaning the backup, et cetera. That was my prior

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1 Q So, this was something you were sending to the bank
 2 to comply with loan obligations, correct?
 3 A Yes.
 4 Q Let's go ahead and mark-- or I'll share with you
 5 PX-100.
 6 Mr. McConney, this is another letter you're
 7 sending to Mr. Drimack at Royal Bank of America attaching the
 8 June 30, 2016 Statement of Financial Condition, correct?
 9 A That's correct.
 10 Q That's your signature, correct, on the first page?
 11 A Yes.
 12 MR. AMER: Your Honor, I move this into
 13 evidence.
 14 MR. ROBERT: Same objection, sir.
 15 THE COURT: Their standing objections. You
 16 don't have to keep saying them. I recognize standing
 17 objections. The Court of Appeals recognizes the standing
 18 objections. You don't even have to call them a standing
 19 objection. It's in evidence. Yes.
 20 Q As you did the year before, Mr. McConney, you are
 21 sending to the bank, Mr. Trump's June 30, 2016 Statement of
 22 Financial Condition in order to satisfy obligations under the
 23 promissory note, correct?
 24 A Correct.
 25 Q And Mr. McConney, you are aware that others within

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1 the organization were provided with Mr. Trump's annual
 2 Statement of Financial Condition to disclose to entities
 3 outside the Trump Organization, correct?
 4 A Yes.
 5 Q In-
 6 THE COURT: Ten-minute warning. I need to break
 7 at 12:50.
 8 Q In particular, you're aware that Michael Cohen was
 9 given a copy for one or two meetings, right?
 10 A He was given a copy. I don't remember which year or
 11 for how many meetings.
 12 Q Would it refresh your recollection to share with you
 13 some of your deposition testimony on the screen? If we can
 14 put it up. This is page 124, lines 9 to 25.
 15 Do you do remember that you sat for an interview
 16 where you gave testimony under oath, correct?
 17 A Yes.
 18 Q Okay. If we look at line 124, 9 to 25:
 19 "Question: Are you aware of anyone else in the
 20 Trump Organization who provided Mr. Trump's annual
 21 Statement of Financial Condition for any year to anyone
 22 outside the Trump Organization?"
 23 You asked to hear it read again.
 24 Then you say: "Yes."
 25 "Question: Who is that?"

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1 "Answer: I know Michael Cohen was given a copy
 2 for one or two meetings."
 3 You see that.
 4 A Yes, sir.
 5 Q Does that refresh your recollection that it was one
 6 or two meetings?
 7 A It does not refresh my memory, but, if it is, it was
 8 one or two meetings.
 9 Q Your testimony was truthful when you gave it during
 10 the interview?
 11 A I believe, so. Yes.
 12 Q You also know that Mr. Weisselberg provided the
 13 statement to insurance companies, right?
 14 A I believe he let them look at the statements, yes.
 15 Q Let's put up PX-294. I'll see if I can do this in
 16 time before the break.
 17 MR. AMER: So, your Honor, PX-294 is the DB
 18 credit memo that Mr. Kise showed during part of his
 19 opening. So, I'm going to ask it be admitted into
 20 evidence. I'm hoping there's no objection.
 21 THE COURT: If he showed it, I'm admitting it
 22 into evidence.
 23 MR. AMER: Thank you, your Honor.
 24 Q Let's go ahead and turn to page 14 of this document.
 25 This was actually a page that Mr. Kise put up during his

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1 opening, and, you'll see that there are various columns of
 2 information in this memo which refer to the client reported
 3 values of various financial statements in columns that are
 4 headed DJT 6/30/2011. Donald J. Trump 6/30/2012, client
 5 reported, and then two columns over, DJT 6/30/2013, client
 6 reported.
 7 So, what I'd like to do is go through with you,
 8 if we can confirm where some of these numbers are coming from.
 9 If we could split the screen and put up the 2011 statement,
 10 which is Plaintiff's 787 in evidence.
 11 If we can go to page four, the assets page. You
 12 can see, Mr. McConney, that the cash and Marketable Securities
 13 figure on the assets page, the 258.9 million matches the
 14 figure for cash and Marketable Securities in the first column
 15 headed DJT 6/30/2011. You see that?
 16 A Yes.
 17 Q So, you would agree with me that that figure is
 18 pulled from the 2011 Statement of Financial Condition,
 19 correct?
 20 A Yes.
 21 Q Then if we put up the 2012 statement, which is
 22 Plaintiff's Exhibit 815 and go to page five. We're looking at
 23 the assets page. You'd agree with me that the cash and
 24 Marketable Securities amount of 169.7 million ties into the
 25 figure that's listed in the Deutsche Bank credit memo for

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1 2012, client reported, right?
 2 A Yes.
 3 Q We'll do 2013 which is Exhibit 707 in evidence. Go
 4 to page four. You'll agree with me that the figure for cash
 5 and Marketable Securities of 339.1 million ties into that
 6 fourth column figure for DJT 6/30/2013, client reported,
 7 correct?
 8 A Yes.
 9 Q In the credit memo, if we could turn to the next page
 10 and leave the statement up and let's look at the top column,
 11 the top chart. You'll see that there are figures for four
 12 properties. They're referred to as four trophy properties.
 13 You see that?
 14 I'm sorry. I'll wait for you to get there.
 15 A Trophy properties, okay.
 16 Q If you go to 2013 statement, you'll see that the
 17 figures for Trump Tower, Niketown, 40 Wall Street, and Trump
 18 Park Avenue all match what's in the credit memo. You see
 19 that?
 20 A Yes.
 21 Q So, you would agree with me that the numbers in this
 22 chart and the credit memo are pulled from the 2013 statement,
 23 correct?
 24 A In the DJT valuation column, yes.
 25 Q Okay. You'll see there's a figure under club

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1 facilities in the credit memo of 1656.2. Do you see that?
 2 A Yes.
 3 Q That ties into the dollar amount for club facilities
 4 in the June 30, 2013 statement, correct?
 5 A That's correct.
 6 MR. AMER: As the Court will recall, the credit
 7 memo relates to the OPO loan which closed in August of
 8 2014. I think this is a good point to break, your Honor,
 9 if you gave me the ten-minute warning.
 10 THE COURT: I'm sure everybody will be happy to
 11 break now. We'll be back at 2:15 as usual. Have a great
 12 lunch.
 13 (Luncheon recess taken.)
 14
 15 (Continued on the following page..)
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1 THE COURT: Mr. Amer, do you have a statement of
 2 some sort to make?
 3 MR. AMER: Yes, your Honor. Just a point to
 4 raise, on the record. It concerns the defendant's
 5 application to the Appellate Division that they're going to
 6 present tomorrow morning, for a stay.
 7 We still do not know, although we have requested
 8 multiple times, what the scope of the stay is going to be.
 9 Is it going to be a stay just of the equitable relief in
 10 your summary judgment decision, or will it be a stay of
 11 this trial? Which, obviously, you know, required
 12 tremendous resources to move forward with.
 13 We believe that there is an obligation to have
 14 given us notice of the specific request for relief that
 15 they are going to seek, 24-hours notice. The papers have
 16 Mr. Robert's firm name on them. We would ask that he just
 17 say, in open court, on the record, what the scope of the
 18 stay is going to be, and if he refuses to say that, then at
 19 least we have that on the record, that we can take to the
 20 Appellate Division.
 21 THE COURT: Well, he can't say what the stay is
 22 going to be. He can say what they are requesting.
 23 MR. AMER: That's what I'm requesting. What is
 24 the scope of the relief that they are seeking, so that we
 25 understand what the nature of the application is tomorrow

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1 morning.
 2 MR. KISE: So -- and I may have to defer, your
 3 Honor, to the expert, the acknowledged expert on the CPLR,
 4 but as I understand it -- and I just responded to Ms. Vale
 5 over the lunch break, a few minutes ago. As I understand
 6 it, 22NYCRR, whatever that is, 1250.4(b)(2) requires that
 7 the party seeking relief, as provided in this subdivision,
 8 shall give reasonable notice to his or her adversary of the
 9 day and time when, and the location where -- we have got
 10 all that covered -- the application or order to show cause
 11 will be presented, and the relief, including interim
 12 relief, being requested.
 13 So, my appellate people are telling me we have
 14 done that. We have told them we are seeking a stay.
 15 THE COURT: Of what?
 16 MR. KISE: Interim relief -- well, that's the
 17 thing. Until we file it, tomorrow -- hold on -- I'm not
 18 sure they're entitled to ask these questions in a trial
 19 court proceeding. It seems irregular that we are even
 20 having a conversation in a trial court proceeding over an
 21 issue that is going to go to the First Department, but we
 22 are seeking a stay pending appeal, pursuant to the notice
 23 of appeal filed on Wednesday.
 24 I've offered to have a conversation with Ms. Vale
 25 tonight. To the extent our appellate people can

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1 communicate with them in between that time and sort out
 2 what's required and what isn't, but you know, until we file
 3 tomorrow morning -- we actually are filing tomorrow
 4 morning, and so it's possible, I don't know, it's possible
 5 we may change our mind. We may decide to seek, you know,
 6 door number one or door number two. I don't think that
 7 that's actually required, that we -- until we present our
 8 papers to the First Department. That's the Court that we
 9 are responding to. I mean, this is -- again, I'm not the
 10 expert here, but this is how it has worked in all the times
 11 I've gone up on interlocutory appeals, is you present your
 12 papers in the morning, and we go to court.
 13 THE COURT: I disagree. They asked for the
 14 relief requested. That's the point of this notice, so they
 15 are not blindsided.
 16 Also, beyond all this, I would just think it's a
 17 matter of common courtesy, you would just explain what
 18 you're planning to request, or are requesting.
 19 MR. KISE: I mean will they be satisfied if I
 20 tell them -- what I'm concerned with is if I say it's A,
 21 and it winds up being B tomorrow morning, then I'm going
 22 hear a lot of static from the Attorney General.
 23 Again, I think it's highly irregular that we are
 24 having this conversation.
 25 THE COURT: I don't think it's irregular, at all.

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1 MS. HABBA: Your Honor, I actually have not even
 2 reviewed -- and I can say that, because I'm sitting here on
 3 trial with you. I haven't had an opportunity to review the
 4 papers, so I most certainly would like that opportunity,
 5 before we discuss anything with the AG. I'm sitting here
 6 representing certain clients, and I'm not going to allow
 7 him to represent anything that would be prejudicial either.
 8 So, can we at least agree that, once it's final -- I mean,
 9 but I don't see why we would do this, ever. I have never
 10 done this.

11 MR. KISE: Why don't we do this. Why don't we do
 12 this. As you know, Judge I'm a pragmatist. Why don't we
 13 do this. Why don't we let him go ahead, and I will just
 14 say, let's assume it's both, for right now; okay? In that,
 15 it's a stay of the summary judgment, and the trial.

16 THE COURT: But --

17 MR. KISE: And if it's not, then they will be
 18 over-prepared, but they won't be under-prepared. But, I
 19 can't commit, on behalf of several lawyers, several clients
 20 that haven't even spoken to, exactly what it's going to be.
 21 It's fair for us to say that it's a stay, and if they want
 22 me to commit to, it's both, then okay, I'll do that, but I
 23 don't know that tomorrow morning -- if it winds up being
 24 less, I just don't want to hear any complaint that it's
 25 going to be less.

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1 THE COURT: Well, I assume they can express that,
 2 that they don't want to be over-prepared, in terms of
 3 getting people to the courthouse here, and all.

4 MR. KISE: It's the same person, Judge. It's
 5 Ms. Vale. I mean, it's the same, and we have been
 6 communicating about this. Or, our office has been.

7 MR. AMER: Your Honor, this is simple. We are
 8 entitled to -- the rules require 24-hours notice. It's not
 9 notice to say, We are doing something, but we don't know
 10 what we are doing. That's not notice. If they haven't
 11 decided what they are doing yet --

12 MR. KISE: No.

13 MR. AMER: -- then they should switch it back to
 14 Tuesday morning.

15 THE COURT: And by the way, I'm not the Appellate
 16 Division, but if I were, I would deny your request on the
 17 ground you didn't give notice, because they didn't know
 18 what they were up against.

19 MR. KISE: Then let's do that, just to satisfy
 20 Mr. Amer and the Government. Again, I think it's highly
 21 irregular. We will be seeking a stay of both the summary
 22 judgment and the trial.

23 MR. AMER: We have our record, and --

24 MR. KISE: Does that satisfy you?

25 MR. AMER: It's not a question of satisfying me.

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1 It's a question of satisfying the rules. You have to give
 2 us 24-hours notice. You just put it on the record, and
 3 we'll have our appellate group deal with it tomorrow
 4 morning.

5 THE COURT: I think we can move ahead.

6 MR. ROBERT: And I'm confident our notice this
 7 morning satisfies all the requirements to make a stay
 8 application before the Appellate Division. So, we can
 9 leave it at that?

10 THE COURT: I'm sorry. I didn't hear the start
 11 of that.

12 MR. ROBERT: I just wanted it to be clear that it
 13 is our position that the notice that we gave the Attorney
 14 General's Office -- including their appellate lawyers,
 15 knowing that all the trial lawyers are here in court today,
 16 including all of us -- of our intention to seek a stay
 17 tomorrow, at 10:00 tomorrow morning. So, they're aware of
 18 it.

19 THE COURT: Well, are they aware of it because of
 20 what's in the notice, or because of what you said two
 21 minutes ago?

22 MR. ROBERT: Our notice says that we are seeking
 23 a stay.

24 THE COURT: Well, that's clearly not sufficient.

25 MR. ROBERT: Well, I respectfully disagree with

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1 the Court, but you have additional notice, and if it turns
 2 out to be less, it turns out to be less.

3 THE COURT: Okay.

4 MR. KISE: But you know, again, I don't want to,
 5 by stating what I stated on the record, to withdraw from
 6 the position that our notice was sufficient as given, this
 7 morning. Let me be clear on that.

8 THE COURT: I understand.

9 MR. KISE: To be clear on that. But, they are
 10 asking. They have obviously, again, engaged in what I
 11 think is a highly irregular procedure, to have a
 12 conversation about an appeal in front of the Court that we
 13 are appealing from, but at all events --

14 THE COURT: Well, you said that five times, and
 15 I've disagreed with you five times.

16 MR. KISE: I know you have.

17 THE COURT: Chris and I understand each other.
 18 We don't always agree, but we understand each other.

19 All right. Now, are we ready to recall the
 20 witness? Let's get the witness back.
 21 (Whereupon, the witness resumed the witness
 22 stand.)

23 THE COURT: Let's continue.

24 You are still under oath. You know?

25 THE WITNESS: Okay.

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1 CONTINUED DIRECT EXAMINATION
 2 BY MR. AMER:
 3 Q Welcome back.
 4 A Thank you.
 5 Q I would like to turn to the cash asset category in the
 6 Statement of Financial Condition, and I would like to start by
 7 showing you the Statement of Financial Condition for 2016. It's
 8 Exhibit 756. It's already in evidence.
 9 MR. AMER: If we could pull up page three.
 10 (Whereupon, a document was displayed, and handed
 11 to the witness.)
 12 Q You will see that the first item on the assets page is
 13 cash, marketable securities and hedge funds, in the amount of
 14 \$114.4 million. Do you see that?
 15 A Yes, sir.
 16 Q Okay.
 17 A Yes, sir.
 18 Q And there are notes to this statement that explain
 19 aspects of each asset category; correct?
 20 A Yes.
 21 Q And if we look at page six, note two is the one that
 22 discusses this asset category; cash, marketable securities, and
 23 hedge funds; right?
 24 A Yes.
 25 Q And it says, "Cash, marketable securities and hedge

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1 funds represents amounts held by Mr. Trump and amounts in
 2 operating entities."
 3 Do you see that?
 4 A Yes.
 5 Q And we can agree operating entities, as used in this
 6 note, means entities within the Trump Organization umbrella;
 7 correct?
 8 A And then some. Yes.
 9 Q It's all operating entities that are within the Trump
 10 Organization?
 11 A It's the entities that are in the Trump Organization,
 12 and entities where Mr. Trump is a partner in those entities.
 13 Q Is it intended to include entities over which
 14 Mr. Trump has no control?
 15 A Yes.
 16 Q And what about this language do you think would
 17 explain to a user that operating entities includes cash,
 18 marketable securities, and hedge funds within entities that
 19 Mr. Trump doesn't control?
 20 A I'm sorry. Can you say that again?
 21 Q Sure. What is it in this language that is highlighted
 22 on this screen that you believe discloses to a user of this
 23 financial statement that this asset category includes cash,
 24 marketable securities, and hedge funds within entities that
 25 Mr. Trump does not control?

J. McConney - Direct by Mr. Amer Page 615

1 A Well, the word operating entities is there. I don't
 2 know how individuals would interpret operating entities, but it
 3 doesn't specifically state entities that he does not control.
 4 Q Well, it doesn't say operating entities that he has a
 5 minority interest in, either; does it?
 6 A It doesn't state, only entities that he owns
 7 100 percent, or that he controls.
 8 Q So, it's your testimony that this asset category
 9 includes cash that Mr. Trump does not have control over. Is
 10 that your testimony?
 11 A Yes.
 12 Q And that was your intent in valuing this asset, that
 13 you were going to include cash which Mr. Trump could not control
 14 and dispense? Is that your testimony?
 15 A Yes.
 16 Q And so, this is not, in your view, an asset category
 17 that represents Mr. Trump's liquidity. Is that what you are
 18 telling us?
 19 A The majority of it is his liquidity.
 20 Q I didn't say majority.
 21 A Mm-hmm.
 22 Q I'm asking you, are you telling us that this asset
 23 category, in your view, is intended to represent cash,
 24 marketable securities, and hedge funds, which do not reflect
 25 Mr. Trump's liquidity?

J. McConney - Direct by Mr. Amer Page 616

1 A I'm not sure that question makes any sense to me.
 2 Q Okay. You have an accounting background; right?
 3 A Yes.
 4 Q You understand the concept of liquidity; correct?
 5 A Yes.
 6 Q And in order for this category to reflect Mr. Trump's
 7 liquidity, would you agree that he would need to have control
 8 over all of the assets that are in this category?
 9 A Yes.
 10 Q With respect to assets that he doesn't have control
 11 over, those are not his liquid assets; right?
 12 A That's not the way we looked at it, but yes.
 13 Q Okay. And you're telling us that it was your intent
 14 to include, within this category, assets that do not reflect
 15 Mr. Trump's liquidity, because you have just told us you are
 16 including assets held by entities in which he owns a minority
 17 stake. Is that correct?
 18 A Yes. The same way we have included accounts payable
 19 in the same entities.
 20 Q Why don't we pull up PX-2587, the native.
 21 (Whereupon, a document was displayed, and handed
 22 to the witness.)
 23 Q Focusing on -- well, let me first ask you about this
 24 document. This is backup that you provided to Mazars for this
 25 asset category for 2016; right?

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1 A Can you just scroll down to the bottom, with the
2 total? Because I believe the answer is yes, but --
3 Q Okay.
4 MR. AMER: Scroll down to the total, for the
5 witness.
6 A Just up a little bit. Up to the total of the cash.
7 Q We'll get there. Hang on a second.
8 A Okay.
9 Okay. I'm sorry. Could you ask the question again?
10 Q Yes. This is the back up for the cash, marketable
11 securities category we were just looking at for the 2016
12 statement; correct?
13 A It's the spreadsheet that summarized the backup. Yes.
14 Q That's what you sent to Mazars, along with your Jeff
15 Supporting Data spreadsheet; correct?
16 A Correct.
17 Q You would consider this spreadsheet to be a business
18 record; wouldn't you?
19 A Yes.
20 Q And if we focus on rows 11 through 16, you will see
21 that each of those entities, 11, and then 16 through 19, all
22 have, in parentheses, 30 percent of cash on B/S -- which I
23 presume is balance sheet?
24 A That's correct.
25 Q Okay. And am I correct that each of these entities

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1 Q He owns a minority percentage, correct?
2 A Yes.
3 Q He has no ability to liquidate the amounts that are
4 in-- that are ascribed to those entities, correct?
5 A That's correct.
6 Q If we scroll down to the -- by the way, you've
7 indicated here in the spreadsheet it's 30 percent. So,
8 actually, if you looked at the balance sheet of the entity,
9 you'd see the 100 percent number and you've taken 30 percent
10 of it and put it on this balance sheet?
11 A Correct. The same way we reflected the payables.
12 Q Is it okay if we refer to this shorthand as Vornado
13 cash?
14 A Fine with me.
15 Q Just so we're clear, Vornado cash is not cash that
16 Mr. Trump has access to on his own, correct?
17 A Correct.
18 Q He cannot withdraw the funds from the accounts where
19 they sit, correct?
20 A Correct.
21 Q Let's come back to -- let's go to PX-3041.
22 MR. AMER: PX-3041 is the defendant's response
23 to the 202 statement and I'm going to ask if we can go to
24 page 142 at paragraph 403 and just blow it up. If we
25 could just do the chart and the response below.

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1 that have the 30 percent parenthetical are entities that are
2 part of the Vornado partnership?
3 A They are two partnerships, so yes.
4 Q Okay. Vornado Partnerships, plural; correct?
5 A Yes.
6 Q And that's a partnership group in which Mr. Trump has
7 a 30 percent minority interest; correct?
8 A Well, I don't know if it's a group. It's, Vornado
9 owns 70 percent; Mr. Trump owns 30 percent.
10 (Continued on the next page.)
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J. McConney - Direct/Amer Page 620

1 Q This is a response that was filed by you in this
2 case, as a defendant, Mr. McConney, and you stated that it's
3 undisputed that the values listed are those reflected in the
4 Statement of Financial Condition and the amounts attributable
5 to the Vornado operating entities are as stated.
6 MR. AMER: I don't know if your preference is for
7 something like this, your Honor, that we admit it into
8 evidence or because it's on NYSCEF that's sufficient?
9 THE COURT: Let's consider this -- deem this
10 admitted into evidence, even though it's already on
11 NYSCEF, which is a whole different thing.
12 Q So, Mr. McConney, it is agreed then that for each
13 year from 2013 to 2021, the Vornado cash is as stated in the
14 second column. The statement year in the first column. The
15 second column has the Vornado cash.
16 The third column has the total cash reported on
17 the statement, and, the fourth column is just math, taking the
18 percentage of that column two represent as to column three.
19 So, that is stipulated fact.
20 Let's go and let's just confirm that your answer
21 is the same with respect to all these years, that the Vornado
22 cash, that has been agreed to, is cash that Mr. Trump has no
23 control over, correct?
24 A Correct.
25 Q Let's go back to PX-2587, the native. Am I correct

J. McConney - Direct/Amer Page 621

1 that this spreadsheet then breaks out where these funds are
 2 located in different accounts, correct?
 3 A I'm sorry. Can you say that again?
 4 Q Yes. The columns, for example, column D says Cash
 5 Allied Irish Bank. So, that is an account that exists, right?
 6 A Right. That's the bank or brokerage company or
 7 whatever that holds that cash.
 8 Q Okay. And if we could-- and, by the way, the cash,
 9 Vornado cash is -- sits in a bank account controlled by the
 10 Vornado Partnerships, right?
 11 A Correct.
 12 Q Can we collapse columns D through N? Mr. McConney,
 13 you list the Vornado cash in a Capital One account that you
 14 list cash for other entities that are controlled by Mr. Trump;
 15 isn't that true?
 16 A Yes.
 17 Q So, you've got 40 Wall Street, LLC is in the Capital
 18 One account. That's clearly something Mr. Trump controls,
 19 right?
 20 A Yes.
 21 Q Isn't it the case then that this document represents
 22 that the Vornado cash is in the same Capital One account that
 23 Mr. Trump's cash resides for those entities that he does
 24 control?
 25 A It doesn't represent that it's in the same bank

J. McConney - Direct/Amer Page 622

1 account. It represent it's in the same bank.
 2 Q Do you know if the Vornado cash is all in a Capital
 3 One account?
 4 A Based on this, I would have to make that assumption,
 5 but, without looking at my backup, I can't make that
 6 statement here.
 7 Q So, you have multiple Capital One accounts here. You
 8 have one called cash in Column O. You have one called cash in
 9 Column P. You have one called OS and E in Column Q.
 10 Do you see that?
 11 A Yes, sir.
 12 Q Isn't it correct, Mr. McConney, that anyone looking
 13 at this spreadsheet would conclude that all of the cash in
 14 Column O sits in the same Capital One account?
 15 A People can make assumptions in any way they want to.
 16 The users of the spreadsheet know that it's not one bank
 17 account.
 18 Q It was your intent, when you created this
 19 spreadsheet, to put all of these cash amounts in Column O;
 20 and, that means that accounts that Mr. Trump controls and the
 21 accounts that hold the Vornado cash are in the same column
 22 under this same Capital One account, and, you intended that to
 23 be the case; isn't that right?
 24 A I did not intend it to be one account. This
 25 spreadsheet is not through Column V. If you keep going out,

J. McConney - Direct/Amer Page 623

1 it's a number of columns. At some point in time, we had to
 2 realize we couldn't keep adding columns for every single bank
 3 or brokerage company. Not account but bank or brokerage
 4 company that was involved.
 5 If Hudson Waterfront or Vornado had their cash
 6 at Capitol One, it means that's the bank, not an account, but
 7 the bank that the money is in.
 8 Q Mr. -
 9 THE COURT: One second. We need to have a quick
 10 technical break of some sort.
 11 (Brief pause.)
 12 THE COURT: Continue.
 13 Q Mr. McConney, if you wanted to list the five Vornado
 14 cash entities in a separate section, you'd only have to add
 15 one more column to the spreadsheet; isn't that right?
 16 A That's correct.
 17 Q This is the spreadsheet that you sent to Donald
 18 Bender, correct?
 19 A Yes.
 20 Q So, when he looks at this spreadsheet, he sees all of
 21 this cash in all of these entities, including ones that
 22 Mr. Trump controls, and the Vornado cash, in a single column
 23 labeled Cash Capitol One, correct?
 24 A Can you start that again, because I think the
 25 beginning of the question, I don't agree with.

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1 MR. AMER: Can you read back?
 2 THE COURT: Read back, please.
 3 (Read back.)
 4 A Yes, he sees a listing of numbers in a column that
 5 says Cash Capital One. He knows it's not in one bank
 6 account.
 7 MR. AMER: I'll move to strike that last part of
 8 the answer.
 9 THE COURT: He said it many times. I'm not
 10 sure -- because it's not responsive to the question.
 11 MR. AMER: And because he's testifying about
 12 what Mr. Bender knows without having any foundation for
 13 that. It's hearsay. He can't get into Mr. Bender's
 14 mind.
 15 MR. ROBERT: All of the questions were elicited
 16 to what Mr. Bender understood from the spreadsheet Mr.
 17 McConney sent. So, to me, it's a fair answer to a fair
 18 question.
 19 THE COURT: Simple point is he doesn't know what
 20 Mr. Bender is going to think. So, I'll strike the last
 21 sentence or clause.
 22 Q It wasn't a mistake, on your part, to include the
 23 Vornado cash in the same Column O as the other entity cash;
 24 that wasn't your intent, correct?
 25 A No. My premise is based on looking at this now is

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1 that's where Vornado has their cash.
 2 Q Let me go back to my question. My question was
 3 simply that it wasn't a mistake on your part to put the
 4 Vornado cash in Column O; it was your intent do so, correct?
 5 A The preparer of this statement, I'm assuming, knew
 6 where the funds were that Vornado had. So, the intent was to
 7 put it in the column with the bank where the funds were.
 8 Based on the way this schedule is supposed to
 9 be prepared, we had put the Vornado cash in the column where
 10 the cash was maintained at Capital One.
 11 Q I'm just going to try, again, to see if I can get a
 12 responsive answer. It's very simple. Including the Vornado
 13 cash in Column O was not a mistake, it was something you
 14 intend to do?
 15 MR. KISE: Objection. This has been asked and
 16 answered about a dozen times. He's given the same
 17 answer. It wasn't his intent, and, Mr. Amer wants to
 18 testify, but, the witness has already answered and said
 19 exactly why he put it where he put it. That's what he
 20 said multiple times.
 21 THE COURT: Overruled. He hasn't answered the
 22 question yet. It's a very simple question. I can't
 23 state it any better than Mr. Amer did.
 24 Were those numbers in Column O the way you
 25 wanted them to be or were they a mistake?

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1 THE WITNESS: Without looking at the backup,
 2 your Honor, knowing where Vornado has their cash, if
 3 their cash was in a different bank, it was a mistake. If
 4 it was in Capital One, we put it in the column where all
 5 the other entities had their cash at Capital One.
 6 Without the backup and looking at the actual
 7 source document, I can't answer the question.
 8 THE COURT: Mr. Amer, what do you want to do?
 9 MR. AMER: One more followup.
 10 Q So, as I understand your testimony, you're saying as
 11 long as the Vornado cash was in an account somewhere within
 12 Capital One Bank, even though it was not a Capital One Bank
 13 that Mr. Trump controlled, then this was not a mistake? This
 14 was something you intended to do?
 15 A That's correct.
 16 Q Let's switch now to a different asset. Let's talk
 17 about Mr. Trump's triplex.
 18 MR. KISE: Apartment.
 19 Q I'd like to discuss your valuation of that property.
 20 So, let's pull up the 2014 statement, PX-730, which is in
 21 evidence, and, let me first focus you on page six where it
 22 says: "Basis of presentation."
 23 This would have been a statement that you
 24 reviewed, correct?
 25 A Yes.

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1 Q It says: "The accompanying Statement of Financial
 2 Condition consists of assets and liabilities of Donald J.
 3 Trump. Assets are stated at their estimated current values.
 4 You understood, during the entire time that you were preparing
 5 the valuations from 2011 through 2016, that the valuations you
 6 were working on were intended to state the assets at their
 7 estimated current values, correct?
 8 A Correct.
 9 Q Let's go back to Plaintiff's 3041. The defendant's
 10 response to Plaintiff's 202.8G statement. Let's look at
 11 paragraph 31.
 12 Again, this is something that you filed in this
 13 case, and, you do not dispute that GAAP defines estimated
 14 current value as "the amount at which the item could be
 15 exchanged between a buyer and seller, each of whom is well
 16 informed and willing and neither of whom is compelled to buy
 17 or sell."
 18 You understood, when you were working on the
 19 valuations, that the values had to be estimated current values
 20 and that estimated current values were this definition on the
 21 screen, correct?
 22 MR. KISE: Objection. No foundation.
 23 THE COURT: Overruled.
 24 A When we were preparing the Statement of Financial
 25 Condition, estimated current value, to me, has a wide range

J. McConney - Direct/Amer Page 628

1 of interpretation. There are a number of definitions. We
 2 may not have listed them all here, but, this is one of them,
 3 I believe.
 4 THE COURT: Well, I'm sorry to interrupt. You
 5 said it's undisputed. You're not disputing the statement
 6 that's highlighted in yellow. So, what are we talking
 7 about?
 8 MR. KISE: He didn't say that. That's a
 9 response.
 10 MR. AMER: He filed --
 11 THE COURT: He's a defendant.
 12 MR. KISE: But, your Honor. So, this is one
 13 piece of the puzzle. What's undisputed is that was the
 14 definition under that one section, but, there's 20 more
 15 pieces to the puzzle after that, and, that's in our
 16 statement of facts.
 17 They just want to ignore the rest of it. So,
 18 yes, GAAP has those words in it, but, GAAP has another
 19 paragraph that tells you how you compute estimated value.
 20 MR. AMER: I'm concerned when we argue about
 21 objections that we end up with testimony.
 22 MR. KISE: It's not fair --
 23 MR. AMER: Excuse me. Let me finish. We have a
 24 witness on the stand, and, you're making a very lengthy
 25 speaking objection in the presence of the witness, and, I

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1 think that's objectionable. So, if we can just have an
 2 objection and get the Court's ruling without a whole
 3 explanation that educates the witness that is here in the
 4 room on the stand --
 5 MR. KISE: I'm not trying to educate the
 6 witness. You asked me a question, your Honor, and I'm
 7 trying to explain why it says what we said. That's what
 8 you asked. If you want to do side-bar --
 9 THE COURT: I didn't ask a question, I remember.
 10 MR. KISE: You said it's undisputed. What is
 11 the issue and I'm explaining what the issue is.
 12 THE COURT: I didn't ask you. I was asking the
 13 witness. In any event, you can cross-examine.
 14 MR. KISE: Correct.
 15 THE COURT: I don't think there was a foundation
 16 need or any explanation needed. You want to ask it
 17 again?
 18 MR. AMER: Sure.
 19 Q Let me back up a bit. You understand that the
 20 Statement of Financial Condition had to be GAAP compliant
 21 unless there was a specific departure from GAAP indicated,
 22 correct?
 23 A I'm not a GAAP expert.
 24 Q Not my question, Mr. McConney. I'm not asking you
 25 about GAAP regulations. I'm asking you a broader question,

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1 amount at which the item could be exchanged between a buyer
 2 and seller, each of whom is well informed and willing and
 3 neither of whom is compelled to buy or sell?
 4 A Yes.
 5 Q Okay. Let's look at the 2012 Jeff Supporting Data
 6 and that's in evidence. We'll put it up on screen, the
 7 native.
 8 Do you recognize this as your Jeff Supporting
 9 Data that was provided to Mazars?
 10 A Looks like it, yes.
 11 Q We've had testimony from Mr. Bender that this was the
 12 control version because it has PBC, provide by client, and it
 13 has the various tick marks numbers, the blue numbers. Does
 14 that sound right to you?
 15 A That sounds right, yes.
 16 Q Let's go to row 833. This is the section that
 17 discusses the triplex, correct?
 18 A Line 833 and line 834, yes.
 19 Q Okay. There's a value in G and there's a value in H
 20 and it covers -- it gives you two years, the current year and
 21 the prior year, correct?
 22 A Can you just scroll up so I can see which is the
 23 current year and which is the prior year?
 24 Q Sure.
 25 A It should be at the top of these -- used to be a

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1 which is, you understood that the Statement of Financial
 2 Condition had to be GAAP compliant, whatever that ment, they
 3 had to be GAAP compliant unless there was a departure from
 4 GAAP specifically noted; is that correct?
 5 A Yes.
 6 Q You agreed, in this filing, that GAAP defines
 7 estimated current value exactly as quoted here.
 8 MR. AMER: That's a stipulated fact, your Honor,
 9 which I ask the Court to take judicial notice of.
 10 THE COURT: Well, I'd rather he said it; but, we
 11 can get to judicial notice, if necessary. I think
 12 sometimes the questions are a little longer than they
 13 need to be.
 14 Did you understand that, pursuant to GAAP, the
 15 definition of estimated current value is as indicated up
 16 there?
 17 THE WITNESS: That's part of the definition.
 18 That are many ways to come up with estimated current
 19 value. If we didn't list them, I'm sorry.
 20 Q Let me see if I can parse this. You say many ways to
 21 come up with estimated current value and I'm asking you what
 22 estimated current value is, however you come up with it, okay.
 23 So, there's methodology and then there's the
 24 result. Did you understand that the result of whatever
 25 methodology you used had to be, at the end of the day, the

Page 632

1 page.
 2 Q So, G is 2011. H is 2012. Correct?
 3 A Yes, sir.
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 5 (Continued on following page..)
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J. McConney - Direct by Mr. Amer Page 633

1 Q So, if we go back, you will see that for 2011 it's
 2 \$80 million, and 2012, it increases by \$100 million to 180;
 3 correct?
 4 A Yes, sir.
 5 Q And let's -- and you say, underneath triplex, "Per
 6 email from Kevin Sneddon," and that's the explanation for the
 7 jump of 100 million to 180 in 2012; correct?
 8 A Yes.
 9 Q And you provided backup for this; correct?
 10 A Yes.
 11 Q So why don't we look at Plaintiff's Exhibit 1052.
 12 (Whereupon, a document was displayed, and handed
 13 to the witness.)
 14 Q Mr. McConney, these are a series of emails between you
 15 and individuals employed at the Trump Realty -- Trump
 16 International Realty; is that right?
 17 MR. AMER: Your Honor, I offer this into
 18 evidence.
 19 MR. ROBERT: Statute of limitations objection.
 20 THE COURT: It's a continuing objection. I don't
 21 really care, but it's a waste.
 22 MR. ROBERT: We still feel that we need to
 23 preserve the record, your Honor.
 24 THE COURT: Despite what the Appellate Division
 25 said? I mean, Court of Appeals? Because --

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1 MR. ROBERT: My understanding of that decision is
 2 that had to do with testimony, and the trial judge had to
 3 be given an opportunity to correct it at the trial level,
 4 to be available, and that's why we bring it up. I may be
 5 reading it incorrectly, but from my reading, it was
 6 testimony.
 7 THE COURT: I don't want to tell you what to do.
 8 So, you can object every time.
 9 Anyway, granted and it's in evidence, over
 10 objection.
 11 (Whereupon, Plaintiff's Exhibit 1052 was received
 12 in evidence.)
 13 Q Mr. McConney, if you can turn to page two of the
 14 exhibit, I want to focus you on your email to Kathy Kaye dated
 15 September 19th, 2012. Do you see that?
 16 A Yes.
 17 Q Am I correct that this is your effort to reach out to
 18 Ms. Kaye to get information for you to value the triplex?
 19 A Yes.
 20 Q And Ms. Kaye is one of the top people at Trump
 21 International Realty; correct?
 22 A Yes.
 23 Q And is it okay if I refer to that entity as TIR?
 24 A Yes. That's the way I do it.
 25 Q Okay. And TIR is an in-house real estate broker;

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1 correct?
 2 A Yes.
 3 Q And you say in your email to Ms. Kaye, "Justin told me
 4 about the apartment he is going to video on the west side. I'm
 5 trying to value DJT's triplex," and then ask you a series of
 6 questions. What building is the unit in; what's the asking
 7 price for the unit; how many square feet is the unit; correct?
 8 A Yes.
 9 Q You are looking for a comp for Mr. Trump's triplex;
 10 correct?
 11 A Correct.
 12 Q Is Justin somebody who works at TIR?
 13 A Justin, I believe, worked for the Trump Organization.
 14 I don't think he worked for TIR.
 15 Q And you understood he was going to video the apartment
 16 to put it up for a listing; correct?
 17 A Yes.
 18 Q And then the top email, Ms. Kaye emails Mr. Sneddon
 19 and copies you and says, "Kevin, please provide Jeff with the
 20 prince's details. I'm not near a computer. Thanks;" right?
 21 A Yes.
 22 Q And Mr. Sneddon is another top person at TIR?
 23 A Yes.
 24 Q Just so we are not confused by the prince's details,
 25 did you understand that that apartment that was going to be

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1 listed was owned by a Saudi prince?
 2 A I don't know about Saudi, but I think, I have some
 3 remembrance, that it was owned by a prince, or some royalty of
 4 some sort.
 5 Q So, it's not a typo. She's really asking for the
 6 prince's details?
 7 A That's what I remember.
 8 Q Okay. Then Mr. Sneddon responds and he says, and
 9 you're copied, "I already valued DJT's triplex for Alan."
 10 You understood that to be Allen Weisselberg; right?
 11 A Yes.
 12 Q And he goes on to say, "Our 75 million-dollar triplex
 13 lifting is in 240 RSB."
 14 Is that 240 Riverside Boulevard?
 15 A Yes.
 16 Q And that's a Trump-developed property?
 17 A At the time, yes.
 18 Q Okay. And he says, "Total square footage is 14 and a
 19 half thousand, including main residence, guest residence, and
 20 staff residence. Ask is 5000-plus per foot."
 21 Did you understand that to be per square foot?
 22 A Yes. \$5,000 per square foot.
 23 Q So, he provided you with some of the information that
 24 you asked for; correct?
 25 A Yes.

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1 Q And then you ask him to send you the email he sent to
 2 Mr. Weisselberg; right?
 3 A Yes.
 4 Q And then he responds, "At 30,000 square feet, DJT's
 5 triplex is worth 4,000 to 6,000 per foot, or 120 million to
 6 180 million;" right?
 7 A Yes.
 8 Q Okay. And this is a point in time where you're still
 9 using 30,000 square feet for the valuation of Mr. Trump's
 10 triplex; right?
 11 A I don't know if it's the point in time, or that's when
 12 we started. I don't remember exactly when we started using
 13 30,000 square feet.
 14 Q Okay. And this is the information that you then use
 15 to put a value on the apartment for 2012 of \$180 million?
 16 A Right.
 17 Q It's fair to say you took the upper end of the range
 18 that Mr. Sneddon provided; correct?
 19 A Correct.
 20 Q Now, there are two components to the formula that you
 21 used to determine the value. One was the square footage.
 22 There's been a lot read and argued about that, but the other
 23 component is the price per square foot; correct?
 24 A Yes.
 25 Q Okay. And so here, the price per square foot that you

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1 used for the 2012 valuation was 6,000 per square foot; is that
 2 right?
 3 A Yes.
 4 Q And you base that off of the information you received
 5 about the listing at 240 Riverside Boulevard; right?
 6 A Sorry. Can you say that again?
 7 Q Sure. You're basing that off of the listing for the
 8 apartment, the comp that was at 240 Riverside Boulevard, that
 9 you were communicating with Ms. Kaye and Mr. Sneddon about;
 10 right?
 11 A Well, I'm basing it on the email from Kevin, the
 12 30,000 square feet, and the 4,000 to 6,000 per square foot. I
 13 think the question about the apartment for sale was the starting
 14 point, and this is, basically, where we ended up.
 15 Q Well, Ms. Kaye's email said that the listing was going
 16 to be at 5,000 per square foot, and you picked -- and
 17 Mr. Sneddon gave you a range of 4,000 to 6,000, so isn't it
 18 correct that that range was based on the listing price for the
 19 comp at 240 Riverside Boulevard?
 20 A I don't know what Kevin's thought process was. It
 21 could be based on this, if you can draw that conclusion, but I
 22 don't know if that's what Kevin was basing it on.
 23 Q Well, it's the mid point of the range that he gave
 24 you; right?
 25 A Yeah. Mathematically, yes.

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1 Q And your inquiry was about that apartment, and his
 2 response was in response to your inquiry; right?
 3 A Yes.
 4 Q Okay. And you probably talked to Mr. Weisselberg
 5 about this valuation; correct?
 6 A We may have, at some point in time. I don't remember
 7 a specific conversation.
 8 Q Well, do you recall that Mr. Weisselberg felt that
 9 going with the high end of the range at \$180 million was
 10 appropriate, and represented the value of Mr. Trump's triplex,
 11 based on what Mr. Sneddon told you?
 12 A Can you say that again? I was kind of --
 13 Q Sure. Is it correct that you reviewed this with
 14 Mr. Weisselberg, and he felt going with the high end of the
 15 range \$180 million, represented the value of Mr. Trump's
 16 triplex, based on what Mr. Sneddon had provided to you?
 17 A That would be my assumption. Yes.
 18 Q Well, I'm asking you for your best recollection. Is
 19 that fair?
 20 A Yes.
 21 Q And you would agree that for purposes of valuing a
 22 property for the Statement of Financial Condition in order to
 23 get to an estimated current value, that it is better to use an
 24 actual sale price, rather than an asking price? Correct?
 25 MR. KISE: Objection. Foundation.

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1 THE COURT: Combination. Foundation.
 2 MR. KISE: Foundation. He already testified he
 3 is not a G.A.A.P. expert. He has his understanding of what
 4 estimated current value is. I'll stop there.
 5 THE COURT: Overruled.
 6 A So, can you ask the question again, please?
 7 MR. AMER: Your Honor, can I get a read back.
 8 THE COURT: That's the way to do it.
 9 Read back, please.
 10 (Whereupon, the requested portion of the
 11 proceedings was read back by the court reporter.)
 12 MR. ROBERT: Same objection.
 13 THE COURT: Same ruling. Overruled.
 14 A I don't think that's -- I think -- there are many ways
 15 to value assets in a Statement of Financial Condition.
 16 Q Let me just go right to your testimony, from the
 17 interview. I'm going to put up page 307, line 13 to 307 -- to
 18 308?
 19 THE COURT: When you say interview, do you mean
 20 deposition?
 21 MR. AMER: This is his interview under oath
 22 during our investigation. So, we don't call it a
 23 deposition. It's an investigatory interview, your Honor.
 24 THE COURT: Thank you.
 25 Q "Question: Why use an asking price, and not an

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1 actual sale?

2 "Answer: We asked ourselves the same thing a few

3 years ago, and we stopped using asking prices, and did sale

4 prices. I don't know why we used asking prices at that

5 time, but we realized it was probably better to get an

6 actual selling price.

7 "And why is that?

8 "Answer: Because you can ask anything you want

9 to. Like, we can ask for 291 million for houses on Seven

10 Springs. It doesn't mean you want to pay that. But,

11 that's what our asking price, if you want to buy it. So,

12 based on that theory, we thought it was a good determining

13 factor at the time, and when we thought about it some more,

14 we figured out, it's better to use selling prices."

15 That was your sworn testimony; correct?

16 A Yes.

17 Q And isn't it correct that when you are valuing a

18 property based on comps using actual sale prices as opposed to

19 asking prices, it's not just the better practice, it's the right

20 way to do it?

21 MR. ROBERT: Objection.

22 THE COURT: Grounds?

23 MR. KISE: Again, foundation. It's the same

24 question, the same problem. It's the same disconnect. I'm

25 loathe, because they are going to throw their pens in the

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1 MR. AMER: I would like to introduce Exhibit

2 3037.

3 (Whereupon, a document was displayed, and handed

4 to the witness.)

5 MR. AMER: Your Honor, I move to admit this

6 exhibit for grounds of notice, that it was public record

7 that the sale occurred.

8 THE COURT: But do we know that they knew about

9 it? And are you arguing constructive notice?

10 MR. AMER: We are arguing that it was something

11 that was in the public domain, that he could have learned

12 about from this article.

13 (Whereupon, there was a pause in the

14 proceedings.)

15 MR. ROBERT: Your Honor?

16 THE COURT: Go ahead. Sorry.

17 MR. ROBERT: It's a 2018 article. We are talking

18 about 2012 valuation. Its hearsay, and we are not

19 accepting what the New York Times says is accurate.

20 THE COURT: I believe that some or all of the

21 defendants had actual notice of this. They asked about it,

22 and were told.

23 But, Mr. Amer, can you resolve this issue?

24 MR. AMER: The question for -- so, the witness

25 thinks it's appropriate to use asking prices. The fact

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1 air, I'm loathe to explain it, but it's the same principle.

2 He has already said there's multiple ways to get there.

3 Mr. Amer is now asking if that's the right way. This is

4 the whole point of the case, there is no one right way.

5 So, he is mischaracterizing the evidence in the record.

6 I'll put it that way.

7 And, this witness isn't a G.A.A.P. expert, so he

8 can't testify to what's the absolutely right way. He has

9 already said his view, multiple times. There are many

10 ways.

11 THE COURT: I think any high school student knows

12 the right way. I'm overruling the objection.

13 Q I'll ask the question again. You would agree that

14 when you are valuing a property based on comps, using actual

15 sale prices, as opposed to asking prices, is not just the better

16 practice, but it's the right way to do it; isn't it?

17 MR. KISE: Same objection.

18 A No.

19 Q You think it's okay to use asking prices when you are

20 looking for comps to value a property at it's estimated current

21 value? Is that your testimony?

22 A Yes, sir.

23 Q Do you know whether this comp at 240 Riverside

24 Boulevard, the prince's apartment, sold? And for how much?

25 A I do not.

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1 that this apartment sold --

2 THE COURT: I think he said they are just

3 different ways. He didn't say asking was the only way, or

4 the correct way. He said it was one way, I think.

5 MS. HABBA: Thank you.

6 MR. AMER: He said it was an acceptable way.

7 THE COURT: Acceptable. That's not the way.

8 That's an acceptable way.

9 MR. AMER: I meant to convey something different.

10 I'm sorry.

11 He is taking that position now, on the stand, and

12 the fact that it was in the public domain, that this

13 apartment sold for \$30 million --

14 THE COURT: Public domain doesn't do it. I think

15 there was a lot more than public domain.

16 Q Do you know, Mr. McConney, whether your colleagues in

17 TIR were aware of the sale of this apartment when it happened,

18 many years later, at a much lower price than the asking price?

19 A I have no idea what they knew.

20 MR. AMER: We'll come back to this, your Honor.

21 THE COURT: Fine.

22 Q Let's look at the 2013 value, and let's put up the

23 2014 JSD, because that will give us both the 2013 value and the

24 2014 value; correct?

25 A Yes, sir.

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1 Q Okay.

2 MR. AMER: So, that is Exhibit 719, and it's a

3 native file.

4 (Whereupon, a document was displayed, and handed

5 to the witness.)

6 Q If we go to rows 843 and 844 -- and we actually don't

7 have to find the date, because it's the same value for both

8 dates; correct?

9 A Yes.

10 (Continued on the next page.)

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J. McConney - Direct/Amer Page 647

1 top: "Doing the list now. As far as DJT's." Did you

2 understand that to mean Mr. Trump's triplex?

3 A Yes, sir.

4 Q "One unit just sold for over 5,000 a foot. However,

5 another just came on the market at over 11,000 per square

6 foot." You see that?

7 A Yes, sir.

8 Q Then she says: "Which is not necessarily indicative

9 of the market," right?

10 A Yes, sir.

11 Q You understood that what she was saying was the

12 asking price of over 11,000 per square foot didn't necessarily

13 indicate what the market would actually pay for that

14 apartment, correct?

15 A I took the whole, the two sentences before. "One

16 just sold for 5,000 a foot. One just came on the market for

17 11,000 a square foot. It's not necessarily indicative of the

18 market." I took both of those sentences.

19 Q In any event, she was telling you the information she

20 was sharing with you was not necessarily indicative of the

21 market, right?

22 A Yes.

23 Q Then she says: "Based on the activity in the luxury

24 market and given how unique the apartment is, as well as tied

25 to celebrity, I don't see how one would list below 8,000 a

J. McConney - Direct/Amer Page 646

1 Q Two hundred million in both years, and in 2013, it's

2 based on Kathy Kaye.

3 Is that an e-mail from her, August 2013?

4 A I'd have to look at the backup but, yes, it's an

5 e-mail from her.

6 MR. AMER: Okay. Let's go ahead and mark 714.

7 THE COURT: Ten-minute warning, everybody.

8 Q This is an e-mail exchange you had with Ms. Kaye,

9 correct?

10 A Yes, sir.

11 MR. AMER: I move this into evidence, your

12 Honor.

13 MR. ROBERT: Same objection. Statute of

14 Limitations.

15 THE COURT: Same ruling. Granted. It's in

16 evidence.

17 Q And the top e-mail from Ms. Kaye to you is the e-mail

18 that you're referencing in the spreadsheet for your

19 \$200 million value; is that right?

20 A I believe August 19, 2013 was the date on the

21 spreadsheet. Can I look at the spreadsheet before I say yes

22 or no?

23 Q Sure. Going back to 719?

24 A August, yes. That is the e-mail we based it on.

25 Q So, let's go back to the e-mail. She says at the

J. McConney - Direct/Amer Page 648

1 square foot at this point which brings us to @ 240 million."

2 Then she says: "200 million is a safe estimate," correct?

3 A Yes.

4 Q So, you go with what she claims is a safe estimate?

5 A Yes.

6 Q We can agree that the item that she says is 11,000

7 per square foot is just a listing price and not an actual sale

8 price, correct?

9 A I believe that to be correct, yes.

10 Q That's what you understood at the time, right?

11 A Yes.

12 Q She's obviously using the 30,000 square foot figure

13 because she's saying 8,000 per square foot, right?

14 A Yes.

15 Q Do you know if she is the person at TIR who decided

16 to list the Prince's triplex at \$75 million?

17 A I have no idea.

18 Q Okay. I'm correct that this one e-mail from Ms.

19 Kaye, that we've just reviewed, is the sole basis for your

20 valuing the apartment in 2013 at 200 million; is that right?

21 A That's correct.

22 Q If we look at the spreadsheet again for the 2014

23 value, you indicate there that it's based on comps at 157. Do

24 you see that?

25 A Yes.

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1 Q That's referring to a property on West 57th Street
 2 which is a very, very tall apartment building, correct?
 3 A Yes.
 4 MR. AMER: Let's go ahead and mark Exhibit 3044.
 5 Q Mr. McConney, is this your backup for getting to the
 6 \$200 million value for 2014 based on comps at 157?
 7 A I believe so, yes.
 8 MR. AMER: Your Honor, I ask that this be
 9 admitted into evidence.
 10 MR. ROBERT: Statute of Limitations objection.
 11 THE COURT: Overruled. Granted. In evidence.
 12 Q What you're doing here, Mr. McConney, is you're
 13 taking all of the units on floors 50 and above that sold in
 14 2014 at the building 157 and you're calculating, based on
 15 those sales, a price per square foot of 6,733; is that right?
 16 A Yes.
 17 Q Then you take that number and you multiply it by
 18 30,000 to get to the value of 201,990 which you round, for
 19 purposes of the statement value, to 200 million; is that
 20 right?
 21 A Yes.
 22 Q The second and third pages are printed from
 23 StreetEasy.com listing the sales; is that right?
 24 A I believe that's correct, yes.
 25 Q Did you consider StreetEasy.com to be a reliable

J. McConney - Direct/Amer Page 651

1 Q Mr. McConney, you'll see that the StreetEasy.com site
 2 that you said was reliable, indicates that this building was
 3 built in 2013, correct?
 4 A Yes.
 5 MR. AMER: Let's go ahead and mark as
 6 Exhibit 3036 for identification a StreetEasy.com listing
 7 for Trump Tower, the building in which Mr. Trump's
 8 triplex is located.
 9 Q You'll see, that according to StreetEasy.com, the
 10 site you testified was reliable, Trump Tower was built in
 11 1983. Do you see that?
 12 A Yes.
 13 Q Do you have any reason to disagree with either of
 14 those dates?
 15 A No.
 16 Q So, Trump Tower is 30 years older than 157, correct?
 17 A Yes.
 18 Q If you look at the second page of the exhibit, let's
 19 look at 3035, page two, you'll see there's a section that
 20 says: "Building facts."
 21 You see that?
 22 A Yes.
 23 Q It says under "sales listings: 245 previous sales at
 24 5,369 per square foot average." Do you see that?
 25 A Yes.

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1 source for real estate apartment sales information?
 2 A Yes.
 3 Q You relied on it, correct?
 4 A Yes.
 5 MR. AMER: I'm going to mark as Exhibit 3035.
 6 This, your Honor, is something we printed outlast week
 7 from the StreetEasy.com website for building 157 and I'd
 8 ask that this be admitted into evidence based on the
 9 witness's testimony that he relied on this site and
 10 considered it to be reliable.
 11 MR. ROBERT: Objection, your Honor. The witness
 12 relied on what's already in evidence. This is just
 13 hearsay. This is something he printed out on October 1,
 14 2023. He didn't rely on this document about 157.
 15 MR. AMER: His testimony was that the site was
 16 reliable, not that the specific printout that he was
 17 looking at was the only thing that was reliable.
 18 MR. ROBERT: In the year that you're questioning
 19 him about.
 20 THE COURT: How about if we just mark it as an
 21 exhibit?
 22 MR. ROBERT: For identification?
 23 THE COURT: Yes, for identification.
 24 MR. ROBERT: Thank you, sir.
 25 THE COURT: Okay.

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1 Q So, that's the average price per square foot for
 2 apartments in 157, correct?
 3 MR. ROBERT: Objection.
 4 THE COURT: Ground?
 5 MR. ROBERT: It's hearsay.
 6 THE COURT: By the way, in one of these
 7 listings, I forgot which, the first amenity was elevator.
 8 I would hope so.
 9 It's an out-of-court statement being introduced
 10 to prove the truth of its contents, isn't it? So, I'm
 11 not sure what exception you want to try to put this
 12 under.
 13 MR. AMER: Your Honor, again, this is a website
 14 that the witness has, himself, relied on for his own
 15 valuations. So, I think it is appropriate based on his
 16 own testimony that this exhibit be admitted into
 17 evidence.
 18 THE COURT: I don't think that alone does it.
 19 Q Mr. McConney, did you look at StreetEasy.com to
 20 determine whether apartments, on average, were selling for a
 21 price per square foot in Trump Tower at a price that was
 22 anywhere equal to what apartments were selling for in a
 23 building that was built 30 years later, 157, when you decided
 24 to use 157 as a comp for Trump Tower?
 25 A No.

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1 THE COURT: Last question then we'll take a
 2 break.
 3 MR. AMER: Okay.
 4 THE COURT: Last question or short series of
 5 questions. Lawyers do that all the time. They say one
 6 question and we get ten.
 7 Q When you decided to use 157 as a comp for Mr. Trump's
 8 triplex in Trump Tower, did you look at any of the factors
 9 such as building amenities, age of the building, or any other
 10 type of factor when deciding whether you might need to adjust
 11 pricing up or down to make it comparable to Mr. Trump's
 12 triplex?
 13 A Not that I remember, no.
 14 MR. AMER: Okay. I think this is a good spot.
 15 THE COURT: The usual ten-minute break over the
 16 course of 15 minutes.
 17 (Recess taken.)
 18 THE COURT: Okay. Let's pick up where we left
 19 off.
 20 Q I have one more valuation on the triplex that would
 21 go to a different asset. So, let's put up the 2016 Jeff
 22 Supporting Data spreadsheet, Exhibit 742. It's already in
 23 evidence. And row 913 is where the triplex section starts.
 24 Again, it's the same value but goes up to 347
 25 million for 2015 and 2016. Do you see that?

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1 A Can you scroll to where it has the June 30th dates
 2 again?
 3 Q Sure. There they are.
 4 A Yes. June of '15 and June of '16, yes.
 5 Q Okay. If we go back to '13, you'll see it says:
 6 "Triplex based on comps from TIR sales office 30,000 square
 7 feet at 10,900 per square foot."
 8 MR. AMER: By the way, I have one more
 9 demonstrative to hand out which is charts that show all
 10 the values for properties on one chart. So, this is PBS
 11 3.1 through 3.11.
 12 Q So, there's a different chart for each asset and the
 13 first page is the triplex. I just put this up because it's an
 14 easy way to appreciate that the values in 2015 and 2016 are
 15 the highest values for the triplex in this 11-year period.
 16 Correct?
 17 A Yes.
 18 Q Okay. Let's look at Exhibit 1037.
 19 MR. AMER: Why don't we give this to the
 20 witness. We'll put it on the screen. It's a one-page
 21 document.
 22 Q Do you see that this is an e-mail from Naomi
 23 Muramatsu to Mr. Weisselberg which he then forwards on to you,
 24 correct?
 25 A Yes.

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1 MR. AMER: I'd ask that this be admitted into
 2 evidence, your Honor.
 3 THE COURT: Granted. It's in evidence.
 4 Q Since Mr. Weisselberg's e-mail-- and, by the way,
 5 based on the date of this e-mail, this is being sent to you
 6 for purposes of preparation of the valuation for 2015 which
 7 was still happening in March of 2016, correct?
 8 A I believe that's correct, yes.
 9 Q Mr. Weisselberg has forwarded you this e-mail from
 10 Ms. Muramatsu. Again, she's in TIR, correct?
 11 A I believe she was running TIR at the time.
 12 Q Okay. She says to Mr. Weisselberg: "There are very
 13 limited number of buildings that sell premium price,
 14 especially larger units and I just looked at the closed sales
 15 data for the following building, which most likely to be the
 16 highest." She lists 15 WPW. That's Central Park west, right?
 17 A I believe so.
 18 Q So, 157, the building you used for comps before,
 19 correct?
 20 A Yes.
 21 Q 432 Park Avenue, right?
 22 A Yes.
 23 Q Was the instruction that was given to TIR that they
 24 should find comps for the triplex by looking at buildings with
 25 closed sales most likely to be the highest?

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1 A I don't know what Allen's instruction to Naomi was,
 2 Ms. Muramatsu.
 3 Q When you communicated, in prior years, to TIR, was
 4 that the marching orders to find buildings with the highest
 5 price per square foot?
 6 A I don't remember telling that to anybody. I tried
 7 or I asked them to find comps.
 8 Q At any rate, her e-mail to Mr. Weisselberg indicates
 9 that she was trying to find buildings that were most likely to
 10 be the highest, correct?
 11 A Yes.
 12 Q Then the next paragraph she says: "Highest was 9,390
 13 per square foot, correct?"
 14 A Yes.
 15 Q That's at 15 Central Park West only 2761 square feet
 16 for 29995, correct?
 17 A Yes.
 18 Q Then she says: "Highest among the larger units." So
 19 she's commenting that this unit at 15 Central Park West was a
 20 smaller unit, correct?
 21 A Yes.
 22 Q Then she says: "Highest among the larger unit was
 23 9,198 per square foot at 157, Unit 90." You see that?
 24 A Yes.
 25 Q Then it says: "10,923 square feet for 100,471,453.

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1 Correct?
 2 A Yes.
 3 Q Now, if we put the this next to the spreadsheet just
 4 so we can compare it. Spreadsheet is 742. You see in the
 5 spreadsheet you indicated 30,000 at \$10,900 per square foot?
 6 Do you see that?
 7 A Yes.
 8 Q Can we agree that your price per square foot is based
 9 on the 10,923 number. Right?
 10 A Yes.
 11 Q And that was a mistake, wasn't it?
 12 A Yes, it was. I picked up the square foot, not the
 13 dollar amount per square foot.
 14 Q Right. So, you used the square footage of the
 15 apartment instead of the price per square foot, which was
 16 9,198. Right?
 17 A Yes.
 18 Q We can do some court math, but, if you'll allow me to
 19 round up 9,198 to 9,200, the difference between the figure you
 20 used of 10,900 and the actual price per square foot rounded to
 21 9,200 is 1,700; and, if you multiply that by 30,000, it comes
 22 to \$51 million.
 23 Does that sound about right?
 24 A I'll have to take your word for it.
 25 Q 1700 times 30 is 51 and, so, this is a \$51 million

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1 mistake in each of the two years, correct?
 2 A Yes.
 3 Q If you had realized, Mr. McConney, at the time that
 4 you were doing this valuation, that the correct price per
 5 square foot was \$9,198, would you have instead chosen, as a
 6 comp, 15 Central Park West because that had a higher price per
 7 square foot of \$9,390?
 8 A I can't make that statement. I don't know what my
 9 thought process would be.
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 11 (Continued on following page..)
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J. McConney - Direct by Mr. Amer Page 659

1 Q Was it your intention at the time to choose a price
 2 per square foot that would give you the highest value for the
 3 triplex?
 4 A We were looking to get a comp for -- so, we were
 5 looking for the price per square foot that would give us what we
 6 thought Mr. Trump's apartment was worth, compared to what was
 7 sold out there. I'm not sure that answers your question, or
 8 not.
 9 Q It doesn't, so let me try again.
 10 Looking at this now, and seeing that the 15 Central
 11 Park West per square foot was actually higher than the one, the
 12 price per square foot at 157, had you known that at the time,
 13 would you have picked 15 Central Park West as the comp, because
 14 you were looking to get the highest number you could for
 15 Mr. Trump's triplex?
 16 A No. We weren't always looking for the highest price.
 17 This had 10,900 square feet, so it was closer in size to what we
 18 thought the square footage was to Mr. Trump's triplex at the
 19 time.
 20 Q Let's turn our attention to 40 Wall Street.
 21 MR. AMER: Let's put up the 2012 Jeff Supporting
 22 Data spreadsheet. It's 793.
 23 (Whereupon, a document was displayed, and handed
 24 to the witness.)
 25 Q If we go to row 110, that's the beginning of the

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1 section for 40 Wall Street.
 2 A I'm sorry, could you just do me a favor and scroll up,
 3 so I know what year?
 4 I guess its only one column, so it's only 2011.
 5 2012. Okay. All right. So this is all 2012. Thank
 6 you. Sorry.
 7 Q And so rows 131 to 133 provide the note that indicates
 8 how you came up with your valuation that landed at 527,200,000;
 9 correct?
 10 A Correct.
 11 Q Okay. And your note says, information provided by
 12 Doug Larson at Cushman & Wakefield, Inc., which reflect cap
 13 rates of 4.23 percent and 4.39 percent for similar-sized office
 14 buildings at 14 Wall Street and 4 New York Plaza; correct?
 15 A Yes.
 16 Q So, let's just go over some background for this type
 17 of valuation. This valuation takes net operating income,
 18 divided by capitalization rate, to get to a building value; is
 19 that right?
 20 A Yes.
 21 Q And the lower the cap rate, the higher the value,
 22 because the formula uses the cap rate as the denominator;
 23 correct?
 24 A Yes.
 25 Q Now, Doug Larson is an appraiser with Cushman &

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1 Wakefield; correct?
 2 A Yes.
 3 Q And he is person that you indicate in the note you got
 4 information from; right?
 5 A That's correct.
 6 Q I'm correct that the Trump Organization had not
 7 retained Mr. Larson or Cushman to conduct an appraisal of
 8 40 Wall Street; right?
 9 A That's correct.
 10 Q And the Trump Organization had not retained Mr. Larson
 11 or Cushman & Wakefield to provide you with a cap rate that was
 12 applicable for 40 Wall Street; correct?
 13 A That's correct.
 14 Q In this note, what you are referring to Mr. Larson
 15 having provided you with is a generic market report from Cushman
 16 & Wakefield; right?
 17 A Yes.
 18 Q And that generic market report is not a report that
 19 Cushman prepared specifically for the Trump Organization; right?
 20 A That's correct.
 21 Q That is a generic marketing report that Cushman mails
 22 out, or emails out, to a large customer base as a service that
 23 it provides; correct?
 24 A I have no idea what they do with it.
 25 Q At any rate, it's not anything that you paid for;

J. McConney - Direct by Mr. Amer Page 663

1 that we were looking at, lines 131 to 133, now. The Jeff
 2 Supporting spreadsheet 793.
 3 Q And just focusing on the note in 131 to 133, does the
 4 page from Exhibit 794 on the left appear to be the backup for
 5 your note in the spreadsheet about how you got to the 4.31 cap
 6 rate average?
 7 A Yes.
 8 Q You took two cap rates, one for 4 New York Plaza, one
 9 for 14 Wall Street, from the generic market report; you averaged
 10 them to come up with 4.31; right?
 11 A Yes.
 12 Q And the next two pages are the backup material. That
 13 is, 794 are pages from that generic market report; right?
 14 A That's correct.
 15 Q And it contains a description of the two properties
 16 you used for the average. It's the second and third properties
 17 on the list; correct?
 18 A Yes.
 19 Q And the cap rates are listed under the column, OAR,
 20 which stance for overall rate of return; right?
 21 A I think so. Yes.
 22 Q At any rate --
 23 A I use that as my cap rate.
 24 Q Understood. That was the column that would have the
 25 cap rate that you used; right?

J. McConney - Direct by Mr. Amer Page 662

1 correct?
 2 A That's correct.
 3 MR. AMER: Let's look at Plaintiff's Exhibit 794.
 4 (Whereupon, a document was displayed, and handed
 5 to the witness.)
 6 Q Mr. McConney, is this back-up material that you
 7 provided to Mr. Bender in connection with your supporting
 8 spreadsheet?
 9 A The documents, yes. The computation in the middle, I
 10 don't think that's mine.
 11 THE COURT: You need to talk in the microphone.
 12 Sorry?
 13 THE WITNESS: It's like an adding machine tape of
 14 some sort, in the middle, I don't believe I did. But, the
 15 documents are mine.
 16 MR. AMER: Your Honor, I ask that this be
 17 admitted into evidence.
 18 MR. ROBERT: Statute of limitations objection.
 19 THE COURT: Objection overruled. Request
 20 granted. It's in evidence.
 21 (Whereupon, Plaintiff's Exhibit 794 was received
 22 in evidence.)
 23 Q I would like to focus you on the second page of the
 24 exhibit.
 25 MR. AMER: If we could put up the spreadsheet

J. McConney - Direct by Mr. Amer Page 664

1 A That's correct.
 2 Q And again, because the cap rate is the denominator in
 3 the equation, the lower the cap rate, the higher the property
 4 value. The higher the cap rate, the lower the property value;
 5 right?
 6 A Yes.
 7 Q There are a total of eight properties listed in this
 8 generic market report. The two you selected and averaged were
 9 the second and third lowest cap rates; right?
 10 A Yes.
 11 Q If we look at the next property after 14 Wall Street,
 12 it's 33 Maiden Lane; correct?
 13 A Yes.
 14 Q If we just look at the description it says, This is a
 15 Class A office building. Do you see that?
 16 A Yes.
 17 Q And 4 New York Plaza, which is a building you selected
 18 to use, is also a Class A office property; correct?
 19 A Yes.
 20 Q 33 Maiden Lane has a higher cap rate of 4.74; right?
 21 A Yes.
 22 Q If you had included that in your average, it would
 23 have drove the cap rate up; right?
 24 A The cap rate would have gone up, yes.
 25 Q And you did not use 33 Maiden Lane; correct?

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1 A That's correct.

2 Q And the next building is 199 -- sorry 195 Broadway,

3 and that's a landmark Class A office building; correct?

4 A Yes.

5 Q And 14 Wall Street is also a landmarked Class A, but

6 it's a Class A-minus office building; correct?

7 A Yes.

8 Q And 195 Broadway has a higher cap rate of 6.3 percent.

9 Do you see that?

10 A Yes.

11 Q If you had used that in your average, it would have

12 driven the cap rate up; correct?

13 A Yes.

14 Q You did not include that building in your cap rate

15 equation; correct?

16 A That's correct.

17 MR. AMER: Your Honor, this is just math, so the

18 Court can take judicial notice of it, but I'll represent to

19 you that if you include those additional two cap rates and

20 you took the average from all four, the cap rate would be

21 4.915 percent, and it would lower the value by \$65 million.

22 THE COURT: Well, subject to the math being

23 correct, I'll take judicial notice of that. Yes.

24 MR. AMER: Thank you, your Honor.

25 THE COURT: It sounds about right.

J. McConney - Direct by Mr. Amer Page 667

1 looking down. Right. There's the -- my notes. Okay. Sorry.

2 Can I just read the notes now?

3 Q Sure.

4 A Okay. So the answer to your last question about 2013

5 was yes. We used the same, 4.31.

6 Q Just so the record is clear, you are now looking at

7 rows 155 to 158, and you can confirm that it's the same

8 description for your valuation of 2012 and 2013; right?

9 A Yes.

10 Q Okay. And then rows 148 through 152 is your note for

11 the valuation for 2014; correct?

12 A Correct.

13 Q And you used a cap rate there. Again, it's

14 information provided by Doug Larson; right?

15 A Correct.

16 Q And it's the same type of generic market report that

17 we have been talking about for Mr. Larson; correct?

18 A That's correct.

19 Q And the cap rate of 3.04 percent for 100 -- sorry. I

20 just caught myself. So, you used the cap rate for 110 William

21 Street of 4.97 percent, and then another building, 61 Broadway,

22 was 4.46 percent. You then say, according to Doug, the spread

23 between Class A and Class B buildings is typically 150 basis

24 point. To be conservative, you reduced the cap rate by 75 basis

25 points to 3.71 percent, and then you averaged that with the

J. McConney - Direct by Mr. Amer Page 666

1 MR. AMER: Let's look at 2014 Jeff Supporting

2 Data, Exhibit 719.

3 (Whereupon, a document was displayed, and handed

4 to the witness.)

5 Q And 40 Wall Street starts at row 118.

6 A I'm sorry, which? Looking at the 2014 column? Column

7 H?

8 Q We are going to look at column G first, which is 2013.

9 A Okay.

10 MR. AMER: And go to row 118.

11 Q That's 40 Wall Street; correct?

12 A Is that a question for me? Yes.

13 Q Yes. Okay?

14 A Yes.

15 Q And you used the same 4.31 cap rate as in the prior

16 year that we have just discussed; right?

17 A Yes.

18 Q It's based on the same backup we just went through;

19 correct?

20 A Without looking at my backup, it's just an assumption.

21 I didn't have a note here, for some reason.

22 Q And if we look at column H, it shows the valuation for

23 2014 at rows 138 to 141; right?

24 A Right. Can you scroll up a little bit, because there

25 may be some notes there. I'm sorry, the page up, or I guess

J. McConney - Direct by Mr. Amer Page 668

1 4.97 percent. Is that right?

2 A Yes.

3 Q And am I correct, Mr. McConney, that during the period

4 we have been discussing, covering the 2012 to 2016 Statements of

5 Financial Condition, while you were receiving and using these

6 Cushman generic market reports that you were getting from

7 Mr. Larson to calculate your cap rates, you were aware that

8 Mr. Larson was preparing formal appraisals for 40 Wall Street

9 for the bank that had the loan on the property; right?

10 A I'm not sure I knew at the time that Doug was doing

11 those appraisals.

12 Q As you sit here right now, you are not sure that he

13 was doing those appraisals?

14 A At that time, I know at one point in time we were --

15 we were refinancing 40 Wall Street, I don't remember what year

16 it was, and I know he was doing an appraisal because I was

17 heavily involved in it. I'm not sure every single appraisal

18 that Doug did for that period of time, I was aware of.

19 Q Mr. McConney, weren't you the conduit for information

20 from Mr. Larson, for purposes of him doing his bank appraisals

21 for 40 Wall Street?

22 A I remember -- again, I remember the one loan that we

23 were doing. I don't remember all the appraisals that he was

24 doing. I could be -- again, I don't remember being the conduit.

25 Q My question is very simple.

J. McConney - Direct by Mr. Amer Page 669

1 A Mm-hmm.

2 Q Isn't it a fact that you, Mr. McConney, were the

3 conduit for information on behalf of the Trump Organization to

4 Mr. Larson in connection with his bank appraisal, bank

5 appraisals that he was doing during the period 2012 to 2016 that

6 we have just been discussing?

7 A You are saying -- I'm saying I'm not sure I was the

8 conduit for every single appraisal.

9 Q And I'm not asking you if you were the conduit for

10 every single appraisal, but you were the conduit for information

11 for Mr. Larson for bank appraisals he was doing for 40 Wall

12 Street. Let's leave it at that. Is that correct?

13 A Yes.

14 Q Okay.

15 MR. AMER: Let's look at Exhibit 3047.

16 (Whereupon, a document was displayed, and handed

17 to the witness.)

18 Q These are emails -- this is an email exchange you have

19 with Mr. Larson; correct?

20 A Yes, sir.

21 MR. AMER: Your Honor, I ask that this exhibit be

22 admitted.

23 MR. ROBERT: Statute of limitations objection.

24 THE COURT: Objection overruled. Granted. It's

25 in evidence.

J. McConney - Direct by Mr. Amer Page 670

1 (Whereupon, Plaintiff's Exhibit 3047 was received

2 in evidence.)

3 Q Let's look at the bottom of the email. This is from

4 Mr. Larson to you, and it's dated October 13, 2011. "Jeffrey,

5 we have been engaged by Capital One Bank to prepare an appraisal

6 of 40 Wall Street. Attached please find a list of information

7 we need to prepare the appraisal."

8 He gives you this phone number, and tells you you can

9 call him.

10 "Hope all is well, thank you, Doug;" right?

11 A Yes, sir.

12 Q So you knew, as of October 2011, that Mr. Larson was

13 preparing an appraisal for 40 Wall for Capital One Bank which,

14 at the time, was the bank that had the loan on 40 Wall Street;

15 correct?

16 A Yes. Thank you for jogging my memory.

17 Q Happy to oblige.

18 Now, let's look at the top email, and this is from you

19 to Mr. Larson. "Doug, a couple of quick questions. You are

20 asking for lease abstracts for the most recent leases. How far

21 back should I go? The last appraisal was done in August 2010."

22 Do you see that?

23 A Yes, sir.

24 Q So you know, in October of 2011, he is doing -- he is

25 currently doing an appraisal, and you also knew that he had done

J. McConney - Direct by Mr. Amer Page 671

1 one the prior year; right?

2 A It looks that way, yes.

3 Q Okay.

4 MR. AMER: Let's look at Plaintiff's

5 Exhibit 3046.

6 (Whereupon, a document was displayed, and handed

7 to the witness.)

8 Q This is an email from Mr. Larson to you dated

9 October 15, 2012; right?

10 A Yes.

11 MR. AMER: Your Honor, I ask that this be

12 admitted into evidence.

13 MR. ROBERT: Statute of limitations objection.

14 THE COURT: Occasion overruled. Granted. It's

15 in evidence.

16 (Whereupon, Plaintiff's Exhibit 3046 was received

17 in evidence.)

18 Q Mr. Larson says, "Jeff, we have been engaged by

19 Capital One Bank to prepare an appraisal of the above property,"

20 which is 40 Wall Street; right?

21 A Yes.

22 Q "The following information is requested in order for

23 us to prepare the appraisal," and he lists a bunch of

24 information; right?

25 A Yes.

J. McConney - Direct by Mr. Amer Page 672

1 Q So a year later, Mr. Larson is doing another

2 appraisal, and you are the person he contacts and tells he is

3 doing it, and requests information; right?

4 A That's correct.

5 Q So you knew in October of 2012 that Mr. Larson was

6 doing, now, his third appraisal for 40 Wall Street; correct?

7 A Yes.

8 MR. AMER: Let's go ahead and mark Exhibit 3048.

9 (Whereupon, a document was displayed, and handed

10 to the witness.)

11 Q This is an exchange, an email exchange between you and

12 Mr. Larson in May of 2015; correct?

13 A Yes.

14 MR. AMER: Your Honor, I ask that this exhibit be

15 admitted into evidence.

16 MR. ROBERT: Statute of limitations objection.

17 THE COURT: Objection overruled. Request

18 granted. It's in evidence.

19 (Whereupon, Plaintiff's Exhibit 3048 was received

20 in evidence.)

21 Q The bottom email is yet another email from Mr. Larson

22 to you, telling you he has is been engaged by Ladder Capital.

23 That's the bank that refinanced the loan; right?

24 A This is the one I remember. Yes.

25 Q Okay.

J. McConney - Direct by Mr. Amer Page 673

1 A Yeah.

2 Q I'm glad to hear you remember this one, but there are

3 three others before this one.

4 A Yes. I just didn't remember those at the time. This

5 is the one I do remember.

6 Q Okay. And once again, he is telling you he has been

7 engaged to do an appraisal of 40 Wall Street, and he is asking

8 you for information; right?

9 A Correct.

10 Q You write to him in response and you say, Doug -- this

11 is the second line.

12 A Okay.

13 Q "Doug, Steve Lafiosca, copied on this email, can help

14 with you the inspection. Based on the appraisals you have done

15 in the past, do you have any of the below information in your

16 files," right?

17 A Yes.

18 Q So you are basically wondering, since he keeps coming

19 to you year after year asking you for all this information, why

20 he doesn't have it already, since he has been doing all these

21 appraisals before; right?

22 A I just asked him if he had it, yes, and if he could

23 use it.

24 Q Well, you are asking him if he had it in his files,

25 because you were aware of all these appraisals he has been

J. McConney - Direct by Mr. Amer Page 674

1 doing; right?

2 A Seven years ago, yes.

3 Q Seven years ago. We were looking at 2012. That's

4 three years ago; right?

5 A No. In 2015, I knew that. That was eight years ago,

6 from today. At that point in time, I probably knew it. I don't

7 remember it now.

8 Q I understand what you are saying. So, we can agree

9 then, having now had your recollection refreshed by looking at

10 all these emails, that you, during the period that you were

11 working on preparing the Statements of Financial Condition from

12 2012 through 2016, you were simultaneously acting as the conduit

13 for information for Mr. Larson, so that he can prepare formal

14 appraisals for 40 Wall Street? Right?

15 A Yes.

16 Q And while you were acting as the conduit to provide

17 information to Mr. Larson, I'm correct that you never sought to

18 use any of the Cushman appraised values for 40 Wall Street in

19 the Statement of Financial Condition; correct?

20 A That's correct.

21 (Continued on the next page.)

22

23

24

25

J. McConney - Direct/Amer Page 675

1 Q And during the period of time that you were acting as

2 the conduit of information for Mr. Larson for his appraisals

3 at 40 Wall Street and you were using his generic market report

4 for your cap rate calculations, you never asked Mr. Larson if

5 the cap rates you were selecting were appropriate. Isn't that

6 right?

7 A No. I mean, it's correct. Yes.

8 Q During this period of time when you were acting as

9 the conduit to provide information to Mr. Larson so that he

10 could do his formal appraisals, you never asked Mr. Larson

11 what cap rates he was using for any of the Cushman appraisals

12 at 40 Wall Street; isn't that right?

13 A I believe that's correct, yes.

14 MR. AMER: Can we put back up the Jeff

15 Supporting Data spreadsheet at 742, the native?

16 Q I want to go back to your note at row 153 that

17 explains the basis for the cap rate. This is your note

18 reflecting that you chose a cap rate of 3.04 percent for 100

19 Wall Street, correct?

20 A Yes.

21 Q You say it's based on a telephone conversation with

22 Doug Larson. You see that?

23 A Yes.

24 Q Okay. The cap rate of 3.04 percent for 100 Wall

25 Street was selected by you from the generic marketing report

J. McConney - Direct/Amer Page 676

1 you got from Cushman; is that right?

2 A Yes. I believe so, yes.

3 MR. AMER: Why don't we put up Plaintiff's

4 Exhibit 868.

5 Q Mr. McConney, this is an e-mail from you to Mr.

6 Bender which encloses an attachment, correct?

7 A Correct.

8 Q The attachment is an excerpt from the 2015 Cushman

9 appraisal of 40 Wall Street, right?

10 A Yes.

11 Q So, it's clear, you did have a copy of the Cushman

12 2015 appraisal when you forwarded this e-mail to Mr. Bender,

13 right?

14 A Yes.

15 MR. AMER: I ask that this be admitted into

16 evidence, your Honor.

17 MR. ROBERT: Statute of Limitations objection.

18 THE COURT: Overruled. Granted. It's in

19 evidence.

20 Q Let's look at the 11th page of the exhibit. Now, Mr.

21 McConney, the highlighting is not anything we're putting up

22 there. This is in the exhibit, correct?

23 A Yes.

24 Q You're sending this to Mr. Bender. Did you highlight

25 this so he could see where you were getting the cap rate from?

J. McConney - Direct/Amer Page 677

1 A I believe so, yes.

2 Q Okay. Now, we do have, and this is what you sent to

3 him, but, the appraisal itself is a much larger document,

4 correct?

5 A I believe so, yes.

6 Q What you sent him was what you picked out of the full

7 appraisal to share with him, correct?

8 A I don't remember picking out certain pages but I

9 sent it to him.

10 Q Okay. You sent him only a portion of the appraisal

11 report, right?

12 A Yes.

13 Q What you sent him was what you intended to send him?

14 A Yes.

15 MR. AMER: Okay. Let's go ahead and mark the

16 full appraisal report.

17 THE COURT: Ten-minute warning.

18 MR. AMER: Just when I hand up a very large

19 document. It's going to be a challenge.

20 THE COURT: I hope you can finish the document

21 before we leave.

22 MR. AMER: I think we'll be okay.

23 Q This is starting at page eight of the document.

24 You'll see the cover page for the appraisal.

25 Do you see that?

J. McConney - Direct/Amer Page 678

1 A Yes.

2 Q It's the same 2015 appraisal that you sent an excerpt

3 of to Mr. Bender, correct?

4 A Can I have that last exhibit back, please? Yes.

5 MR. AMER: Your Honor, I ask Exhibit 118 be

6 admitted into evidence.

7 MR. ROBERT: Statute of Limitations objection.

8 THE COURT: Overruled. Granted. It's in

9 evidence.

10 Q Let's turn to page 15 of the appraisal report.

11 Again, this is something you had in your file and you have

12 looked at?

13 A I had or had not?

14 Q You had looked at it because you sent a portion of it

15 to Mr. Bender, correct?

16 A Correct.

17 Q Okay. Let's look at the cap rate that Mr. Larson

18 used based on his professional appraisal, 4.25. Right?

19 A There are a number of cap rates here. It's one of

20 them that he used, yes, that is.

21 Q That is a different and much higher cap rate than the

22 one you used in the same year of 3.04 percent, correct?

23 A Yes.

24 MR. AMER: Let's go to -- I will represent to you

25 another math point, your Honor, that if you use Mr.

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1 Larson's cap rate of 4.25, instead of Mr. McConney's cap

2 rate of 3.04, the new value is \$227 million lower than

3 the value that Mr. McConney calculated.

4 THE COURT: Those cap rates are really

5 important, but, I'll take judicial notice of that,

6 subject to checking the math.

7 MR. AMER: Just so you have it, the new value is

8 569 million which is \$227 million lower than the value in

9 the Statement of Financial Condition. Let's go to page

10 100 in the appraisal report.

11 Q Mr. McConney, this is a description of comps that is

12 in the appraisal report; and, in fact, Mr. Larson looked at

13 100 Wall Street which was the basis for your choosing

14 3.04 percent, right?

15 A Yes.

16 Q Okay. Let's go to page 105 and that begins the

17 discussion of the comparables in his appraisal and he

18 discusses 100 Wall Street. You see that? It's the very first

19 comparable sale.

20 A Yes.

21 Q Okay. If we look at the last paragraph in this

22 section, Mr. Larson says: "In comparison with the subject

23 property, a downward adjustment was required for property

24 rights conveyed. A downward adjustment was required for the

25 size under the premise that smaller properties sell for more

J. McConney - Direct/Amer Page 680

1 per square foot than larger properties."

2 Do you see that?

3 A Yes.

4 Q Okay. So, Mr. Larson a professional -- he's a

5 professional appraiser, right?

6 A Yes, he is.

7 Q He looked at the same property that you used as the

8 basis for your cap rate, and, he did two downward adjustments,

9 and, he ended up choosing a cap rate that was higher than the

10 one you chose.

11 He chose 4.25 percent, right?

12 A He chose 4.25 on that prior page you looked at. I

13 don't know where that 4.25 came from.

14 Q He looked at the same property, 100 Wall Street, that

15 was the basis for your cap rate, right?

16 A Yes.

17 Q He did two downward adjustments, correct?

18 A Yes.

19 Q You didn't share this page with Mr. Bender when you

20 sent him the excerpts from the appraisal, did you?

21 A I'd have to go back and look.

22 Q I'll represent to you, you did not.

23 A I believe you.

24 Q Okay. So, Mr. Bender was not aware that Mr. Larson

25 had reviewed and downwardly adjusted the very property that

J. McConney - Direct/Amer Page 681

1 you used as the basis for your cap rate, correct?
 2 MR. ROBERT: Objection.
 3 THE COURT: What's the objection?
 4 MR. ROBERT: Before Mr. Amer talked about what
 5 Mr. Bender knew. It wasn't part of what he said. We
 6 don't know what Mr. Bender knew.
 7 MR. AMER: I can rephrase it.
 8 THE COURT: Sustained.
 9 Q Mr. Bender would not have known, based on what you
 10 sent him, that Mr. Larson had looked at and downwardly
 11 adjusted the very property that you relied on for your cap
 12 rate. Isn't that fair?
 13 A That's correct but he could have asked for the whole
 14 appraisal, also.
 15 Q I'm just asking you based on what you sent to him.
 16 You would agree that this process of making adjustments to
 17 comp sales, in order to compare them to the subject property,
 18 is what appraisers routinely do so that the comps better
 19 reflect the value of the subject property; isn't that right?
 20 A I don't know what appraisers do. I don't know how
 21 they make these adjustments. I see on this one. I don't
 22 know what they do as a general practical matter.
 23 Q At no point when you were selecting cap rates from
 24 the generic market reports, did you undertake any efforts to
 25 make adjustments to the compensation so that they better

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1 predict.
 2 MR. ROBERT: Tomorrow is only a half day.
 3 MS. GREENFIELD: Do we expect Mr. Weisselberg
 4 tomorrow or Tuesday? Monday is a holiday.
 5 MR. AMER: What I would say if I were to finish
 6 before the end of the session, it's going to be very
 7 close to the end of the session. So, we want to avoid
 8 having to inconvenience Mr. Weisselberg. We can say I'll
 9 go to whenever we stop and we'll be done.
 10 MS. GREENFIELD: If we're beginning with
 11 Weisselberg Tuesday morning, who is after Weisselberg, if
 12 we know yet?
 13 MR. ROBERT: They have Birney.
 14 MR. WALLACE: The next Trump employee will be
 15 Patrick Birney but we took Mr. Kise's position to heart
 16 and are going to call Nick Haigh to appear in person
 17 rather than do a deposition while the trial is going on.
 18 He will appear on the 11th. He has the 11th and
 19 the 12th he leaves the country. So, our expectation is
 20 we're going to work cooperatively to get through Mr.
 21 Weisselberg, depending on when he ends. Could be Mr.
 22 Haigh or Mr. Birney but those will be the next two
 23 witnesses.
 24 MS. GREENFIELD: We'll revisit it tomorrow
 25 before we adjourn.

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1 reflected the value of 40 Wall Street; isn't that correct?
 2 A That's correct.
 3 MR. AMER: I'm at a good point, your Honor.
 4 THE COURT: Okay. We need to talk to the
 5 attorneys about scheduling, but I promised to Chris Kise
 6 to teach him some New York history.
 7 Does anybody know how Maiden Lane got its name?
 8 If you ever see it, you'll see it's sort of a depression
 9 in the area. Mr. Kise, because there was a stream. Back
 10 in colonial times, young women would take their wash to
 11 the stream to wash it, and they were called maidens.
 12 That is how it got to be called Maiden Lane.
 13 THE COURT: Now, Allison has some business to
 14 conduct.
 15 MS. GREENFIELD: Thank you, Judge. So, I assume
 16 we're going to be continuing for with Mr. McConney
 17 tomorrow. How long do we anticipate cross? Is there
 18 going to be cross tomorrow?
 19 MR. KISE: No.
 20 MS. GREENFIELD: How much more direct?
 21 MR. AMER: I'm going to say I'm half way
 22 through.
 23 MS. GREENFIELD: Who is after Mr. McConney?
 24 MR. SOLOMON: Mr. Weisselberg.
 25 MS. GREENFIELD: That will be a full day, I

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1 THE COURT: He's not leaving the country because
 2 of this case?
 3 MR. SOLOMON: So we're clear, Mr. Weisselberg
 4 need not be here tomorrow?
 5 THE COURT: Right.
 6 MR. SOLOMON: We'll be finished for the day and
 7 if he's finished tomorrow, we'll pick up Mr. Weisselberg
 8 first thing Tuesday morning?
 9 THE COURT: Yes.
 10
 11 (Whereupon, the trial is continued to
 12 October 6, 2023 at 10:00 a.m.)
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Donald J. Trump, et al

October 5, 2023

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1 know of any others right now. That is the one that sticks
 2 out in my mind.
 3 Q You would agree with me that the basis of valuation
 4 of the triplex was set forth in the Jeff Supporting Data?
 5 A Yes, sir.
 6 Q The basis valuation for 40 Wall Street was set forth
 7 in the Jeff Supporting Data?
 8 A The method valuation, yes, sir.
 9 Q The basis for the valuation of Trump Tower would have
 10 been set forth in the Jeff Supporting Data?
 11 A Trump Tower Commercial, yes, sir.
 12 Q Basis for valuing Niketown would have been set forth
 13 in the Jeff Supporting Data?
 14 A Their methodology for valuating was included in the
 15 Jeff Supporting Data.
 16 Q The basis of valuing Trump Park Avenue would have
 17 been set forth in the Jeff Supporting Data?
 18 A Their methodology for doing it would have been set
 19 forth in the Jeff Supporting Data.
 20 Q Their methodology for valuing their interest in-- the
 21 Trump Organization's interest in 1290 Avenue of the Americas
 22 would have been set forth in the Jeff Supporting Data?
 23 A Mr. Trump's interests in 1290 --
 24 Q Yes?
 25 A --Avenue of the America would have been -- their

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1 methodology would have been set forth.
 2 Q The method for valuing 555 California, President
 3 Trump's interest in that entity, that would have been set
 4 forth in the Jeff Supporting Data?
 5 A Yes, I believe it would have.
 6 Q The method for valuing Seven Springs would have been
 7 set forth in the Jeff Supporting Data?
 8 A I believe it would be yes, sir.
 9 Q The method for valuing Mar-a-Lago would have been set
 10 forth in the Jeff Supporting Data?
 11 A I believe that would be true.
 12 Q So, every year, you were presented with the basis for
 13 valuation of each of these assets in the Jeff Supporting Data?
 14 A I believe, off the top of my head, that would be
 15 true, sir.
 16 Q Yesterday, I think you said you had tremendous
 17 respect for Jeff, for Mr. McConney; is that correct?
 18 A He's one of the better accountants I ever worked
 19 with.
 20 Q He passed along this information to you every year?
 21 A Him and Patrick Birney.
 22 Q The Jeff Supporting Data was what you reviewed when
 23 preparing your compilation report?
 24 A Mazars would have looked at it. I don't know the
 25 word "reviewed".

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1 Q Mazars would have looked at it but not necessarily
 2 you?
 3 A I may not have looked at every line of Mazars and --
 4 say the question again.
 5 Q Mazars -- someone from Mazars would have looked at
 6 all the Jeff Supporting Data but not necessarily you?
 7 A I can't say somebody from Mazars looked at every
 8 line of the worksheet.
 9 Q You can't tell me whether someone from Mazars looked
 10 at every line on the worksheet?
 11 A I can't read somebody else's mind today.
 12 Q You testified earlier you would responsible for all
 13 the work product that went into it?
 14 A Absolutely.
 15 Q You agree you were responsible to make sure somebody
 16 at Mazars looked at every line on that spreadsheet?
 17 A I don't think a person at Mazars would need to look
 18 at every line on that worksheet. I agree I was responsible
 19 for the compilation, if it's the right word. I was the
 20 partner in charge of the compilation procedure.
 21 Q You were the partner in charge of the compilation
 22 procedure. The buck stopped with you?
 23 A Absolutely.
 24 THE COURT: Ten-minute warning.
 25 Q If the buck stopped with you, Mr. Bender, would you

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1 have not been required to sign off on the basis for valuing
 2 each of the assets and making sure it was consistent with
 3 estimated current values?
 4 A It we were not engaged, the compilation did not
 5 require us to do the work. The financial statement is the
 6 Trump Organization. They were the experts in real estate.
 7 They were the experts in golf courses and it was them.
 8 If something, as part of a high-level review,
 9 if I noticed something, like 57th Street, I'd bring it to--
 10 yeah, 57th Street.
 11 If I brought something like 57th Street came to
 12 my attention, I'd do it, but, it was not our responsibility
 13 to. We were not engaged to discuss -- we were engaged to do
 14 method appraisals-- not appraisals. That was not part of our
 15 engagement.
 16 Q Appraisals weren't part of your engagement?
 17 A We were engaged to-- to the best of my recollection,
 18 we were never engaged to do an appraisal for the Trump
 19 Organization.
 20 Q Now, Mr. Bender, you told me that you were required
 21 to follow AICPA guidelines, correct?
 22 A To the best of my ability.
 23 Q And when you weren't, you'd consult a specialist?
 24 A I would try to, if I something came to my attention.
 25 Q Are you aware that the AICPA guidelines for the

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1 compilation of personal financial statements require you, in
 2 connection with the compilation, to under ordinary-- excuse
 3 me. To "ordinarily, an accountant can compile personal
 4 financial statements based on the individual's representation
 5 of estimated current value of assets and the estimated current
 6 amount of liabilities."
 7 You'd agree with that statement?
 8 A Can you read it, again, please?
 9 MR. WALLACE: Objection. If he's introducing
 10 language from a document, we'd like that to be on the
 11 record.
 12 MR. SUAREZ: Sure. I'm happy to move into
 13 evidence what I believe was premarked and somebody will
 14 give me the number.
 15 Q AICPA personal financial statements. Chapter Two.
 16 2.03, compilation of financial statements.
 17 Have you ever seen the AICPA guide for
 18 preparation of financial statements?
 19 A Yes, sir.
 20 Q All right. So, turn to page -- to chapter two, which
 21 governs a compilation of personal financial statements at
 22 Section 2.03. We've premarked this as exhibit D-950. It
 23 said: "Ordinarily, an accountant can compile personal
 24 financial statements based on the individual's representation
 25 of estimated current values of assets and the estimated

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1 current amounts of liabilities. At a minimum, however, the
 2 accountant should obtain an understanding of the methods by
 3 which the individual determined the estimated current values
 4 of significant assets and the estimated current amounts of
 5 significant liabilities and consider whether the methods were
 6 appropriate, in light of the nature of each asset or
 7 liability."
 8 MR. WALLACE: Your Honor, we'd like to note an
 9 objection to the use of this document at this time. It's
 10 dated May 1, 2008. I believe that this guidance has
 11 been -- was superseded in 2009. So, it wouldn't have
 12 been relevant in 2011, but, if he wants to ask the
 13 question, we want to note --
 14 THE COURT: Your objection is noted. I don't
 15 know how much it changed or didn't change from that year,
 16 but, I'll take that into consideration.
 17 Q Do you see that?
 18 A Yes.
 19 Q Is that something you undertook with respect to the
 20 assets?
 21 A I don't recall. As counsel said, if this happened
 22 at the time and I don't recall -- we definitely looked at --
 23 I don't recall today what we did.
 24 Q You don't recall--
 25 A No.

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1 Q -- your involvement with that, okay.
 2 You see in Section 2.07: "Reporting or compiling personal
 3 financial statements. If the accountant --
 4 A Let me find it.
 5 Q --believes --
 6 THE COURT: It's on the screen.
 7 THE WITNESS: Thank you.
 8 Q --"that the methods used to determine the estimated
 9 current value of assets and the estimated current amounts of
 10 liabilities are not in accordance with statement of position
 11 82-1 accounting and financial reporting for personal financial
 12 statements, AICPA technical practice aids, or if he or she
 13 believes that the methods are not appropriate, in light of the
 14 nature of each asset and liability, he or she should consider
 15 whether modification of a standard report is adequate to
 16 disclosure the departure."
 17 THE COURT: "To disclose."
 18 Q "To disclose the departure."
 19 "If the accountant determines that modification
 20 of the standard report is not adequate to indicate the
 21 deficiencies in the financial statements taken as a whole, the
 22 accountant should withdraw from the engagement and provide no
 23 other services with respect to those financial statements."
 24 Do you see that?
 25 A Yes, I do.

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1 Q Did you ever, prior to 2020, withdraw from the
 2 engagement with the Trump Organization?
 3 A No, I did not.
 4 Q Did you ever, prior to 2020, give any indication to
 5 the Trump Organization that you disagreed with the methods
 6 used to determine estimated current values?
 7 A I don't believe it was required of me to do that per
 8 compilation procedure.
 9 Q Did you ever, prior to 2020, advise the Trump
 10 Organization that you disagreed with any of the methods used
 11 to determine the estimated current value of the assets?
 12 A 57th Street would be one example where I did
 13 disagree.
 14 Q That is the only one?
 15 A The only one I'm thinking of now.
 16 Q When you brought up your disagreement with 57th
 17 Street, what did the Trump Organization --
 18 A We had Mazars saying-- Trump Organization spoke
 19 about it.
 20 Q They revised it to your satisfaction?
 21 A They revised it to our satisfaction, Mazars.
 22 MR. SUAREZ: Okay. I think I'm at a good point
 23 to take a break.
 24 THE COURT: Like yesterday, we'll take a
 25 ten-minute break. Take 15 minutes, but, unlike

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1 yesterday, unless there's some personal emergency, I'll
 2 be very strict. We're starting again in 15 minutes,
 3 whether you're here or not.
 4 (Recess taken.)
 5 (Whereupon, the witness enters the courtroom.)
 6 THE COURT: Okay, counsel. Please, proceed.
 7 Q Mr. Bender, please take a look at Section 2.05.
 8 "Personal financial statement, compilation of personal
 9 financial statements from the AICPA."
 10 Do you see this?
 11 A May I have the original document, please?
 12 Q Premarked D-950. It says -- I'd invite you to read
 13 along with me, Mr. Bender.
 14 A One second. Thank you.
 15 Q "Before submission, the accountant should read the
 16 compiled personal financial statements and consider whether
 17 such financial statements appear to be appropriate in form and
 18 free from obvious material errors. In this context, the term
 19 error refers to mistakes in the compilation of financial
 20 statements, including arithmetical or clerical mistakes and
 21 mistakes in the application of accounting principles,
 22 including disclosure. Misstatements that may occur in
 23 personal financial statements prepared in conformity with
 24 Generally Accepted Accounting Principles include:
 25 Number one: "The failure to record estimated

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1 income taxes on the differences between the estimated current
 2 value of assets and the estimated current amounts of
 3 liabilities and their tax basis."
 4 Two: "Failure to disclose the methods used to
 5 determine estimated current values and amounts."
 6 Three: "Failure to record accounts on the
 7 accrual basis" and, number four: "Presentation of an asset or
 8 liability at an obviously inappropriate value or amount."
 9 Do you see that?
 10 A Yes, sir.
 11 Q In connection with the 2015 Statement of Financial
 12 Condition when you were preparing your Independent
 13 Accountant's Compilation Report, did you note that the
 14 presentation of any asset or liability was presented at an
 15 obviously inappropriate value or amount?
 16 A No. As part of my compilation procedure, nothing
 17 came to my attention at the time.
 18 Q Okay. So, at the time, nothing came to your
 19 attention as the presentation of an asset or liability at an
 20 obviously inappropriate value or amount?
 21 A Correct.
 22 Q In connection with the 2014 compilation report, did
 23 anything come to your attention as the presentation of an
 24 asset or liability at an obviously inappropriate value or
 25 amount?

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1 A Nothing came to my attention at that time.
 2 Q Certainly, you didn't disclose to the Trump
 3 Organization or President Trump that any assets presented at
 4 an obviously inappropriate value or not?
 5 A No, sir.
 6 Q In connection with the 2013 compilation report for
 7 Statement of Financial Condition, did you identify any asset
 8 that was presented at an obviously inappropriate value or
 9 amount?
 10 A At the time, the compilation report was issued, I
 11 did not -- I did not inform the Trump Organization of the
 12 presentation of assets or liability in misappropriate value.
 13 Q Did you determine whether there was a determination
 14 of an asset or liability at an obviously inappropriate value?
 15 A At the time we issued the financial statement,
 16 nothing came to my attention.
 17 Q In 2013 when preparing your independent accounting
 18 compilation report, did anything come to your attention about
 19 a presentation of an asset or liability at an obviously
 20 inappropriate value or amount?
 21 A I think you already asked, 2013, but, I repeat, no.
 22 Q How about 2012? In connection with your preparation
 23 of an Independent Accountant's Compilation Report, did any
 24 asset strike you as being presented at an obviously
 25 inappropriate value or amount?

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1 A No, sir.
 2 Q Did any liability strike you as being presented at an
 3 obviously inappropriate value or amount?
 4 A Not that I can recall at this time. No, sir.
 5 Q In 2011, which you testified to on Monday, you were
 6 preparing your Independent Compilation Report, did any asset
 7 or liability strike you as being presented at an obviously
 8 inappropriate value or amount?
 9 A No, sir.
 10 Q How about 2016? In 2016 did any asset strike you as
 11 being presented at an obviously inappropriate value or amount?
 12 A No, sir.
 13 Q In 2017, when you prepared your Independent
 14 Accountant Compilation Report, did any asset strike you as
 15 being presented at an obviously inappropriate value or amount?
 16 A No, sir.
 17 Q In 2018, when you were preparing your Independent
 18 Accounting Compilation Report, did any asset or liability
 19 strike you as being presented at an obviously inappropriate
 20 value or amount?
 21 A No, sir.
 22 Q In 2019, in connection with the preparation of your
 23 Independent Accounting Compilation Report, did any asset in
 24 the President's Statements of Financial Condition strike you
 25 as being presented at an obviously inappropriate value or

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1 amount?
 2 A No, sir.
 3 Q Did any liability strike you as being presented at an
 4 obviously inappropriate value or amount?
 5 A Not that I recall at this moment.
 6 Q In 2019, in connection with preparing your
 7 Independent Accountant's Compilation Report, did any asset
 8 strike you as being presented at an obviously inappropriate
 9 value or amount?
 10 A I'm sorry. Which year did you say?
 11 Q 2019.
 12 A No, sir.
 13 Q How about liabilities? Any liabilities strike you as
 14 being presented at an obviously inappropriate value or amount?
 15 A Not that I recall at this moment. No, sir.
 16 Q Okay. In 2020, when you prepared the Compilation
 17 Report, the Independent Accountant's Compilation Report, did
 18 any asset or liability strike you as being prepared at an
 19 obviously inappropriate value or amount?
 20 A No, sir, not that I recall.
 21 Q All right. How about the failure to disclose the
 22 methods used to determine estimated current values or amounts?
 23 In 2020, in connection with the preparation of
 24 your Independent Accountant's Compilation Report, did you note
 25 any failure to disclose the methods used to determine

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1 estimated current values and amounts?
 2 A Did I note or notice?
 3 Q Note.
 4 A Note. What do you mean by note?
 5 Q Did you notice?
 6 A Okay. No.
 7 Q You noticed. You did not notice a failure to
 8 disclose the methods used to determine estimated current
 9 values and amounts in connection with President Trump's
 10 Statement of Financial Condition of 2020?
 11 A No, sir. I don't recall.
 12 Q Did you notice any failure to disclose the method
 13 used to determine estimated current values and amounts in
 14 connection with your Independent Accountant's Compilation
 15 Report for President Trump's Statement of Financial Condition
 16 in 2019?
 17 A I do not recall. No, sir.
 18 Q Did you notice a failure to disclose the methods used
 19 to determine estimated current values and amounts in
 20 connection with your preparation of the Independent
 21 Accountant's Compilation Report for President Trump's
 22 Statements of Financial Condition in 2018.
 23 A Nothing came to my attention.
 24 THE COURT: We're not going to go each year by
 25 year, are we?

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1 MR. SUAREZ: I'd-- not asset by asset but I'd
 2 like to get through every year.
 3 THE COURT: I'm not going to let you do that.
 4 Ask him if it happened in any year.
 5 Q Did you ever notice in any year in the Statement of
 6 Financial Condition that we discussed here today, yesterday or
 7 Monday whether there was a failure to disclose the methods
 8 used to determine estimated current values and amounts with
 9 respect to any asset listed on President Trump's Statement of
 10 Financial Condition?
 11 A I do not believe so.
 12 THE COURT: So, now, the record is clear for
 13 every year. Great.
 14 MR. SUAREZ: Thank you.
 15 MR. ROBERT: Your Honor, if I may be heard on
 16 that, sir.
 17 THE COURT: Yes.
 18 MR. ROBERT: First of all, Mr. Bender's answer
 19 was "I don't believe so." So, I don't think that was as
 20 dispositive as he wants us to believe. If he wants to
 21 say no, it never happened, that's one thing.
 22 In addition, the relief the Attorney General is
 23 seeking against all the defendants is extraordinary.
 24 THE COURT: What does that have to do with
 25 anything?

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1 MR. ROBERT: Because they're trying to lump
 2 together a sequence of years and based on the fact that
 3 they have individual defendants that they've named as
 4 well as entities, what happened in a specific year is
 5 crucially important. They're seeking a quarter of a
 6 billion dollars in damages for the defendants.
 7 THE COURT: What does that have to do with
 8 anything?
 9 MR. ROBERT: The severity and importance of
 10 making sure we go year by year because different people
 11 have different responsibilities year by year.
 12 THE COURT: We're asking this particular
 13 witness.
 14 MR. ROBERT: And this particular witness is
 15 saying -- I think the answer was. Not-- let me make
 16 sure.
 17 THE COURT: Answer is the same for every year,
 18 whether it was complete or not.
 19 MR. ROBERT: Let me see what his answer was.
 20 Give me one moment, or, the Court Reporter can read back,
 21 with the Court's permission.
 22 THE COURT: No.
 23 He's asking the same question. He asked for
 24 2020, 2019, 2018. I don't see the point to go through
 25 every single year. It's the same question and same

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1 answer. So I asked counsel to ask for all the years and
 2 the answer is the same. Either he doesn't remember or he
 3 didn't. What's the difference? Jesus.
 4 But I'll ask the Plaintiffs, do you want to go
 5 through every year or not? Because I could get reversed
 6 for not allowing him to ask for every individual year
 7 rather than lumping them all together.
 8 What would you like me to do?
 9 MR. WALLACE: Whatever your Honor wants.
 10 THE COURT: I don't want to go through nonsense.
 11 So, let's move on. Objection overruled.
 12 MR. KISE: So, to be clear, we're precluded from
 13 asking year-by-year questions in the course of this
 14 proceeding?
 15 MR. WALLACE: I object.
 16 MR. KISE: What we're driving at here is who, at
 17 Mazars, was responsible for conforming with the AICPA
 18 standard each year. President Trump and the other
 19 defendants are accused of committing fraud in a repeated
 20 and persistent pattern, year by year by year each
 21 statement.
 22 So, each statement, respectfully, your Honor,
 23 stands on its own. Each statement is a freestanding
 24 statement. Each certification is a freestanding
 25 certification. This is what your Honor has ruled, that

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1 involves millions of pages of documents. I'm sorry, your
 2 Honor, but, I think we should be entitled to go year by
 3 year because that's their burden of proof. If we're
 4 going to lump it all together and all the organizations
 5 together --
 6 THE COURT: We're not lumping it all together.
 7 We're asking if the answer is the same for every year.
 8 Same for 2020. Same for 2019. Same for 2018. He said--
 9 he can ask whether the answer would be the same for every
 10 year. You can argue for every year. His answer of 2013,
 11 '15 or '11 or '12 would be the same. That's your record.
 12 I don't see any way around that.
 13 Again, I'll ask Plaintiff, do you want to hear
 14 it for every year or risk my being reversed because I
 15 wouldn't let them put on a defense in a really big case.
 16 (Continued on the following page..)

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1 they're independent. So, it is crucial, we believe, for
 2 the government to establish that in each independent
 3 year, there are these infirmities and if they can't
 4 establish that, then they need to -- they've not met
 5 their burden of proof and I'll give you an example.
 6 We're talking here about a presentation of an
 7 asset or liability at an obviously inappropriate value or
 8 amount. The government has introduced evidence of an
 9 alleged five or six hundred million dollar disparity on
 10 the Statement of Financial Condition for Mar-a-Lago.
 11 They've said it should be 18 to 27 instead of the six,
 12 seven, eight hundred that we have. That, to me -- I'm
 13 just --
 14 THE COURT: You're talking to me or the press or
 15 the audience, Chris?
 16 MR. KISE: I'm talking to you, your Honor.
 17 That, to me, you're asking why we have to go year by
 18 year.
 19 THE COURT: You don't have to go year by year.
 20 You have to go every year and he said every year, the
 21 answer would be the same. We're wasting more time than
 22 if he just let him go through it but this is --
 23 MR. KISE: We need to be able to put on our
 24 defense the way we think we should be able to put on a
 25 defense, year by year. They brought this case. It

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1 MR. WALLACE: So the record is clear, we are
 2 happy to stipulate here that Mr. Benders' response will be
 3 the same from every year from 2011 to 2020.
 4 THE COURT: That's my ruling. Objection
 5 overruled.
 6 Q Mr. Bender, when you stay you don't believe so, do
 7 you know?
 8 A Read the question again?
 9 THE COURT: Do you want read back?
 10 Read back, please.
 11 By the way, I do this same technique to try to
 12 save time, whether a big case or a little case. It's the
 13 same thing.
 14 (Whereupon, the requested portion of the
 15 proceedings was read back by the court reporter.)
 16 THE COURT: So, let's move on with the next
 17 question.
 18 Q Mr. Bender, I do not believe so, does that mean no?
 19 A Yes. That means no.
 20 Q Thank you. And Mr. Bender, for each and every year
 21 that you prepared a Statement of Financial Condition and didn't
 22 notice a failure to disclose the methods used to determine
 23 estimated current values and amounts, if you didn't notice a
 24 failure to disclose the methods used to determine estimated
 25 current values and amounts, you certainly couldn't have

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1 communicated that to the Trump Organization; correct?
 2 MR. WALLACE: Objection.
 3 THE COURT: Correct. If he didn't notice, then
 4 he couldn't communicate it.
 5 MR. SUAREZ: I just asked the question, and I got
 6 an objection. I just want to make sure we all understand
 7 it correctly, your Honor.
 8 THE COURT: Okay. If you don't notice something,
 9 you can't communicate it to someone else. Can we agree on
 10 that, counselor?
 11 MR. SUAREZ: Yes.
 12 THE COURT: So, what's the point of asking the
 13 question?
 14 MR. SUAREZ: I would like the witness to make
 15 that record, that if he didn't notice it, he didn't
 16 communicate it. The point is to establish that he didn't
 17 communicate it, your Honor.
 18 THE COURT: Yes. You did establish it, and he
 19 said he didn't notice it. But, I'll ask the witness to
 20 answer.
 21 Did you communicate what you didn't notice?
 22 THE WITNESS: The only change I would make is, he
 23 used the word, prepared. This was not a preparation. This
 24 was a compilation, so I just -- his question has to be
 25 adjusted.

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1 A If you say compilation, if I didn't notice it, I
 2 didn't communicate it on the compilation.
 3 Q Mr. Bender, certainly when you prepared the 2015
 4 Statement of Financial Condition --
 5 MR. SUAREZ: I'm going to stop. I'm going to
 6 withdraw the question. I'm going to speak more slowly.
 7 Q Certainly, Mr. Bender, when you prepared the
 8 independent accountant's compilation report for the 2015
 9 Statement of Financial Condition, you didn't forget all of the
 10 things that you learned when you prepared the independent
 11 accountant's compilation report for the Statement of Financial
 12 Condition in 2014; did you?
 13 A No -- say that again.
 14 MR. SUAREZ: I'm trying to adhere to your Honor's
 15 direction not to go year-by-year.
 16 Q But, I'm simply trying to establish the fact,
 17 Mr. Bender, that, from year to year, you didn't forget what you
 18 learned the prior year in preparing a Statement of Financial
 19 Condition. Compilation report.
 20 A Generally, that would be true. I'm not saying I would
 21 remember line-by-line from the year before, but generally, that
 22 would be true.
 23 Q But material issues that you learned in one year, you
 24 would remember the following year?
 25 A Generally, that would be true.

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1 Q Or they would be reflected in your work papers?
 2 A Generally, that would be true.
 3 Q And the work papers were maintained by Mazars?
 4 A Yes, sir.
 5 Q Would you review those work papers each year, before
 6 picking up on the following year's independent accountant's
 7 compilation report?
 8 A I don't recall if I didn't or I didn't.
 9 Q You don't recall whether you, each year, before
 10 beginning the prior -- the current year's independent accounting
 11 compilation report, review the prior year?
 12 A I don't recall -- I don't recall.
 13 Q Mr. Bender, at your deposition you testified that you
 14 spent 50 to 60 hours each year working on the Statement of
 15 Financial Condition compilation report; is that correct?
 16 A That would be an estimate. Yes.
 17 Q Okay. It's an estimate. It would change from year to
 18 year.
 19 MR. SUAREZ: And I'm not going to ask year to
 20 year, because I understand the Court's order.
 21 Q That would be an estimate from the period of time 2011
 22 to 2020, you spent about 50 to 60 hours a year?
 23 A That would be an estimate.
 24 Q And in your opinion, as the --
 25 MR. SUAREZ: Withdrawn.

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1 Q And as the partner in charge at Mazars, in charge of
 2 preparing the independent accountant compilation report for the
 3 45th President of the United States, 50 to 60 hours a year was a
 4 sufficient amount of time for you to spend on that assignment;
 5 correct?
 6 A Yes, sir.
 7 THE COURT: We are taking a very short break.
 8 (Whereupon, there was a pause in the
 9 proceedings.)
 10 THE COURT: Okay. Let's continue with where we
 11 left off.
 12 Q And within those 50 to 60 hours a year, approximately,
 13 that you spent compiling the Statement of Financial Condition
 14 for the 45th President of the United States, that was a
 15 sufficient amount of time for you to satisfy yourself that the
 16 statements did not fail to disclose the methods used to
 17 determine estimated current values and amounts?
 18 A I did the best, based on my professional skills, to
 19 meet those standards.
 20 Q I'm sorry. I can't --
 21 A I did the best, based on my professional standards, to
 22 meet those.
 23 Q You did the best, based on your professional
 24 standards?
 25 A My professional skills.

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1 Q And were those the professional standards for Donald
 2 Bender, or the professional standards of Mazars.
 3 A I used my best professional skills to meet the
 4 standards of Mazars. Of Mazars, and the AICPA.
 5 Q All right. So you used your best professional skills.
 6 So, can we infer from your testimony that it was your best
 7 professional skills that the president had the benefit of, or
 8 can we infer from your skills that it was the benefit of -- from
 9 your statement that it was the benefit of Mazars' skills, that
 10 the president had the benefit of?
 11 A I thought you asked about me -- I method your question
 12 was addressed about me.
 13 Q Well, was 50 to 60 hours a year sufficient for you to
 14 supervise everyone at Mazars that worked on this engagement?
 15 A Yes. I felt it was.
 16 Q And to adequately make sure that you could represent
 17 to the president that his Statements of Financial Condition did
 18 not fail to disclose the methods used to determine estimated
 19 current values and amounts?
 20 A We did our best to try to meet those standards, yes.
 21 Q You tried your best?
 22 A Yes.
 23 Q And you tried your best, in those 50 to 60 hours a
 24 year, to make sure that Mazars USA -- 2016, for example -- could
 25 represent to the president that all of the assets were

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1 presented, all of the assets or liabilities, were presented at
 2 an amount that was not inappropriately -- that was not obviously
 3 inappropriate?
 4 MR. WALLACE: Objection.
 5 THE COURT: What's the ground?
 6 MR. WALLACE: The question is completely unclear.
 7 THE COURT: How about a rephrase?
 8 MR. SUAREZ: Sure.
 9 Q The 50 to 60 hours a year that you worked on the
 10 Statement of Financial Condition, was that sufficient for you,
 11 Mr. Bender, to be comfortable signing the name, Mazars USA, to
 12 the Statement of Financial Condition certifying that the assets
 13 were not presented at an obviously inappropriate value or
 14 amount?
 15 A I was comfortable signing the compilation. I did not
 16 need to certify anything. That was not an audit. This was a
 17 compilation. The standards for a compilation don't require us
 18 to certify anything.
 19 Q Well, the standards for at compilation do require you
 20 to present a compilation report that notes whether any of the
 21 assets or liabilities are stated at an obviously inappropriate
 22 value or amount?
 23 A Yes, sir.
 24 Q And in 50 to 60 hours a year, you were able to satisfy
 25 yourself that the asset value that was stated -- and let's take

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1 an example. Let's use a concrete example. Let's take 2013.
 2 Let's start with 2013. Fifty to 60 hours a year -- let's put up
 3 2013.
 4 (Whereupon, a document was displayed, and handed
 5 to the witness.)
 6 Q Mazars and WeiserMazars, both of those logos on are
 7 the page, at the top. It says WeiserMazars LLP.
 8 MR. SUAREZ: Come on over. Next page.
 9 Q Your signature, the assets.
 10 Let's go through the assets. In 2013, in 50 to 60
 11 hours a year, you were able to satisfy yourself that it was
 12 appropriate to list \$339 million in cash, \$339 million in cash,
 13 on the statement of assets in 2013, Mr. Bender?
 14 A On the Statement of Financial Conditions? I met the
 15 professional standard for a compilation. Yes, sir.
 16 Q So, to meet the professional standard for a
 17 compilation and conclude that an asset or liability is not
 18 stated at an obviously inappropriate value or amount, in 50 to
 19 60 hours a year, you could do that, to determine, just go
 20 through them, \$339 million in cash and marketable securities?
 21 A Yes, sir.
 22 Q And in 50 to 60 hours a year, you were able to take
 23 Trump Tower at \$526 million, and determine that Trump Tower, at
 24 \$526 million, was not presented at an obviously inappropriate
 25 value or amount?

D. Bender - Cross by Mr. Suarez Page 413

1 A Based on my compilation procedures, nothing came to my
 2 attention.
 3 Q And in 50 to 60 hours a year, you were able to
 4 determine that Trump Tower being presented at \$526,800,000 did
 5 not fail the compilation -- did not -- I'm sorry, the Statements
 6 of Financial Condition, it did not fail to disclose the methods
 7 used to determine estimated current value of that asset?
 8 A Say that again, please?
 9 Q You were able, in 50 to 60 hours a year, to determine
 10 that the Statements of Financial Condition did not fail to
 11 disclose the methods used to determine estimated current value,
 12 estimated current value of that asset?
 13 A Nothing came to my attention, as part of my
 14 compilation procedures.
 15 Q And in 50 to 60 hours a year, you were able to
 16 determine that NikeTown, worth \$287,600,000 in 2013, was
 17 appropriately listed, and that the Statement of Financial
 18 Condition did not fail to disclose the methods used to determine
 19 estimated current values and amounts?
 20 A Nothing came to my attention, as part of my
 21 compilation procedures.
 22 Q And in 50 hours a year, you were able to determine, 50
 23 to 60 hours a year, approximately, you were able to determine
 24 that that asset was not presented at an obviously inappropriate
 25 value or amount?

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1 A Nothing came to my attention, as part of my
 2 compilation procedures.
 3 Q And in connection with 40 Wall Street, identified in
 4 2013 at \$530 million a year, Mr. Bender, you were able to
 5 determine that the Statement of Financial Condition did not fail
 6 to disclose the methods used to determine estimated current
 7 value and amount of that asset?
 8 A Nothing came to my attention, as part of my
 9 compilation procedures.
 10 Q Okay. And in 50 to 60 hours a year, Mr. Bender, you
 11 were able to determine that 40 Wall Street was not presented at
 12 an obviously inappropriate value or amount; is that correct?
 13 A Nothing came to my attention during my compilation
 14 procedures.
 15 Q And in 50 to 60 hours a year, Mr. Bender, you were
 16 able to determine that Trump Park Avenue, listed in the
 17 Statement of Financial Condition at \$346,100,000, that the
 18 Statement of Financial Condition did not fail to disclose the
 19 methods used to determine estimated current value and amount for
 20 that asset?
 21 A Nothing came to my attention, during my compilation
 22 procedures.
 23 THE COURT: Counselor, can we lump this all
 24 together? Again, using the same principles, you can ask
 25 him, for each item, whether 50 or 60 hours was sufficient.

D. Bender - Cross by Mr. Suarez Page 415

1 I think that would make sense, but if you really want to do
 2 it, go ahead.
 3 MR. SUAREZ: I'm doing my best to lump this
 4 together, but I can't lump it together, your Honor, because
 5 each separate asset on the spreadsheet presents the basis
 6 for valuation, and Mr. Bender's testimony, I believe, is
 7 that within 50 to 60 hours a year, he was able to look at
 8 all of those valuations and make sure that they were
 9 properly listed, or at a minimum, that they were properly
 10 disclosed in the Statement of Financial Condition, what the
 11 basis for that methodology was.
 12 THE COURT: Yes. The key word you used is, all.
 13 Ask him if he would have the same answer to the same
 14 questions for each line. But all the lines --
 15 MR. SUAREZ: May I try to truncate is by
 16 saying --
 17 Q Would you have the same answer to the same questions
 18 concerning the club facilities and real estate in New York,
 19 Florida, New Jersey, California, Washington D.C., North
 20 Carolina, and Scotland, at \$1,656,200,000?
 21 A Nothing came to my attention as part of my compilation
 22 procedures.
 23 Q Nothing came to your attention. Did anything come to
 24 your attention concerning the manner in which estimated current
 25 value and amounts for the Trump World Tower at United Nations

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1 Plaza was disclosed in this financial statement?
 2 A No.
 3 Q And did anything come to your attention that would
 4 cause you to think that this asset was not presented at an
 5 obviously inappropriate value or amount?
 6 A No, sir.
 7 Q Did anything cause you to think that it was presented
 8 at an inappropriate value or amount?
 9 A No, sir.
 10 Q The Trump Plaza commercial and retained residential
 11 portions identified at \$31 million, in 50 to 60 hours a year, is
 12 that something that you were able to determine that the Jeff
 13 Supporting Data that then was reflected in the notes,
 14 Mr. Bender, did not fail to disclose the methods used to
 15 determine estimated current values and amounts?
 16 A Nothing came to my attention.
 17 Q Nothing came to your attention.
 18 So, this is all work that you did in 50 to 60 hours a
 19 year?
 20 A My time would have been 50 to 60 hours a year.
 21 Q Your time alone?
 22 A My time alone.
 23 Q Sufficient?
 24 A On average.
 25 Q On average?

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1 A Guesstimate.
 2 Q I've been asked to bring them all together.
 3 A Okay.
 4 Q And in 50 to 60 hours a year, Mr. Bender, the Trump
 5 Palace, the Trump Parc, the Trump Parc East condominiums, those
 6 commercial portions, you were able to satisfy yourself that the
 7 Statement of Financial Condition did not fail to disclose the
 8 methods used to determine estimated current value and amounts
 9 for those three assets at \$13,700,000?
 10 A Nothing came to my attention, as part of my
 11 compilation procedure.
 12 THE COURT: Counselor, I don't talk just to hear
 13 myself. You seem to be doing the exact same thing, and I'm
 14 precluding you from doing it. You can lump together -- I
 15 thought you were just going to list the different
 16 properties, but to ask the question again, I'm not going to
 17 let you to that.
 18 MR. SUAREZ: Your Honor, here is the concern that
 19 I have: Every single Statement of Financial Condition
 20 lists the property differently. Every single Statement of
 21 Financial Condition, from year to year, identifies the
 22 properties differently. Mr. Bender just told you, your
 23 Honor, that he or Mazars retained the knowledge as to all
 24 material assets that went from year to year, and how those
 25 assets changed, and in 50 to 60 hours a year, Mr. Bender

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1 satisfied himself that he could sign the name of a major
 2 international accounting firm on the Statement of Financial
 3 Condition, slapped their logo on it, and called it an
 4 independent compilation report.
 5 THE COURT: Maybe that helps you. That is his
 6 testimony, yes. Or, you can ask him, Would your answer be
 7 the same to the same questions for all of the other
 8 properties on that sheet? That's all I'm going to let you
 9 do.
 10 THE WITNESS: My testimony wasn't that, from year
 11 to year. I said, in each individual year, your Honor.
 12 MR. SUAREZ: And that just reiterates the point
 13 as to why we have to go year by year, your Honor. Because
 14 in each individual year, his testimony may be different.
 15 THE WITNESS: No. I said, I didn't necessarily
 16 compare to the previous year.
 17 MR. SUAREZ: He didn't necessarily compare to the
 18 previous year, which is even more important, because every
 19 single year, he had two rows of data presented to him; the
 20 prior year and the current year, and his testimony today is
 21 that he didn't compare to the prior year.
 22 THE WITNESS: I may not necessarily have compared
 23 every item to the previous year.
 24 THE COURT: Let me approach this a different way.
 25 How much longer do you expect this cross

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1 examination to take?
 2 MR. SUAREZ: Your Honor --
 3 THE COURT: That's a simple question.
 4 MR. SUAREZ: We have --
 5 THE COURT: If you do it your way. Not my way.
 6 MR. SUAREZ: We have Statements of Financial
 7 Condition. I would work my hardest to be done today.
 8 MR. WALLACE: Today?
 9 THE COURT: Well --
 10 MR. WALLACE: Your Honor, at this point I will
 11 raise that we have another witness who has come in from out
 12 of the town, now in second day of waiting outside, and if
 13 they are just going to do this, read every number and say,
 14 did he spend the 50 to 60 hours he already testified he
 15 spent, this is time wasting. I don't know why they think
 16 running out the clock is going to be helpful, but there's
 17 no jury. I don't know who we are performing for, at this
 18 point. The evidence is clear. He spent 50 to 60 hours a
 19 year. The statements say what they say.
 20 THE COURT: I'll let --
 21 MR. WALLACE: If we are going to go on all day
 22 with Mr. Bender, at some point we would like to have a
 23 conference, because we have a witness waiting.
 24 THE COURT: I just want to point out to
 25 everybody, Mr. Bender is not on trial here. Somebody else

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1 is, or various people are, on trial here.
 2 MR. KISE: I would respectfully disagree with
 3 that, your Honor.
 4 MS. HABBA: As would I, your Honor.
 5 MR. KISE: His credibility, his veracity, his
 6 thoroughness in conducting his job that he got paid
 7 millions of dollars a year to do. He was the CPA. He had
 8 certain responsibilities under the AICPA standards. Those
 9 responsibilities are laid out. If he didn't meet those
 10 standards -- he is sitting here answer after answer saying,
 11 Nothing came to my attention; I don't recall. The only
 12 things he seems to recall, with any degree of specificity,
 13 are what the Government wants him to recall. That's a fair
 14 summary of his testimony so far.
 15 MR. WALLACE: The record saying what?
 16 MR. KISE: So we need to be allowed to parse the
 17 evidence. We didn't bring this case.
 18 THE COURT: But you don't -- you are not allowed
 19 to waste time. That's what this is becoming, going through
 20 every one of these and getting the same answer, when you
 21 can just say, Would your answer be the same.
 22 And, as I said, I do this in every trial, and you
 23 know what? No one has ever objected to it.
 24 MS. HABBA: Your Honor, if I may, this trial is
 25 different because we still don't even have clarity on the

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1 years in question, and for my clients, frankly, it's
 2 incredibly important. My clients, some of them did the
 3 backup data, that he is complimenting my client from the
 4 stand, but I can't ask him specifically, and have no record
 5 as to what he relied on with my client Mr. McConney, for
 6 instance, or Allen Weisselberg.
 7 This is insane. We haven't gotten one answer out
 8 of him, and we have not objected to the fact that he is
 9 being evasive, but quite honestly, your Honor, he is. He
 10 has not answered one question. He has no memory today, as
 11 we sit here.
 12 MR. KISE: I just want to be clear, your Honor.
 13 THE COURT: Go ahead.
 14 MR. KISE: The Government has brought a case
 15 accusing my client of a staggering fraud, and that is based
 16 on year-by-year. They pointed out to you, in this year
 17 they made these changes, in this year they made those
 18 changes. I mean, it's specific to year. But now, when it
 19 comes time for us to defend ourselves and point out the
 20 flaws in that case, they want --
 21 THE COURT: You have had plenty of chances to
 22 defend yourself, and I've already ruled on them.
 23 MS. HABBA: No, your Honor. We disagree with
 24 that.
 25 MR. KISE: With respect to intent, with respect

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1 to materiality, and with respect to reliance, these
 2 concepts are very important, and so we'll attempt to
 3 streamline these as much as possible, but they gone back --
 4 THE COURT: You haven't seen that, yet. I made a
 5 ruling, and he totally ignored it. I said, I'm not going
 6 to let you do property by property, and then he just went
 7 on, property by property.
 8 MR. KISE: But we have to do property by
 9 property, because that's -- the devil is in the details.
 10 I'm sorry, but it is.
 11 THE COURT: You can do property by property, and
 12 you can lump them all together. This is ridiculous.
 13 To the reporters, I'm pounding the bench, again.
 14 This is ridiculous.
 15 MS. HABBA: That's the one thing I agree with
 16 you, sir. This is absolutely ridiculous.
 17 THE COURT: There's no point in going through
 18 each line, when the counsel can ask the witness if his
 19 answer would be the same for each line. Then you have got
 20 your record on appeal, and then you have got whatever
 21 post-trial brief you want to say. I'm just being logical,
 22 here.
 23 MR. KISE: I'm not sure -- let me be sure I
 24 understand what you are saying. So, you are asking us to
 25 go line by line, but just ask the same question for each

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1 line?
 2 THE COURT: I'm asking --
 3 MR. KISE: Would your answer be the same -- for
 4 example, would your answer be the same as to Trump
 5 International Hotel and Tower; would your answer be the
 6 same as to Mansion at Seven Springs; would your answer be
 7 the same as to partnerships and joint ventures? I mean,
 8 I've never had to negotiate how to ask questions, as a
 9 defense lawyer, but -- and I think it's highly irregular.
 10 I think it makes -- I think it makes a very poor record,
 11 frankly.
 12 So, this is why I think we should be entitled to
 13 present our defense the way we want to. It is going to
 14 take some time, but they brought a case that spans a
 15 decade, and accuses --
 16 MS. HABBA: Exactly.
 17 MR. KISE: -- my client of massive and staggering
 18 fraud, they can't condense it all together, because they
 19 have a witness waiting, and it's inconvenient.
 20 MS. HABBA: And your Honor, your order itself
 21 goes to, for instance, Mar-A-Lago, famous Mar-A-Lago, which
 22 we are clearly having a discrepancy for, on the value. How
 23 can you say that now we can't sit her and ask about the
 24 value of Mar-A-Lago?
 25 THE COURT: All I'm asking is that you lump

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1 things together, so we don't waste time. You can include
 2 Mar-A-Lago and any other property in whatever question it
 3 is, but let's not waste time. I'm just being logical,
 4 here. I'm not going to let you ask every single line, when
 5 you can just ask, For all the lines, would your answer be
 6 the same. You will have your record, you will have what
 7 I've heard, and let's just move ahead. You are not going
 8 to get away with this.
 9 MR. KISE: For the record, I object to that
 10 procedure, your Honor.
 11 MS. HABBA: As do I, your Honor.
 12 MR. ROBERT: As do I.
 13 THE COURT: Okay.
 14 By the way, you don't even have to say every line
 15 on the page. You can say, Would your answer be the same
 16 for A, B, C, D, E, F. You can name them all, but you don't
 17 have to ask the question again.
 18 Q For the questions that we have just run through
 19 Mr. Bender, I'm just going to --
 20 MR. SUAREZ: Your Honor, I'm being very delicate,
 21 to make sure I don't re-ask the question.
 22 Q But, I'm going to go through, and I'm going to
 23 question you, for the remaining assets, whether 50 to 60 hours a
 24 year was sufficient for you, number one, to determine that the
 25 Statement of Financial Condition did not fail to disclose the

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1 methods used to determine estimated current values and amounts;
 2 and number two, that the asset was presented at a value or
 3 amount that was not obviously inappropriate.
 4 A I'm sorry. Nothing came to my attention, during my
 5 compilation procedures.
 6 Q And that was true --
 7 MR. SUAREZ: I'm sorry, your Honor.
 8 Q But my question, actually, Mr. Bender, was a little
 9 different. My question wasn't whether anything came to your
 10 attention. My question was whether 50 to 60 hours a year was
 11 sufficient for you to determine that the Statement of Financial
 12 Condition with respect to, take the Trump International Hotel
 13 and Tower, New York, New York, did not fail to disclose the
 14 methods used to determine estimated current values and amounts,
 15 and presented the value or amount of that asset or liability, in
 16 a manner that was not obviously inappropriate.
 17 A I was able to meet my standards for my compilation
 18 procedures.
 19 MR. SUAREZ: The witness is being evasive, which
 20 is the reason we've got to go and try to pin him down. He
 21 testifies, 50 to 60 hours a year. I'm asking him, with
 22 respect to each asset, whether within those 50 to 60 hours
 23 a year, it was sufficient for him, the person who signed
 24 the accountant's compilation report, to determine whether
 25 two very basic and fundamental criteria had been met.

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1 That's the question. Was that enough time for you to make
 2 that determination? If his answer is yes, I'll say, same
 3 question. Same question for this asset. Same question for
 4 this asset. If his answer is no, I'll ask him the same
 5 question for each asset, same question for each asset, same
 6 question for each asset.
 7 THE COURT: I think that's what I'm asking you to
 8 do.
 9 MR. SUAREZ: And I'm more than happy to do that,
 10 your Honor. I'm certainly not intending to upset you or
 11 not follow the Court's orders but --
 12 THE COURT: I have a thick skin, but it's really
 13 being pierced, here.
 14 MR. SUAREZ: But the answer that I'm getting from
 15 the witness is not responsive, candidly.
 16 Q The question is, Mr. Bender, in 50 to 60 hours a year,
 17 were you able to determine whether the asset listed in this
 18 Statement of Financial Condition, with respect to each asset
 19 listed on the Statement of Financial Condition, the Statement of
 20 Financial Condition did not, number one, fail to disclose the
 21 methods used to determine estimated current values and amounts;
 22 and number two, present an asset or liability at an obviously
 23 inappropriate value or amount.
 24 Was that enough time for to you make that
 25 determination?

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1 A It was enough time for me to make that determination,
 2 based on my compilation procedures.
 3 Q Okay. Same question for Trump International Hotel and
 4 Tower. Would you give me the same answer? Yes or no.
 5 A Yes, sir.
 6 Q And for Mansion at Seven Springs. If I asked you the
 7 same question, would you give me the same answer?
 8 A Yes, sir.
 9 Q With respect to the partnerships and joint ventures,
 10 the first one, 1290 Avenue of the Americas, New York, New York;
 11 and 555 California Street, San Francisco, California, would you
 12 give me the same answer, if I asked you the same questions?
 13 A Yes, sir.
 14 (Continued on the next page.)
 15
 16
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 23
 24
 25

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1 Q With respect to the Trump International Hotel and
 2 Tower in Las Vegas, Nevada, would you give me the same answer,
 3 if I asked you the same question?
 4 A Yes, sir.
 5 Q With respect to Miss Universe Pageants, would you
 6 give me the same answer, if I asked you the same questions?
 7 A Yes, sir?
 8 Q With respect to real estate licensing developments,
 9 would you give me the same answer, if I asked you the same
 10 questions?
 11 A Yes, sir.
 12 Q With respect to the other assets, would you give me
 13 the same answer, if I asked you the same question?
 14 A Yes, sir.
 15 Q Now, the other assets, the other assets are disclosed
 16 at a value of \$337 million in this Statement of Financial
 17 Condition, correct?
 18 A Yes, sir.
 19 Q You, Mr. Bender, made the determination it was
 20 appropriate to present them as other assets, to lump them
 21 together in the category of other assets?
 22 A It's the client's compilation. They prepared the
 23 financial statement. Yeah, they prepared the financial
 24 statement.
 25 Q You understood which assets were included within the

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1 value of the other assets. Was that part of your mathematical
 2 calculation?
 3 A Yes, sir.
 4 Q You went through all of the other assets and I, with
 5 your Honor's permission, I'd like to pull them up and walk
 6 through what other assets fold into other assets.
 7 THE COURT: I'm not sure he understood the
 8 question before. I think isn't the question, do you know
 9 what the other assets were. I'll ask that question, all
 10 right.
 11 Do you know what the other assets were?
 12 THE WITNESS: I know a lot of them. I don't now
 13 them all for every year, off the top of my head.
 14 THE COURT: Did you know them all for 2013?
 15 THE WITNESS: I can't tell you today.
 16 THE COURT: Ask him what you want.
 17 MR. SUAREZ: Let's pull up the Jeff Supporting
 18 Data for other assets. I would just note that part of
 19 the argument that we've heard is that assets were moved
 20 in or out of this category over the years, for one reason
 21 other another, and, whatever motivations the government
 22 ascribes to them, that we don't agree with, but,
 23 certainly, certainly, the point is the independent
 24 accountant that looked at these Jeff Supporting Data in
 25 50 to 60 hours a year was able to determine that they

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1 should all be lumped together in the category of other
 2 assets and that that same independent accountant and his
 3 knowledge of the AICPA guidelines carried that knowledge
 4 over from year to year, your Honor, and how those assets
 5 changed and what he looked at and whether those assets
 6 were lumped together into the category of other assets
 7 are the questions that I respectfully intend to ask the
 8 witness.

9 THE COURT: Let's start and see how it goes.

10 MR. SUAREZ: Excellent.

11 Q Mr. Bender, other assets, The Apprentice. Did you
 12 review the basis for including that asset into the category of
 13 other assets?

14 A It wasn't a review but I was happy -- I was content
 15 with the classification at that time.

16 Q It was okay with you to classify that as other asset?

17 A At that time, yes.

18 Q Okay. The Wollman Rink, were you able to classify
 19 that as an asset in the Statement of Financial Condition?

20 A At that time, yes.

21 Q Is it still okay to call it an other asset? You keep
 22 saying "at that time" as if you'd change your mind and would
 23 call it another asset today. That would be okay with you?

24 A I would be fine.

25 Q You'd be perfectly fine with calling that an other

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1 asset. The President's family receivables, you'd be okay with
 2 calling that an other asset?

3 A Yes, sir.

4 Q Trump Model Management disclosed to you \$2 million.
 5 You'd be okay with calling that an other asset?

6 A Yes, sir.

7 Q The Virginia Vineyards which, in 2013, were valued at
 8 \$15,439,000, you'd be okay with calling that an other asset?

9 A Yes, sir.

10 Q You made the determination it was okay to include
 11 that in the other assets?

12 A The client made the determination. I did not have
 13 any problem at the time.

14 Q You had no problem in the manner in which it was
 15 disclosed in the financial statement?

16 A Not at that time, no, sir.

17 Q How about today, you think it was inappropriate to
 18 disclose that?

19 A As of today, I'm not on top of all standards as of
 20 today but I know of nothing --

21 Q When did you stop being on top of all standard?

22 A I stopped doing compilations about two or three
 23 years ago.

24 Q Before that, you were on top of all the standards?

25 A No but I have subject matter specialists who would

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1 assist me, and I would able to consult people.

2 Q Starrett City Associates, \$10 million. It was okay
 3 for you to lump that into other assets? You didn't have an
 4 issue with how that was disclosed, Mr. Bender?

5 A No, I did not have an issue.

6 Q Okay, the President's aircrafts which, in 2013, were
 7 disclosed at asset value of \$52 million. You can see there
 8 the manner in which those asset values were derived at
 9 \$52 million. You were okay lumping that into other assets?

10 A I was okay at that time.

11 Q Are you okay with it today? I'm trying to understand
 12 or qualify "at that time."

13 A Yes. Yes.

14 Q Okay. The triplex --

15 MR. SUAREZ: I think he I said it right this
 16 time, your Honor.

17 Q --listed there at \$200 million, it was okay with you
 18 to lump that in as an other asset?

19 A It was, yes.

20 Q Okay. The two homes in Palm Beach in 2013 listed as
 21 an asset of \$9 million and \$2,750,000, that was okay for you
 22 to list as an other asset?

23 A It was okay.

24 Q In Beverly Hills, California the residence in Beverly
 25 Hills, \$15 million asset, that was okay to lump it in?

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1 A It was okay at that time, yes.

2 Q The licensing deals, the management fees, and
 3 incentive fees, it was okay to lump those assets in as other
 4 assets?

5 A It was okay at that time. Yes, sir.

6 Q Same question for the accounts payable. Okay to lump
 7 them in as other assets?

8 A Those are the liabilities. I take it back. That is
 9 a liability on the other side and that's a --

10 Q Let's put a pause on that. So, in 2013 when you
 11 reviewed all of those assets, you were okay lumping them into
 12 other assets?

13 A Mazars compiled the financial statement. We had no
 14 problem at that time.

15 Q Do you have a problem with the fact in 2013 all of
 16 those assets were put together and included as other assets in
 17 the Statements of Financial Condition?

18 A We had no problem when we issued the statement.

19 Q Okay, at that time-- withdrawn. In connection with
 20 all the assets that we just discussed, the failure -- sorry.
 21 You did not know, in connection with all the assets that we
 22 just discussed, as other assets, you did not know or notice a
 23 failure to disclose the methods used to determine estimated
 24 current value among any of those assets?

25 A Not that I recall at this time.

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1 Q And in your estimation, in the 50 to 60 hours you
2 spent on this worksheet, you did not notice that any of these
3 assets were presented at an obviously inappropriate value or
4 amount, did you?
5 A Nothing came to my attention when I compiled the
6 2013 --
7 Q 2013?
8 A Yeah, it's not shown.
9 Q You would agree with me when you compiled 2013, you
10 had in front of you the number used in '13 and the number that
11 was used in 2012?
12 A Yes.
13 Q So, you can see, for example, when you go all the way
14 to the top, that the President's cash position in June 30,
15 2013 increased to \$339 million from \$169 million the year
16 before?
17 A His cash and marketable security balance.
18 Q Cash and Marketable Securities increased from \$339
19 million from 169 the year before?
20 A That's what it says. Yes, sir.
21 Q In the time that you spent reviewing that, you were
22 comfortable that the method used to determine the estimated
23 current value of all of these assets on the spreadsheet were
24 properly disclosed in the Statement of Financial Condition?
25 A When I was compiling it, not reviewing it. You said

D. Bender - Cross/Suarez Page 436

1 Q If I asked you the same question for the note related
2 to Trump Tower, you'd give me the same answer?
3 A Yes, sir.
4 Q If I asked you the same question for the secured
5 lease bond related to Niketown?
6 A Yes, sir.
7 Q The loan related to 40 Wall Street, you'd give me the
8 same answer?
9 A Yes.
10 Q The loans related to club facilities and related real
11 estate, you'd give me the same answer?
12 A Yes, sir.
13 Q The loan related to Trump Park Avenue, you'd give me
14 the same answer?
15 A Yes.
16 Q So, in reviewing and preparing your Independent
17 Accountant's Compilation Report, you would have been apprised
18 of the fact that there was a loan on Trump Tower, correct?
19 A Yes, sir.
20 Q You would have been apprised to the fact that there
21 was a loan related to 40 Wall Street?
22 A Yes, sir.
23 Q You would have been apprised of the fact that there
24 was a loan related to club facilities and real estate?
25 A Yes, sir.

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1 reviewed. When I was compiling, nothing came to my attention
2 or bothered me.
3 THE COURT: Five-minute warning.
4 MR. SUAREZ: Let's move back to liabilities.
5 MR. WALLACE: The People would like to request a
6 side-bar before we actually all leave for lunch. So, if
7 that can be accommodated within the five minutes.
8 THE COURT: Let's do that. Great.
9 MR. WALLACE: Now or -- I think five more
10 minutes and then we can talk.
11 THE COURT: Go five more minutes of testimony
12 and then we'll talk.
13 Q Let's pull up the 2013 Statement of Financial
14 Condition. Next page. Next page. Let's go to liability.
15 Here you have the liabilities, Mr. Bender.
16 You correctly noted the accounts payable and
17 accrued expense of liability of \$20 million. In the 50 to
18 60 hours you spent, Mr. Bender, producing your Independent
19 Accountant's Compilation Report for the 2013 Statement of
20 Financial Condition, were you able to determine, with respect
21 to accounts payable and accrued expenses, the Statement of
22 Financial Condition did not fail to disclose the methods used
23 to determine the estimated current value, the amount of that
24 liability?
25 A Nothing came to my attention during that time.

D. Bender - Cross/Suarez Page 437

1 Q And the loans related to club facilities and real
2 estate, that's also grouping, correct?
3 A Yes, sir. I believe so.
4 Q That reflects more than one loan?
5 A I'd have to check. I'm not familiar with the debt
6 on the club facilities at the time.
7 Q You certainly would have determined that was an
8 appropriate way to disclose that?
9 A Yes, sir.
10 Q You would have determined that loans related to Trump
11 Park Avenue were appropriately disclosed?
12 A Yes.
13 Q The loans related to the commercial and retained
14 residential portions of Trump Plaza were appropriately
15 disclosed?
16 A Yes, sir.
17 Q Same question with the Trump International Hotel and
18 Tower New York?
19 A Sorry?
20 Q The loan related to the Trump International Hotel and
21 Tower New York?
22 A Nothing came to my attention.
23 Q The loan related to the mansion at Seven Springs, you
24 would have determined that was appropriate to disclose at that
25 time?

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1 A Nothing came to my attention, so I agree.

2 Q So, you agree. Same question for other mortgages and

3 loans payable?

4 A Nothing came to my attention.

5 Q Same question for commitments and contingencies?

6 A Nothing came to my attention, your Honor.

7 Q Same question for the net worth calculation for 2013?

8 A That's math. A plus B should equal C.

9 Q So, nothing came to your attention that the Statement

10 of Financial Condition in any way failed to disclose the

11 methods used to determine estimated current values with

12 respect to the statement of net worth, correct?

13 A Statement of financial conditions not the -- you

14 used the statement of --

15 Q The statement of net worth. It says net worth there.

16 A Okay.

17 Q You described as a -- what you described as a

18 mathematical calculation of assets minus liabilities, correct?

19 A Yes, sir.

20 Q We take all of the assets that you said in the prior

21 page, you spent the time to determine there was no failure to

22 disclose the estimated current value of those assets, the

23 methods for determining the estimated current value of those

24 assets and you subtracted from them all of the liabilities for

25 the-- that are listed on this page and I think your testimony

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1 THE COURT: Okay. Let's do what we said.

2 Attorneys stay. Everybody else, 2:15. Thank you.

3

4 (Luncheon recess taken.)

5

6 (Continued on following page..)

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D. Bender - Cross/Suarez Page 439

1 was, you determined that there was no failure to disclose the

2 methods used to determine the estimated amounts of those

3 loans?

4 A I believe.

5 Q So, if you were to subtract those two, you wouldn't

6 take issue with the computation of net worth either?

7 A Sorry?

8 Q You would not take issue with the computation of net

9 worth?

10 A Nothing came to my attention.

11 Q At 4.9 million?

12 A Nothing came to my attention.

13 Q This is the review that you conducted in 50 to

14 60 hours?

15 A This is a compilation that I prepared in 50 to

16 60 hours.

17 Q If I were to ask you --

18 If I were to ask you the same questions with

19 respect to the presentation of an asset or liability at an

20 obviously inappropriate value or amount, the 50 or 60 hours

21 was sufficient for you to determine with respect to this

22 Statement of Financial Condition there was no presentation of

23 asset or liability as an obviously inappropriate value or

24 amount, you'd have the same answer?

25 A Yes, sir.

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1 A F T E R N O O N S E S S I O N .

2

3 THE COURT: Counsel, we're going to accommodate

4 a witness. We're taking a witness out of order. Mr.

5 Bender will be testifying later after we finish this

6 testimony.

7 Who are you calling?

8 MR. GABER: People call Camron Harris. Judge,

9 I've been admonished to introduce myself to the Court.

10 THE COURT: Can't hear you.

11 MR. GABER: My name is Sherief Gaber. We spoke

12 last week. Feels like last year's arguments.

13 THE COURT: Please keep your voice up.

14 Most of you don't realize this but this is a

15 very important day. I believe -- correct me if I'm

16 wrong -- it's Kevin Wallace's birthday.

17 MR. WALLACE: Thank you, your Honor. This is a

18 living nightmare for me.

19 THE COURT: Happy birthday. Is this how you're

20 celebrating?

21 MR. WALLACE: Just happen to be surrounded by

22 people I love.

23 MR. ROBERT: Up to this line.

24 (Whereupon, the witness enters the courtroom.)

25 C A M R O N H A R R I S, called as a witness, having

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1 been first duly sworn, was examined, and testified, as
 2 follows:
 3 THE COURT: State your name and home or business
 4 address on the record.
 5 THE WITNESS: I'm Camron Harris. Work address:
 6 Whitley Penn. 8343 Douglas Avenue Dallas, Texas.
 7 DIRECT EXAMINATION
 8 BY MR. GABER:
 9 Q Good morning, Mr. Harris.
 10 A Good afternoon.
 11 Q You just gave us your name and place of business.
 12 Can you just state your employer and title, for the record?
 13 A Yeah. My employer is Whitley Penn. Title is audit
 14 partner.
 15 Q Mr. Harris, were you involved in the engagement
 16 compiling of a 2021 Statement of Financial Condition of Donald
 17 J. Trump?
 18 A Yes, sir.
 19 Q Mr. Harris, how long have you been employed there?
 20 A Over 19 years.
 21 Q Can you describe your educational background?
 22 A I graduated from Texas Tech with an accounting and
 23 management degree.
 24 MR. KISE: Is his microphone on?
 25 THE COURT: You have to speak right into it,

C. Harris - Direct/Gaber Page 443

1 clearly.
 2 A I graduated from Texas Tech with a management and
 3 accounting degree and I'm a CPA.
 4 Q I believe that you said you were an audit partner,
 5 Mr. Harris. Can you describe that role?
 6 A Yes, as an audit partner, I lead multiple teams that
 7 are in charge of doing attestation work for numerous clients.
 8 Q As audit partner, did you have a role in any of
 9 Whitley Penn's audit engagement for the Trump Organization?
 10 A I only work on attestation engagements.
 11 Q All of the attestation agreements?
 12 A Correct.
 13 Q So, Mr. Harris. I'll bring up a document that
 14 Plaintiff's have marked PX-1498 for identification.
 15 Are you familiar with this document, Mr. Harris?
 16 A Yes, sir.
 17 Q Can you describe what this document is?
 18 A Yes. This is our client acceptance procedure memo.
 19 This memo details out the work that we did, forbearance
 20 proposal, and onboarding process and determining if this was
 21 a client that we were going to take on.
 22 Q When you say this was a client, can you clarify?
 23 A Restate, please.
 24 Q Who is this?
 25 A The engagement that we do for the Trump

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1 Organization.
 2 Q Is this memo kept among the work papers for this
 3 engagement?
 4 A Correct.
 5 MR. GABER: I'd like to move this into evidence,
 6 Judge.
 7 THE COURT: Granted. It's in evidence.
 8 Q So, Mr. Harris, I'd like to direct your attention to
 9 the top of the second page of this document, if you would.
 10 It says: "On August 17, 2021 Camron Harris,
 11 Randy Gregg, Jeff Lawlis held a call with Mark Hawthorn and
 12 Jeff McConney. During this call we went through all the prior
 13 years' audit and compilation records and asked various
 14 questions about the operation and each of the entities. We
 15 also discussed the clients acceptance inquiry outlined above.
 16 Management provided and answered all questions adequately and
 17 was forthright in providing all necessary information."
 18 Was-- the meeting occurred as described here?
 19 A Yes.
 20 Q Who is Jeff McConney?
 21 A Jeff McConney was the Vice President of Finance.
 22 Q At the Trump Organization?
 23 A Yes.
 24 Q Who is Mark Hawthorn?
 25 A Mark Hawthorn's role was CFO at the Trump

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1 Organization over the resort properties.
 2 Q Was the Statement of Financial Condition of Donald J.
 3 Trump one of the audits and compilations discussed on this
 4 call with Mr. Hawthorn and Mr. McConney?
 5 A I believe so.
 6 Q Do you know what or can you describe what role Jeff
 7 McConney played in the SOFC engagement?
 8 A Yes, Jeff was one of our main points of contact as
 9 we were going through that compilation. He's reviewed a lot
 10 of the work prior to it being provided to us.
 11 Q Same question for Mr. Hawthorn.
 12 A Mr. Hawthorn was not involved in the Statement of
 13 Financial Condition.
 14 Q Now, move down to the third to last paragraph on this
 15 document. It's right there above the section called
 16 "background check." It says that-- I'm sorry. It's the one
 17 starting on September 1, 2021. It says that "Camron Harris
 18 Randy Gregg and Jeff Lawlis held a call with Jeff McConney.
 19 During this call we discussed and asked questions regarding
 20 the DJT SOFC and reviewed the prior year report."
 21 Is prior year review a requirement of
 22 compilation engagement?
 23 A No.
 24 Q Can you tell me what you recall of the discussion at
 25 that meeting?

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1 A We would have gone through the 2020 Statement of
2 Financial Condition that was provided by Jeff McConney to us
3 and just read through it trying to get an understanding of
4 what was included, what the process entailed, and how we were
5 to obtain information and then we asked the client acceptance
6 inquiries as well.
7 Q Prior year inquiries aren't required, as I believe
8 you just testified. Why were you reviewing the previous
9 year's SOFC?
10 A We all prefer to get the prior year papers, if we
11 can, to obtain a better understanding of the work audit that
12 was done in the prior year and to help us, aid us as we begin
13 to plan for potentially doing this engagement.
14 Q Did you ultimately accept that engagement?
15 A Yes.
16 MR. GABER: Can I bring up 1497.
17 Q Mr. Harris, I've handed you a document marked
18 Plaintiff's Exhibit 1497 for identification. Do you recognize
19 this document?
20 A Yes, sir.
21 Q Can you tell me what this document is?
22 A Overall compilation program. So, this program is
23 sort of built out into three sections. A planning section or
24 work papers section and then a reporting section. This
25 program is promulgated from the compilation guidance SSARS

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1 and then an audit would be the top attestation engagement
2 type where you're truly going into the underlying support
3 documents.
4 Q You mentioned the standard governing compilation
5 engagements. Do you know what those standards are? Can you
6 describe them?
7 A SSARS 80. Yes. SSARS 80, that is the main guidance
8 we file when we go through the compilation. It's a statement
9 on standards for accounting and review services and that's
10 what these programs are derived from that.
11 We followed that as our guide to complete all
12 of the necessary and required steps and procedures.
13 Q At this time, I'd like for you to turn to page 4, on
14 the screen here. Page four says that "Whitley Penn held a
15 planning call with Jeff McConney and Patrick Birney in early
16 October 2021."
17 Were you on this call?
18 A Yes.
19 Q Early October 2021. Can you describe what was
20 discussed at this call?
21 A We described it as our planning call. So, during
22 the planning call, we'd going over introducing our team to
23 the client. We'd also be introduced to the main points of
24 contact that we'd be working with in regards to that
25 engagement.

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1 which is made by the AICPA.
2 So, this is our guide whenever there is a
3 compilation that shows all the steps that we need to complete
4 as part of the compilation.
5 Q And is this for the Statement of Financial Condition
6 engagement, this particular compilation program?
7 A Correct.
8 MR. GABER: I'd like to move this into evidence.
9 THE COURT: Granted. It's in evidence.
10 Q Mr. Harris, take a step back. Can you explain your
11 understanding of what a compilation is, in accounting terms?
12 A Sure. At a compilation, we're receiving information
13 from the client. We're reviewing that for obvious errors.
14 We are then putting it together in a format and presentation
15 that is the proper, in accordance with the applicable
16 framework, that we're doing that compilation in. We do not
17 conclude or do not verify any of the accuracy on any of the
18 information that is provided.
19 Q Is that different than a review or audit engagement?
20 A Yes.
21 Q In what way?
22 A Compilation, we're at lowest attestation, lowest
23 assurance in the attestation agreements. Review would be the
24 next level of an attestation agreement, which would include
25 review, year after year analytics, inquiries with management

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1 We'd also go through a timeline of when we were
2 going to do this work for them. We also, during that time,
3 we'll ask for updates, things that are going on with the
4 operations of entities, any changes in systems or internal
5 controls and go through inquiries as well.
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7 (Continued on following page..)
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C. Harris - Direct by Mr. Gaber Page 450

1 Q At this time, I would like you to flip to page 11.
2 It says there that, "The SOFC is prepared under ASC
3 274, personal financial statements. ASC 274 requires that all
4 assets and liabilities be reported as estimated current values
5 as of the reporting date."
6 What is your understanding of this requirement of ASC
7 274?
8 A Yes. Under ASC, so, all the assets and liabilities,
9 they say current value. That's the key word, versus book value.
10 Like, a G.A.A.P. audit is at book value, versus fair market
11 value, or current values, which is what that's referring to.
12 Q And does ASC 274 cover all personal financial
13 statements under G.A.A.P.?
14 A I couldn't answer that.
15 Q Okay.
16 MR. GABER: So, if we scroll down to page 14.
17 Q First, it says Patrick at the top of the page. Who is
18 Patrick?
19 A Patrick Birney.
20 Q Who is Patrick Birney?
21 A I'm not positive of his title, but he was main point
22 of contact that we had when we were completing Statements of
23 Financial Condition, and prepared and provided a majority of the
24 work papers.
25 Q Okay. So it says, "Patrick explained that he is the

C. Harris - Direct by Mr. Gaber Page 451

1 primary preparer of the valuations. Patrick obtained all of the
2 necessary information for the valuations from external and
3 internal sources. He worked with other team members to pull
4 this information together, such as Ray Flores. Ray Flores
5 performs the first review of Patrick's spreadsheet and financial
6 statements. Prior to issuance of the SOFC, an individual from
7 upper management of the Trump Organization, and also one of the
8 Trump family members, will read and review the financial
9 statements."
10 Mr. Harris, do you know who the individual from upper
11 management of the Trump Organization was, referred to here?
12 A Jeff McConney.
13 Q And Mr. Harris, do you know who the member of the
14 Trump family who read and reviewed the 2021 financial statement
15 was?
16 A We received the representation letter signed by Donald
17 Trump, Jr., as the trustee.
18 Q It's your understanding that he reviewed the
19 statement?
20 A We provided the final version to Jeff to provide to
21 him, and we got the representation letter returned to us,
22 signed, by Mr. Trump, Jr.
23 Q Thank you. We can move on.
24 Mr. Harris, I'm going to ask you to -- for
25 identification, I'm going to pass you a document that's marked

C. Harris - Direct by Mr. Gaber Page 452

1 Plaintiff's Exhibit 1515.
2 (Whereupon, a document was displayed, and handed
3 to the witness.)
4 Q So, this is a sort of series of emails, so we'll start
5 from the bottom.
6 MR. GABER: Not all the way. Sorry. Page two.
7 Q So, page two here, this is an email -- or, do you
8 recognize this document?
9 A What I'm holding here is different than that.
10 (Whereupon, there was a pause in the
11 proceedings.)
12 A This is different. Yeah. What I'm holding here is
13 not the same thing as what I'm seeing on the screen.
14 (Whereupon, there was a pause in the
15 proceedings.)
16 (Whereupon, a document was handed to the
17 witness.)
18 Q Do you recognize this document, Mr. Harris?
19 A Yes.
20 Q Can you -- is this your email address here, at the
21 top?
22 A Yes, it is.
23 Q Okay. And did you send this email?
24 A Yes.
25 MR. GABER: I would like to move Plaintiff's

C. Harris - Direct by Mr. Gaber Page 453

1 Exhibit 1515 into evidence.
2 THE COURT: Granted. It's in evidence.
3 (Whereupon, Plaintiff's Exhibit 1515 was received
4 in evidence.)
5 Q So, "Mr. Harris, I have included everything, based on
6 the information I have, but need help on audit committee and RP
7 section below, before getting this over to Felix, to
8 distribute."
9 First, what is RP, in this context?
10 A Related party.
11 Q Okay. And Mr. Harris, looking at this document, what
12 are you asking for here, can you tell me?
13 A This email took place as I was preparing to send out
14 our independence check.
15 Q Is that a conflict check?
16 A Yes.
17 Q And if you go to page three of the document,
18 Mr. Harris, one of the lines, it says, "List the names of the
19 board of directors/trustees, including the chairman of the audit
20 committee."
21 You were asking for that information, then. Do you
22 have an understanding of who those individuals are, for the
23 Trump Organization?
24 A Yes.
25 Q Can you tell me?

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1 A Donald Trump, Jr. and Eric Trump.
 2 Q What do you understand Eric Trump's role to have been
 3 with respect to the board of directors/trustees, including the
 4 chairman of the audit committee?
 5 A As the trustee, executive leadership, corporate
 6 governance, tone at the top.
 7 Q And Donald Trump, Jr.?
 8 A Same responsibilities.
 9 Q Did either -- did Eric Trump play any roles as a
 10 member of, or chairman of, the audit committee for the Trump
 11 Organization?
 12 A They do not have an audit committee.
 13 Q They do not have -- okay. What interactions did you
 14 have with Eric Trump in their role as --
 15 (Whereupon, there was a pause in the
 16 proceedings.)
 17 Q Tone at the top?
 18 A The person in charge, they set the tone at the top.
 19 The leader.
 20 Q And did you have meetings with Eric Trump, in this
 21 capacity?
 22 A Is this in relation to the Statement of Financial
 23 Condition?
 24 Q Yes.
 25 A No.

C. Harris - Direct by Mr. Gaber Page 455

1 Q How about generally?
 2 A Who?
 3 Q Mr. Eric Trump. Did you have meetings with Mr. Eric
 4 Trump regarding other engagements?
 5 A Other engagements, yes.
 6 Q But you had no other meetings that included you
 7 discussing the Statement of Financial Condition?
 8 A Yes.
 9 Q I had asked you if you had had any meeting with Eric
 10 Trump that discussed the Statement of Financial Condition.
 11 A No, I did not.
 12 Q Did you have an annual meeting with Mr. Eric Trump
 13 related to the Trump Organization engagement?
 14 A Correct.
 15 Q Yes?
 16 A Yes.
 17 Q The Statements of Financial Condition have been
 18 discussed at any of these annual meetings?
 19 A No, they were not.
 20 Q You sure about that?
 21 A Our first meeting took place subsequent to the
 22 issuance of the Statement of Financial Condition.
 23 Q Mr. Harris, do you remember giving a deposition in May
 24 of this year?
 25 A Yes.

C. Harris - Direct by Mr. Gaber Page 456

1 Q And I believe that we were at your counsel's office,
 2 we sat in the conference room, there was a stenographer there?
 3 A I remember, yes. I remember this.
 4 Q Do you remember what I asked you about the audit
 5 committee and the annual meetings at the time?
 6 A Yeah.
 7 Q Okay. And if I were to bring up your transcript,
 8 would that potentially refresh your recollection as to answers
 9 you gave during that meeting, or during that --
 10 A I don't recall what I said.
 11 Q Okay. And would it refresh your recollection if I
 12 showed you your testimony from that day?
 13 A Yes.
 14 MR. GABER: I would like to refresh his rec, so
 15 if we look at page 76.
 16 (Whereupon, a document was displayed.)
 17 Q So, I asked you:
 18 "So, in this capacity that we are describing
 19 here, did Don, Jr. or Eric certify that there were any
 20 internal audit controls, policies or procedures at the
 21 Trump Organization that you are aware of?"
 22 And you said:
 23 "No."
 24 And I asked you:
 25 "You have described some of what you understand

C. Harris - Direct by Mr. Gaber Page 457

1 Eric's role to be. You mentioned an annual meeting. You
 2 had mentioned that you/he is present at meetings between
 3 you and the managers of the hotels."
 4 You said:
 5 "Correct."
 6 I asked:
 7 "Any other interactions with Mr. Eric Trump in
 8 regards to his, like, role as either --"
 9 I think the transcript is a little --
 10 "-- in the capacity of an audit committee member,
 11 or --"
 12 And then you said:
 13 "Sure. On the audit side, those are primary
 14 discussions."
 15 Let me just see.
 16 (Whereupon, there was a pause in the
 17 proceedings.)
 18 Q So then, if we skip ahead to 77, on line 11, I asked
 19 you:
 20 "Just the high level, just the high level
 21 managerial operational stuff that you described?"
 22 And then you said:
 23 "Yup. Exactly right. That annual meeting we
 24 have goes through all the engagements which, the Statement
 25 of Financial Condition would be a part of that discussion."

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1 So, does this refresh your recollection as to whether
2 those annual meetings discussed the Statement of Financial
3 Condition?
4 MR. ROBERT: Objection, your Honor.
5 THE COURT: And what's the ground of the
6 objection?
7 MR. ROBERT: I think Mr. Gaber has to go up to
8 the question and answer that's before that, to put that in
9 context.
10 THE COURT: Well, let's do that, unless there's
11 an objection.
12 Q Okay.
13 "Question: Did you have any meeting with either
14 Don, Jr. or Eric, with respect to the SOFCs?"
15 You answered:
16 "Not specifically. Not specifically in relation
17 to the, yeah, Statement of Financial Condition."
18 And then, the question that I just read out.
19 So, while not specifically, did you have any meetings
20 in which the Statement of Financial Condition would be a part of
21 the discussion?
22 A I did not have any meetings with Donald Trump, Jr. or
23 Eric Trump in regards to the Statement of Financial Condition.
24 Q So, when you testified that at the annual meeting that
25 you had that goes through all the engagements, which the

C. Harris - Direct by Mr. Gaber Page 459

1 Statement of Financial Condition would be a part of that
2 discussion --
3 A I think the question, lines seven and nine, or line
4 nine, would be my answer, that I did not have any meetings in
5 relation.
6 Q Did you discuss the Statement of Financial Condition
7 at the annual meetings in any way?
8 A No.
9 Q That seems --
10 A Yes. It's contradictory, nine and fifteen are
11 definitely contradictory, but during those annual meetings that
12 we had in January, that's with Eric Trump and his accounting
13 team and the property managers, and we go through the audit and
14 other compilation engagements during that meeting.
15 Q Okay. Let's move on.
16 (Whereupon, a document was displayed, and handed
17 to the witness.)
18 Q So Mr. Harris, I'm handing you a document marked PX
19 2300 for identification. Do you recognize this document?
20 A Yes, sir.
21 Q Can you tell me what it is?
22 A Mazars engagement letter.
23 Q Engagement letter for what engagement?
24 A Engagement letter for the Statement of Financial
25 Condition.

C. Harris - Direct by Mr. Gaber Page 460

1 Q Okay. Mr. Harris, looking at the signature block, can
2 you tell me why this engagement letter is addressed to Mr. Eric
3 Trump?
4 A As the trustee of the revocable trust and most of the
5 properties, assets, liabilities that are included on the
6 Statement of Financial Condition fall under the revocable trust.
7 Q The signature block identifies Mr. Trump as president
8 of the Trump Organization. Did you understand that to be his
9 role at the time of this letter?
10 A Yes.
11 Q The letter then goes on to say:
12 "Mr. Trump -- Dear Mr. Trump, you have requested that
13 we prepare the financial statements of Donald J. Trump, the
14 company, which comprise your Statement of Financial Condition as
15 of June 30, 2021, and the related notes to the financial
16 statements required by accounting principles generally accepted
17 in the United States of America, G.A.A.P., and perform a
18 compilation engagement with respect to these financial
19 statements. We are pleased to confirm our acceptance and
20 understanding of this engagement by means of this letter."
21 So, this is, Whitley Penn will prepare the financial
22 statements and perform a compilation engagement with respect to
23 these statements. Is preparation and performing of the
24 compilation engagement different than compiling the Statement of
25 Financial Condition?

C. Harris - Direct by Mr. Gaber Page 461

1 A As part of the compilation engagement, what we were
2 doing is taking the information provided by the client,
3 reviewing that for any obvious errors, and then adjusting it for
4 any presentation or format issues to make sure it's in
5 accordance with that applicable guidance.
6 Q Does preparation include generating valuations of
7 assets or determining the amounts of liabilities in the
8 financial state?
9 A No. We do not verify anything, in a compilation.
10 Q So under, Our Responsibilities, it says, "The
11 objective of our engagement is to prepare financial statements
12 in accordance with G.A.A.P., based on information provided by
13 you, and then B, apply accounting and financial reporting
14 expertise to assist you in the presentation of financial
15 statements, without undertaking to obtain or provide any
16 assurance that there are no material modifications that should
17 be made to the financial statements in order for them to be in
18 accordance with G.A.A.P."
19 Can you describe what you mean, by without undertaking
20 to obtain or provide any assurance?
21 A Correct. As part of a compilation, we could not
22 verify the accuracy of any of the information that is provided,
23 and we do not provide an opinion, or any assurance or
24 conclusion, in regards to the accuracy of the information on
25 that compilation.

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1 Q Okay. And then a moment ago we discussed the, I
 2 believe it's pronounced SSARSs?
 3 A Correct.
 4 Q And you had said you discussed them, but can you tell
 5 me what they provide in the context of a compilation engagement,
 6 including the ethical principles here?
 7 A Yes. Under SSARSs, that is the guidance and the rules
 8 that we follow. It provides the guidelines that we must follow,
 9 and the procedures that we must do to be in compliance with the
 10 compilation guidance.
 11 Q And then the paragraph below that, it says, "We are
 12 not required to, and will not, verify the accuracy or
 13 completeness of the information you will provide to us for the
 14 engagement, or otherwise gather evidence for the purpose of
 15 expressing an opinion or conclusion. Accordingly, we will not
 16 express an opinion or conclusion, nor provide any assurance on
 17 financial statements."
 18 Why are you not required to verify accuracy or
 19 completeness of the information?
 20 A That's the definition of a compilation.
 21 Q So --
 22 A Under -- not required, under a compilation, to do
 23 those procedures.
 24 Q Okay. And assurance here, again, I think you
 25 described it, means what?

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1 A We are not providing any opinion or providing any
 2 conclusions in regards to the information within the Statement
 3 of Financial Condition.
 4 Q In the next paragraph it says, "Our engagement cannot
 5 be relied upon to identify or disclose any financial statement,
 6 misstatement, including those caused by fraud or error, or to
 7 identify or disclose any wrongdoing within the entity, or
 8 noncompliance with laws and regulations."
 9 Is this also part of the compilation standards that
 10 you have discussed?
 11 A Correct.
 12 Q So, this is set by the AICPA for any compilation
 13 engagement?
 14 A Correct.
 15 Q Can I direct to you page two? Under the header, Your
 16 Responsibilities, it says, "This engagement is -- the engagement
 17 to be performed is conducted on the basis that you acknowledge
 18 and understand that our role is, to prepare financial statements
 19 in accordance with G.A.A.P., and assist you in the presentation
 20 of the financial statements in accordance with G.A.A.P. You
 21 have the following overall responsibilities that are fundamental
 22 to our undertaking the engagement, in accordance with SSARSs."
 23 And then there's a list here of several items that fit
 24 that description. Can I just ask, as a general matter, for all
 25 of the responsibilities listed here in the A through G -- sorry,

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1 A through H, is it important that a client acknowledge and
 2 understand their responsibilities, as described here?
 3 A Yes.
 4 Q Is it necessary for them to do so in order for Whitley
 5 Penn to take an engagement such as this one?
 6 A Yes.
 7 Q So, beneath the list of responsibilities, the document
 8 also says that the Trump Organization would be responsible for,
 9 quote, "Designating an individual with suitable skills,
 10 knowledge and experience to oversee our preparation of your
 11 financial statements."
 12 To your knowledge, was somebody at the Trump
 13 Organization designated for this purpose, in fact?
 14 A Jeff McConney.
 15 Q Jeff McConney.
 16 So, it also says, "You are also responsible for all
 17 management decisions and responsibilities --" Sorry. That's
 18 what I just read.
 19 Okay. Later in the document, it says, "These
 20 responsibilities are fundamental to your undertaking the
 21 engagement."
 22 I think that you already said that Whitley Penn would
 23 require the client to acknowledge all of these things before
 24 taking it, but why are they fundamental? Can you explain that?
 25 A Under a compilation, we are not doing anything, you

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1 know, to verify the accuracy of that information, so that
 2 responsibility and accountability follows within the client to
 3 be doing those things so that the information is correct,
 4 because we didn't do anything to verify that it is correct.
 5 Q And then the last sentence on this page, it says, "You
 6 are responsible for evaluating the adequacy and results of these
 7 services performed, and accepting responsibility for such
 8 services."
 9 What does that mean to you, for a client to be
 10 responsible for those items?
 11 A The client needs to make representations that the
 12 information that they are providing is accurate and complete,
 13 and in accordance with the framework that we are following.
 14 Q Can we go down to the next page, then?
 15 On page three of this, under, Our report, it says, "As
 16 part of our engagement, we'll issue a report on the compiled
 17 financial statements that will state that we did not audit or
 18 review the financial statements, and that accordingly, we do not
 19 express an opinion, a conclusion, or provide assurance on them."
 20 I believe that you describe the assurance issue. Then
 21 it says, "Our report will disclose," and for the sake of time,
 22 I'll just say that there's a long list here of disclosures that
 23 the report will include. Are you able to summarize what these
 24 disclosures are?
 25 A Under the compilation guidance, again, we, the

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1 management, acknowledged that the framework was going to be
 2 under G.A.A.P., and so we reviewed all of the information that
 3 we were providing, reviewed the Statement of Financial Condition
 4 and the report to ensure that it's in that proper presentation
 5 and format that follows G.A.A.P., but then you must disclose any
 6 departures from G.A.A.P., and so these are the departures from
 7 G.A.A.P.
 8 Q So, departures from G.A.A.P. are required disclosure
 9 in a compilation report?
 10 A Correct.
 11 Q And so, would each one of the disclosures here be
 12 necessary to disclose, before you were to issue your compilation
 13 report?
 14 A Restate that question?
 15 Q So, if there is a departure from G.A.A.P. in the
 16 financial statement, you would -- would you issue the
 17 compilation report, without disclosure of that departure?
 18 A No.
 19 Q Okay. At the bottom of this paragraph it says, "If
 20 these provisions were to be included in the financial
 21 statements," referring to the disclosures that we just
 22 discussed, "they might influence the user's conclusions about
 23 the entities' financial position, results of operations, and
 24 cash flows. Accordingly, the financial statements will not be
 25 designed for those who are not informed about such matters.

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1 There may be circumstances in which the report differs from the
 2 expected form and content."
 3 Can you explain to me what it means here, that the
 4 provisions -- if the provisions were to be included, they might
 5 influence the user's conclusions? What does that mean?
 6 A That if all this information was included, that the
 7 amounts could be different.
 8 Q And what does it mean that the statements will not be
 9 designed for those who are not informed about such matters?
 10 A Anybody that uses the statement should understand that
 11 the numbers have not been verified, we have not verified the
 12 accuracy of them, and we have not concluded or provided any sort
 13 of assurance on them, and that these departures could change the
 14 amounts that are being presented, on that statement of the
 15 financial condition. So, any user needs to be aware of those
 16 disclaimers.
 17 Q Is that for the benefit of Whitley Penn, as the
 18 compiler?
 19 You just described that it -- that you hadn't
 20 performed assurance on it, and so the user would need to be
 21 aware of that.
 22 A I think part of it, yeah, it's for Whitley Penn. Yes.
 23 Q Okay. So is the warning here, that users might reach
 24 a different conclusion about the financial condition of Donald
 25 J. Trump, is that wording based only on the G.A.A.P. exceptions

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1 here, the disclosure of the G.A.A.P. exceptions, or is it just
 2 broadly, that's construed.
 3 A I believe this paragraph, specifically, that we are
 4 referring to, is talking about the disclaimers and the
 5 differences, those departures and the differences, those could
 6 make.
 7 Q So Mr. Harris, having gone through the statements that
 8 Whitley Penn has made in the engagement letter, and looking at
 9 the Trump's organizations responsibilities in the engagement,
 10 broadly speaking, what's the role of this mutual responsibility
 11 and obligation in the engagement letter?
 12 A The majority of the responsibility falls upon the
 13 client to do A through G, or H, that was listed on that previous
 14 page, whereas part of our compilation procedures -- again,
 15 you're gathering information from a client, reviewing it for
 16 obvious errors, and putting it into a usable format that's in
 17 accordance with the framework.
 18 MR. GABER: Can we go to the bottom of the
 19 document?
 20 Q So, at the bottom it says, response, "This letter
 21 correctly sets forth our understanding, The Trump Organization,
 22 acknowledged and agreed on behalf of the Trump Organization by,"
 23 and then do you recognize that signature, Mr. Harris?
 24 A Yes, I do.
 25 Q Whose signature is that?

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1 A Eric Trump.
 2 Q Did you have an understanding of whether Eric Trump
 3 had the authority to retain Whitley Penn for this engagement,
 4 based on his position at the Trump Organization?
 5 A I would presume the trustee and president would be
 6 able to make that decision.
 7 Q Okay. And would Whitley Penn perform a compilation
 8 report without an engagement letter?
 9 A No.
 10 (Whereupon, a document was displayed, and handed
 11 to the witness.)
 12 Q So Mr. Harris, I'm handing you, for identification, a
 13 document that has been marked Plaintiff's Exhibit 1512.
 14 Do you recognize this document Mr. Harris?
 15 A Yes. I recognize this document.
 16 Q Can you describe to me what it is?
 17 A Yeah. Email from another engagement team member to
 18 me. He was trying to put the agenda together that we would
 19 provide the client, as we started to begin the planning and the
 20 compilation for the Statement of Financial Condition.
 21 (Continued on the next page.)
 22
 23
 24
 25

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1 MR. GABER: First, I'd like to move this document
2 into evidence.
3 THE COURT: Granted. It's in evidence.
4 Q Can you tell me who Mr. McKinnell is?
5 A Steven McKinnell was the senior manager on the
6 Statement of Financial Condition.
7 Q Okay. "I tried to strip this down to keep it a
8 compilation scope." Then he goes to SSARS 80. Then says "if
9 we do anything more than that, we run the risk of performing
10 assurance procedures."
11 Can you explain what you understood Mr.
12 McKinnell to be concerned about here?
13 A He was pulling this agenda from our normal planning
14 agenda that we use for, primarily, our audit and review
15 engagements; and, so, there's additional items that are
16 already included on that template agenda that were not
17 necessary to be on it for a compilation.
18 Q I believe that the agenda is attached to this
19 document, it's pages 2 and 3.
20 Can you identify what the agenda items are that
21 he was concerned about?
22 A It's our standard agenda. The management inquiries
23 are-- a few of them are taken off on that.
24 Q Sorry?
25 A A few of the management inquiries, number seven,

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1 that's the main part of what he was referring to.
2 Q As beyond the scope of the compilation engagement?
3 A Not beyond the scope. Sorry. Restate your original
4 question.
5 Q I had just asked you, I believe, and the last answer,
6 you said that Mr. McKinnell was looking at the agenda and
7 trying to make sure the items that were going to be discussed,
8 that would put you in the position of providing too much
9 assurance or getting rid of the audit scope of the
10 compilation. I was trying to understand and identify any of
11 the items here.
12 A Yes, number seven, the management inquiries. It's
13 larger than the audit review agenda. There's more items.
14 Q Looking at this agenda, as you and Mr. McKinnell, as
15 the engagement team, and two other client teams Jeff McConney,
16 Raymond Flores and Patrick Birney, these were the individuals,
17 the ones at this meeting?
18 A Correct.
19 Q It seems we don't have paper copies of this. Are you
20 comfortable with just reviewing it on the screen, Mr. Harris?
21 A Yes.
22 Q Do you recognize this document?
23 A Yes.
24 Q Can you tell us what this is?
25 A Our Statement of Financial Condition, the final

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1 report.
2 Q The Statement of Financial Condition, the final
3 report. What are the components of this document?
4 A This document would be made up of our compilation
5 report, which is our letter to the trustee that goes at the
6 front of this report and then it's going to include the
7 Statement of Financial Condition as well as the footnotes and
8 disclosures.
9 MR. GABER: First, I'd like to admit this
10 document in evidence.
11 THE COURT: Granted. It's in evidence.
12 Q You just said, Mr. Harris, you'd include our
13 compilation report. Whitley Penn is responsible for the
14 compilation report?
15 A When I say compilation report, I'm referencing just
16 the one page that has our signature on it.
17 Q In addition to the compilation report, you mentioned
18 the Statement of Financial Condition and the notes.
19 Who is responsible for the content of the
20 Statements of Financial Condition?
21 A The client's responsible for that.
22 Q Who's responsible for the notes?
23 A The client is responsible for them.
24 Q So, at the top of this, this is the report that you
25 were describing, right?

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1 A Correct.
2 Q It says: "The trustee of the Donald J. Trump
3 Revocable Trust dated April 7, 2014 as amended on behalf of
4 Donald J. Trump, are responsible for the accompanying personal
5 financial statement which comprises the Statement of Financial
6 Condition as of June 30, 221 and related notes to the
7 financial statement in accordance with accounting principals
8 generally accepted in the Untied States of America."
9 Then it says: "We had performed a compilation
10 engagement in accordance with the statements on standards for
11 accounting and review services promulgated by the Accounting
12 and Review Services Committee of the AICPA. We did not audit
13 or review the financial statement nor were we required to
14 perform any procedure to verify the accuracy or the
15 completeness of information provided by the trustee of Donald
16 J. Trump Revocable Trust dated April 7, 2014, as amended on
17 behalf of Donald J. Trump. Accordingly, we do not express an
18 opinion, a conclusion, nor provide any form of assurance on
19 this personal financial statement."
20 Can you explain why this language is included in
21 your report?
22 A It's going back through a lot of that compilation
23 guidance that's stating that the client is ultimately
24 responsible for this, as the accounting firm would be
25 responsible for taking the information that the client

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1 provided, reviewing it for obvious errors, and putting it
 2 into the format that would then be used by GAAP in this
 3 circumstance.
 4 Q Who is this addressed to, this report?
 5 A The trustee.
 6 Q It says: "The effects of these departures. These
 7 departures above," being the GAAP disclosures that were
 8 referenced in the engagement letter. You can correct me if
 9 I'm wrong. "From the accounting principles generally accepted
 10 in the United States of America have not been determined."
 11 Can you explain that?
 12 A As part of the compilation guidance, the accountants
 13 are not responsible to understand what the effects of those
 14 departures from GAAP are that we've included within that
 15 disclaimer paragraph.
 16 THE COURT: Five-minute warning.
 17 Q It says: "Because of the significance and
 18 pervasiveness of the matters discussed above."
 19 I'll first ask, what are the matters discussed
 20 above? What do you understand that to be?
 21 A From the previous page, it's discussing who's
 22 responsible and that it's in GAAP, that it would not provide
 23 our assurance or conclusion on it. It includes the departure
 24 from GAAP as well.
 25 Q It says: "Makes it difficult to assess their impact

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1 in there so that the user will refer back to that compilation
 2 report we just went through that has those certain departures
 3 and some of that wording that provided no assurance on this
 4 information.
 5 Q Right before we take a break, it says "assets are
 6 stated at their estimated current values and liabilities at
 7 their estimated current amount using various valuation
 8 methods."
 9 Can you explain what that means?
 10 A The client prepared calculations for the assets and
 11 liabilities-- well, for the assets in regards to -- they
 12 prepared calculations to get to the fair market value, the
 13 current value, or selling price of these assets.
 14 Q The client prepared them?
 15 A Yes.
 16 MR. GABER: Judge, we can take a break now.
 17 Okay?
 18 THE COURT: Another ten-minute break. Take
 19 15 minutes.
 20 (Recess taken.)
 21 THE COURT: Let's get the witness.
 22 (Whereupon, the witness enters the courtroom.)
 23 THE COURT: Please proceed.
 24 Q Mr. Harris, you said the client is responsible for
 25 calculating the assets and liability in the Statement of

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1 on the person financial statement. Users of this personal
 2 financial statement should recognize that they might reach
 3 different conclusions about the financial condition of Donald
 4 J. Trump if they had access to a revised Statement of
 5 Financial Condition prepared in conformity with the accounting
 6 principles generally accepted in the United States of
 7 America."
 8 Who are the users of this personal financial
 9 statement?
 10 A That, as my understanding, this requirement came
 11 from a lender.
 12 Q Do you know which lender?
 13 A I believe Deutsche.
 14 Q Does this paragraph only refer to the disclosed
 15 exceptions to GAAP listed on the previous page?
 16 We can go up to that, if you want to see it?
 17 A Yeah. I think it's referring exactly to those
 18 departures from GAAP as well as this other paragraph in
 19 regards to effects of COVID on the operations of the assets.
 20 Q This here, this is, it's labeled The Notes to
 21 Statement of Financial Condition.
 22 Why does it say in parentheses Independent
 23 Accountant's Compilation Report?
 24 A That's a requirement in the disclosure checklist for
 25 compilation to include that wording in there. I think it's

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1 Financial Condition?
 2 A Correct.
 3 Q Did Whitley Penn determine any of the values
 4 presented in the Statements of Financial Condition?
 5 A No, we did not verify the accuracy of the
 6 information.
 7 Q Did Whitley Penn determine any valuation methods for
 8 the client to use?
 9 A No, we did not determine any valuation methods.
 10 Q Mr. Harris, I'm going to hand you an exhibit marked
 11 PX 050101, slip-sheet for a document provided to us. Do you
 12 recognize the spreadsheet, Mr. Harris?
 13 A Yes, sir.
 14 Q Can you tell me what that is?
 15 A This worksheet, the Excel worksheet was provided by
 16 the client. It included all of the asset amounts that feed,
 17 tie back into the Statement of Financial Condition.
 18 Q Is that the final version that was used to tie back
 19 to your final compilation report?
 20 A If it was pulled from our work papers, it would be
 21 the final version.
 22 Q I can represent to you it was pulled from your work
 23 papers.
 24 A Yes.
 25 MR. GABER: I ask that this be admitted into

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1 evidence.
2 THE COURT: Granted. It's in evidence.
3 MR. GABER: I'm not sure that the engagement
4 letter, if I officially said the magic words. In risk of
5 repeating myself, I'd ask that that be moved into
6 evidence as well.
7 THE COURT: At the risk of repeating myself,
8 granted. It's in evidence.
9 Q So, what do you use this document for when completing
10 your compilation engagement?
11 A This document provided by the client we review it
12 for obvious errors. So, we scroll through it looking for
13 mathematical errors and going through everything that is on--
14 everything on here to see if there's obvious errors we come
15 across. This would be the source document that ties back to
16 the Statement of Financial Condition.
17 Q Did you rely on any other backup or support documents
18 in connection with the 2021 SOFC engagement?
19 A There were multiple prepared by the client, work
20 papers that were provided to us by the client and they all
21 stated in our engagement letter so there are other details
22 that are in there that tie back to the Statement of Financial
23 Condition outside of just this one document, but, this
24 includes all of the cash, the escrow, and then all of the
25 property and investment accounts.

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1 Q So, any asset or liability listed in this Statement
2 of Financial Condition would be found in this document?
3 A The liabilities are not within this work paper.
4 Q Where do the liabilities come from?
5 A We have a separate detail for an accounts payable
6 detail and notes payable detail that are included within our
7 work papers that detail out all of those portions, the
8 liability portion of Statement of Financial Condition.
9 Q Okay. You said that Whitley Penn would correct any
10 obvious errors in this document; is that correct?
11 A Management or the clients would correct any errors
12 that we noted. Any obvious errors, we would not make the
13 corrections.
14 Q Did you perform any analysis or analytic procedure on
15 the assets listed here?
16 A No, we do not.
17 Q I'm going to present you an exhibit now marked
18 Plaintiff's Exhibit 1502 for identification.
19 Do you recognize this document, Mr. Harris?
20 A Yes, sir.
21 Q Can you tell me what it is?
22 A This is our representation letter. This letter is
23 prepared by us but we provide it to the client to review and
24 sign and return to us. It is the last work paper that we
25 receive prior to issuing our final compilation report and it

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1 includes representations that management is making, that
2 representations are stating that the information that the
3 client has provided is accurate, complete, and in accordance
4 with applicable framework.
5 Q The second paragraph here says: "Certain
6 representations in this letter are described as being limited
7 to matters that are material. Items are considered material,
8 regardless of size, if they involve an omission or
9 misstatement of accounting information such that in the light
10 of surrounding circumstances there is a substantial likelihood
11 that individually or in the aggregate, they would
12 significantly influence the judgment made by a reasonable user
13 based on the SOFC."
14 I just want to ask you, what does it mean if the
15 items are considered material, regardless of size?
16 A On the compilation we did prepare materiality
17 calculation but, yeah, if anything can be misconstrued by the
18 user, regardless of that materiality that we use, yeah, it
19 could significantly influence or change your judgment.
20 Q It says: "We acknowledge our responsibility and have
21 fulfilled our responsibilities for the preparation and fair
22 presentation of the SOFC in accordance with accounting
23 principles generally accepted in the United States of America
24 except for the following items:" Then there's, I believe, a
25 list, we've grown very familiar with, of GAAP exceptions but

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1 would Whitley Penn have issued the SOFC if the client did not
2 make this representation about the GAAP exceptions?
3 A No.
4 Q Now, in the interest of time, I won't read through
5 all the representations but there's a number of
6 representations in this document that are being made.
7 Would Whitley Penn issue the compilation report
8 without these representations from management?
9 A We would not issue a report without getting the
10 signed representation letter.
11 Q In this form?
12 A In?
13 Q Signed representation. Would Whitley Penn have
14 issued the 2021 SOFC without a signed representation letter in
15 this form?
16 A This form?
17 Q This letter. Not any letter. A letter that lists
18 out everything here?
19 A Correct.
20 MR. GABER: Apparently, I have not moved to
21 admit this into evidence. I'd like to do so.
22 THE COURT: Granted. It's in evidence.
23 MR. ROBERT: Can we ask Mr. Sherief to speak a
24 little more into the microphone.
25 MR. GABER: I'll try that. Can we scroll to the

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1 bottom of this.
 2 MR. ROBERT: Thank you, sir.
 3 Q Do you recognize the signature on this document, Mr.
 4 Harris?
 5 A Yes.
 6 Q Whose signature is that Mr. Harris?
 7 A Mr. Donald J. Trump, Jr..
 8 Q So, Mr. Donald J. Trump, Jr. signed the management
 9 representation letter on behalf of the Donald J. Trump
 10 Revocable Trust which, I believe you said, holds many of the
 11 entities represented in this?
 12 A That would be accurate, yes.
 13 Q Mr. Harris, did Whitley Penn perform any work
 14 concerning any 2022 or later Statement of Financial Condition
 15 of Donald J. Trump?
 16 A No, we did not.
 17 Q Were you ever asked to?
 18 A No, we were not.
 19 Q Did you ever inquire as to whether it would be sought
 20 from the Trump Organization?
 21 A We did inquire of it, as part of our normal
 22 engagement procedure. Prior to the time period when we would
 23 expect to start that engagement, we reached out to Jeff
 24 McConney in regards to the 2022 Statement of Financial
 25 Condition at which point he said to hold off working on that

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1 D A V I D B E N D E R, having been previously
 2 duly sworn, resumed the witness stand and continued to
 3 testify as follows:
 4 THE COURT: I remind the witness you're still
 5 under oath.
 6 THE WITNESS: Thank you, your Honor.
 7 CROSS-EXAMINATION (Cont'd)
 8 BY MR. SUAREZ:
 9 Q Mr. Bender, good afternoon. Have you had the
 10 opportunity to discuss your testimony with anyone since we
 11 last spoke?
 12 A I had privileged conversations.
 13 Q Did you have an opportunity to discuss your testimony
 14 with anyone since we speak?
 15 A Any conversation would be subject to attorney/client
 16 privilege.
 17 MR. SUAREZ: That's not what I'm asking. I'm
 18 asking if he spoke to anyone.
 19 THE COURT: Let's get a blanket yes or no. Did
 20 you speak to anybody in this case about your testimony?
 21 THE WITNESS: Yes.
 22 Q Who did you speak with?
 23 A That would be privileged.
 24 THE COURT: I don't think-- who you speak with
 25 is not privileged.

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1 and he concluded later on, reached back out stating it was no
 2 longer necessary.
 3 Q Is the Trump Organization still a client of Whitley
 4 Penn on other engagements?
 5 A Yes.
 6 MR. GABER: Nothing further. Thank you, Mr.
 7 Harris.
 8 THE COURT: Cross-examination?
 9 MR. ROBERT: At this time, we reserve to be able
 10 to call the witness back during our case, pursuant to the
 11 order of stipulation that we had.
 12 THE COURT: Counsels, step up.
 13 (Side-bar discussion held off the record.)
 14 THE COURT: So, the defendants are reserving the
 15 right to call Mr. Harris back for cross-examination and
 16 we're going to go with Bender at this point. Back to
 17 Bender, correct?
 18 MR. ROBERT: Correct, your Honor. Thank you,
 19 sir.
 20 MR. WALLACE: If they call Mr. Harris on their
 21 case in chief, it would be a direct examination and not a
 22 cross-examination.
 23 MR. ROBERT: That's fine, your Honor.
 24 THE COURT: All agreed.
 25 (Whereupon, Mr. Bender resumes the stand.)

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1 THE WITNESS: Counsel.
 2 Q You spoke with your counsel?
 3 A Yes.
 4 MR. SUAREZ: May I inquire which counsel he
 5 spoke with?
 6 THE COURT: Yes.
 7 Q Which counsel did you speak with?
 8 A I had lunch with counsel from Blank Rome and Wilson
 9 Elser.
 10 Q Did either of the counsel tell you how you should
 11 testify here today?
 12 A No, sir.
 13 Q Okay.
 14 MR. SUAREZ: We'll pull up Plaintiff's
 15 Exhibit 741.
 16 Q Do you recognize this document, Mr. Bender?
 17 A Yes, I do.
 18 Q What is this document?
 19 A This is the representation letter for the
 20 compilation of the personal financial statement of Donald J.
 21 Trump as of June 30, 2016.
 22 Q Did you draft this document?
 23 A Did I draft it? I supervised it. I don't know if I
 24 drafted it or a member of my team drafted it.
 25 Q What member of your team would have drafted this

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1 document?

2 A I couldn't answer that without seeing the work

3 papers.

4 Q Just to be clear, which work papers?

5 A In our binders there are all these papers are list

6 and tells you who worked on the --

7 Q Those binders would tell me which individual person

8 actually drafted this management representative letter?

9 A It wouldn't tell me who drafted it, but might tell

10 me who worked on it.

11 Q Did you discuss the contents of this management

12 representation letter with anyone at Trump Organization?

13 A I don't recall.

14 Q Did any member of your team discuss this letter with

15 anyone at the Trump Organization?

16 A Nobody from my team discussed it, other than me, if

17 I would have discussed it.

18 Q Why is that?

19 A Because nobody else would have -- would have come to

20 me.

21 Q You were the person that had communications with the

22 Trump Organization on behalf of your firm?

23 A Not on all matters.

24 Q As it relates to the compilations of the President's

25 Statements of Financial Condition, were you the individual

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1 Q Portal?

2 A Yeah.

3 Q What is portal?

4 A Put into a portal.

5 Q Would you review all the documents that were put into

6 a portal by the Trump Organization?

7 A Would I personally do it?

8 Q Yes.

9 A Not necessarily, no, sir.

10 Q Who would review it on your behalf?

11 A On this engagement or any engagement?

12 Q On any engagement with the Trump Organization?

13 A Items, in general, that went into a portal in later

14 years would have been put-- certain interns would have loaded

15 it into another binder.

16 Q Who would have reviewed that for you?

17 A Who would have reviewed it?

18 Q Yes. The documents that were uploaded to the portal,

19 who would have reviewed it for you?

20 A I don't know if anybody reviewed it after it went

21 into the binder. What do you mean by review?

22 Q Do you know what it means to review a document?

23 A Yes.

24 Q Okay. If documents were uploaded by the Trump

25 Organization to Mazars portal, who would have reviewed the

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1 that had discussions with staff at the Trump Organization?

2 A Members of my team could have had discussions also.

3 Q In connection with the 2016 Statement of Financial

4 Condition, which members of your team could have had

5 discussions with staff at the Trump Organization?

6 A I would need to see the binders to see who worked on

7 it.

8 MR. SUAREZ: You can turn to the following page,

9 please. The following page.

10 Q Here at the bottom of this document, are you aware

11 whether this document was actually signed by Mr. Weisselberg

12 or Mr. Trump, Jr.

13 A It appears to be their signatures.

14 Q Who would you know that?

15 A I recognize their signatures.

16 Q How is that the case?

17 A I've seen their signatures a number of times over

18 the years.

19 Q Okay. How was this letter transmitted to Mazars?

20 A I can't be 100 percent sure.

21 Q How do you think that the letter was transmitted to

22 Mazars?

23 A Either by e-mail or portal.

24 Q Excuse me?

25 A Either by e-mail or portal.

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1 documents?

2 A Again, the word "review" I'm not going to use but

3 who would have looked at the documents is what other staff

4 member subsequently pulled it up the files to work on that

5 engagement.

6 Q Okay. Are you mindful of the difference between

7 looking at a document and reading it?

8 A Yes.

9 Q What is the difference between looking at a document

10 and reading it?

11 A Reading it is reading the whole document. Looking

12 at it would have been to look --

13 Q Looking at it is just to observe the fact that a

14 document exists?

15 A Yes. They would have looked more looked at it if

16 they needed the document, they would have used it, in

17 general.

18 (Continued on the following page..)

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D. Bender - Cross by Mr. Suarez Page 490

1 Q Who would have read and comprehended the documents
2 that were uploaded by the Trump Organization in the Mazars
3 portal?
4 A Whichever staff member would have been assigned to
5 work on an engagement would have done whatever procedures were
6 required for the engagement they were working on.
7 Q Okay. And in connection with the 2016 compilations
8 report for the Statement of Financial Condition, who would have
9 read and reviewed the documents that were uploaded in the Mazars
10 portal by the Trump Organization?
11 A I'm not sure it went into the portal. I'm just
12 saying, it's a possibility.
13 Q So, the Trump Organization, it's possible, could have
14 been uploading documents into the portal, but you don't know who
15 would have read those documents?
16 A Any person who would have signed off on the document,
17 or on the binder -- any staff member who would have worked on
18 the, prepared the work papers, an individual entity, would sign
19 off on the work papers that they worked on.
20 Q But you don't know who that was?
21 A On which occasion?
22 Q In the connection with the 2016 compilation report for
23 the Statement of Financial Condition.
24 A You need to look in the binder and see who signed off
25 on the binder.

D. Bender - Cross by Mr. Suarez Page 491

1 Q Are these physical binders?
2 A Electronic binders.
3 Q They are electronic binders. Did you access to the
4 electronic binders?
5 A Yes.
6 Q And in connection with preparing your compilation
7 report for the Statement of Financial Condition, did you read
8 and understand the documents that were in the electronic
9 binders?
10 A I did not read -- all I did not necessarily read all
11 of the documents.
12 Q Okay.
13 MR. SUAREZ: If we can please turn to Plaintiff's
14 Exhibit 740, and if we can zoom into the section that says,
15 Our responsibilities.
16 (Whereupon, a document was displayed, and handed
17 to the witness.)
18 A Excuse me. Which paragraph?
19 Q We are looking here at, Our responsibilities, and you
20 would agree, Mr. Bender, that this was the engagement letter
21 prepared by Mazars in connection with the 2016 compilation
22 report for the Statement of Financial Condition?
23 A Yes, sir.
24 Q Okay. Do you see in paragraph two, where it says,
25 "The objective of our engagement is to apply accounting and

D. Bender - Cross by Mr. Suarez Page 492

1 financial reporting expertise to assist you in the presentation
2 of the financial statement, without undertaking to obtain or
3 provide any assurance that there are no material modifications
4 that should be made to the financial statement in order for it
5 to be in accordance with accounting principles generally
6 accepted in the United States."
7 Do you see that?
8 A Yes, sir.
9 Q All right. What accounting and financial reporting
10 expertise did you apply to assist the Trump Organization in the
11 presentation of the financial statement?
12 A I applied compilation procedures, as deemed necessary
13 to do this engagement.
14 Q Any others?
15 A I can't tell you what I did for the June 30, 2016
16 statement without my binder to see if I did anything else that I
17 could find.
18 Q So, paragraph one of this document says, "The
19 objective of our engagement is to prepare the financial
20 statements in accordance with accounting principles generally
21 accepting in the United States of America, based on information
22 provided by you."
23 Do you see that?
24 A Yes, sir.
25 Q So, "you," is the Trump Organization, in this case?

D. Bender - Cross by Mr. Suarez Page 493

1 A Yes, sir.
2 Q They would provide, you, Mazars, through Mr. Bender,
3 information; correct?
4 A They provided us information, that we do compilation
5 procedures.
6 Q Okay. And then you, Mazars, undertook the
7 responsibility to apply accounting and financial reporting
8 expertise. In the second paragraph. Do you see, in the second
9 paragraph --
10 A Yes, sir.
11 Q -- it says, "Apply accounting and financial reporting
12 expertise?"
13 A To assist.
14 Q To assist. So, you undertook, you promised the Trump
15 Organization that you were going to apply Mazars allegedly
16 considerable accounting and financial reporting expertise to
17 assist the Trump Organization.
18 A We were engaged to compile financial statements.
19 Q But that's not what this says. This doesn't say that,
20 We agree that it is our responsibility to apply compilation
21 procedures, Mr. Bender. This goes a step further. It says that
22 you are going to assist them in the presentation of the
23 financial statements.
24 A Without undertaking or obtaining or providing any
25 assurance that there are no material modifications that should

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1 be made.

2 Q And granted, it says that, but what meaning do you

3 ascribe to the concept that there was expertise that you were

4 going to apply to assist your client in preparing those

5 financial statements?

6 A If you would need a further definition, I would have

7 to reach out. We would need to get somebody who is an expert in

8 compilations.

9 Q So, you are not sure of what additional expertise was

10 applied to the Trump Organization.

11 A I would want to get expert help.

12 Q And is that something that we would be able to

13 determine, from your time records? Did you log this in your

14 time entries?

15 A Did I do the --

16 Q Yes.

17 A Did I --

18 Q Did you maintain time entries? All the lawyers in

19 private practice are still traumatized by time entries.

20 A I did time sheets.

21 Q You do time sheets.

22 A Yes.

23 Q And you maintain time sheets in connection with your

24 work on the compilation reports for the Statements of Financial

25 Condition?

D. Bender - Cross by Mr. Suarez Page 495

1 A Yes, sir.

2 Q And would those time sheets adequately describe the

3 accounting and financial reporting expertise that you applied to

4 assist in the presentation of the financial statements?

5 A I don't think -- you would have to check to see if

6 there were descriptions.

7 Q All right. And how were those time sheets kept?

8 A Electronically.

9 Q Are they in the binders?

10 A No, sir.

11 Q Where are they kept, in the Mazars universe?

12 A You would have to speak to somebody in internal

13 accounting.

14 Q The last time -- you retired from Mazars in what year,

15 Mr. Bender?

16 A '22.

17 Q In 2022? And at that time, if you needed to pull up

18 your accounting records to see your time sheets and your time

19 entries, how would you do that?

20 A I would have the ability to pull up most of those,

21 that information, yes.

22 Q You would have had the ability?

23 A Yes.

24 Q Affirmatively had the ability to do?

25 A Yes.

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1 Q And if you needed to do it, how would you do it?

2 A I would load my time entry program.

3 MR. WALLACE: Objection, at this point.

4 I interrupted the witness. I apologize.

5 MR. SUAREZ: We'll move on.

6 Next page.

7 Q Do you see this disclaimer language here, Mr. Bender,

8 where it says that your own report will include the following

9 and, then it has a disclaimer?

10 A Yes, sir.

11 Q And if I were to pull up the compilation report for

12 2016, Plaintiff's Exhibit 742 -- excuse me, Plaintiff's

13 Exhibit 756, Plaintiff's Exhibit 756, that would have the same

14 disclaimer?

15 MR. WALLACE: Objection. I'm not sure the record

16 it clear what Plaintiff's Exhibit 756 is.

17 THE WITNESS: That's what I want to make sure.

18 (Whereupon, a document was displayed, and handed

19 to the witness.)

20 A Yes, sir.

21 Q We are going to blow up 756, and it will show the

22 disclaimer, and that disclaimer appears there, on the second

23 paragraph of 756.

24 A No. That's the last paragraph.

25 Q Last paragraph?

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1 A Not the second paragraph.

2 Q Significance and pervasiveness of the matters

3 discussed above?

4 A Yes, sir.

5 Q And the engagement letter was a prerequisite to you

6 getting the engagement to prepare the compilation report;

7 correct?

8 A We might have started the procedures before we

9 received the physical engagement letter.

10 Q So, you did not need an engagement letter to start the

11 procedure; is that your testimony?

12 A We might have started it without the -- without the --

13 Q My question is a little different. Did you need the

14 engagement letter to start the procedures?

15 A I did not need the engagement letter to start the

16 procedures.

17 Q Do the accounting, the accounting, the CPA accounting

18 guidelines require you to have an engagement letter before you

19 perform a compilation report?

20 A I would have to check. I'm not sure, off the top of

21 my head.

22 THE COURT: Ten-minute warning.

23 MR. SUAREZ: Thank you, sir.

24 Q If the engagement letter, in theory, predates the

25 compilation report, and in fact predates the compilation report,

D. Bender - Cross by Mr. Suarez Page 498

1 how would you know which disclosures were appropriate to include

2 in your accountant's compilation report, if you had not even

3 begun the engagement, Mr. Bender?

4 A Well, can you clarify what you mean by disclosure?

5 Q Sure. How would you know that this clause was

6 required in your compilation report, ahead of time?

7 A If the Trump Organization would have informed us that

8 they wanted to change the level of work we had done before.

9 They had not informed us of such a change.

10 Q But this clause isn't standard operating procedure in

11 a compilation report; correct?

12 A No, sir.

13 Q You would have to become familiar with the accounting

14 and financial reporting of the organization in order to

15 determine which clause you needed to include as a disclaimer;

16 correct?

17 A Yes, sir.

18 Q And you would do that, in theory, prior to preparing a

19 compilation report?

20 A Yes, sir.

21 Q Okay. And the next page, as to cash and marketable

22 securities and hedge funds, escrow reserve, deposits and,

23 pre-paid taxes --

24 MR. WALLACE: Objection. It says expenses, not

25 taxes.

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1 MR. SUAREZ: I'm sorry. Thank you. It's late.

2 Q As to cash, marketable securities and hedge funds,

3 escrow reserve, deposits, and prepaid expenses, those are two

4 separate lines in this Statement of Financial Condition;

5 correct?

6 A Yes, sir.

7 Q All right. So, as to cash, marketable securities and

8 hedge funds, which are listed as \$114,400,000, would you agree

9 that you had the ability to determine that there was no failure

10 to disclose the methods used to determine estimated current

11 value and amount of that asset?

12 A What's the last word? I'm sorry. Just last word. I

13 didn't hear.

14 Q Of that asset?

15 A Okay. Thank you.

16 THE COURT: I'm sorry. Just, ask the whole

17 question again.

18 MR. SUAREZ: Sure.

19 Q In connection with your preparation of the independent

20 account and compilation report, were you able to determine that

21 there was no failure to disclose the method used to determine

22 estimated current values and amounts for that asset?

23 A I believe there were.

24 Q You believe there were no failures?

25 A No failures.

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1 Q Correct?

2 MR. SUAREZ: I'm going to adopt your Honor's

3 order and direction, to say the same question with respect

4 to each asset. I just want to make sure that I've got the

5 question down right.

6 Q With respect to the escrow reserve, deposits and

7 prepaid expenses identified as \$28,010,000, were you able to

8 determine that there was no failure to disclose the methods used

9 to determine estimated current values and amounts for that

10 asset?

11 A Yes. I believe so.

12 Q Is that yes?

13 A Yes.

14 Q Yes. Same question for Trump Tower?

15 A Just reword the question one more time? Or reread the

16 question?

17 THE COURT: Do you want to repeat?

18 MR. SUAREZ: Please.

19 THE COURT: Okay.

20 (Whereupon, the requested portion of the

21 proceedings was read back by the court reporter.)

22 A Yes, I was.

23 Q Same question for Trump Tower?

24 A Yes, sir.

25 Q Same answer?

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1 A Yes, sir.

2 Q Same question for NikeTown on East 57th Street? Same

3 question, same answer?

4 A Yes, sir.

5 THE COURT: You don't have to say, Same question,

6 same answer. You can just list each property.

7 Q And that applies, as well, to 40 Wall Street?

8 A Yes, sir.

9 Q And that applies, as well, to the Trump Park Avenue?

10 A Yes, sir.

11 Q And applies as well to the club facilities and related

12 real estate in New York, Florida, New Jersey, California,

13 Washington D.C., North Carolina, Scotland and Ireland?

14 A Yes, sir.

15 Q And those are identified at 2,107,800,000?

16 A Our compilation procedures, we were able to satisfy,

17 as part of our compilation procedures.

18 Q And the same question for the Trump World Tower at

19 United Nations Plaza, Mr. Bender?

20 A Yes. We were able to satisfy, as part of our

21 compilation procedures.

22 Q And the same question for 100 Central Park South?

23 A Yes. We were able to satisfy, as part of our

24 compilation procedures.

25 Q And the same question for Trump Plaza, commercial and

D. Bender - Cross by Mr. Suarez Page 502

1 residential portions, in New York, New York?

2 A Yes. We were able to satisfy, as part of our

3 compilation procedures at that time.

4 Q You say, at the time. Is there anything that's

5 changed now?

6 A I don't recall. I can't tell you what's going on

7 today.

8 Q With respect to the Statement of Financial Condition

9 in 2016?

10 A At the time we prepared, there was no issue.

11 Q Okay. With respect to the Trump Palace, Trump Parc,

12 and Trump Parc East condominiums, the commercial portions, same

13 question Mr. Bender.

14 A There were no issues at that time. We had no trouble

15 satisfying ourselves.

16 Q The same question for the Trump International Hotel

17 and Tower in New York, New York, Mr. Bender?

18 A At that time, we had no problem satisfying ourselves.

19 Q And the same question for the Trump Old Post Office in

20 Washington D.C.?

21 A At that time, we had no problem satisfying ourselves.

22 Q And would you give me the same answer if I asked about

23 1290 Avenue of the Americas, and 555 California Street?

24 A Yes, sir.

25 Q And the same question for the Trump International

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1 Hotel and Tower in Las Vegas?

2 A Yes, sir.

3 Q Same question for real estate licensing developments?

4 A Yes, sir.

5 Q And when you say, Yes, sir, Mr. Bender I'm

6 understanding that to mean that if I asked you the same

7 question, you would give me the same answer?

8 A Yes, sir.

9 Q And the same for, other assets?

10 A Yes, sir.

11 Q And that mathematically footed to the 6,300,000,000 --

12 MR. SUAREZ: Please move that up.

13 Q And that footed to the \$6,388,510,000 in total assets?

14 A I believe so.

15 Q And that's the math that you would have carried over

16 from the supporting data which was provided to you?

17 A The math would have been done separately, on the

18 sheet.

19 Q It would have been a separate document?

20 A This would have been added up separately.

21 Q The math to get here, the numbers that are reflected

22 in this statement of assets.

23 A I can't tell you if it was done on Excel or in Word,

24 without seeing the line documents, but the math would have been

25 done -- this document is separate. Would be done separately.

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1 Q This document would have been done separately?

2 A Yes.

3 Q And where would the values on this document have been

4 divined were?

5 A They would have come from Jeff Supporting Data.

6 THE COURT: Okay. Are we through with this?

7 MR. SUAREZ: Yes.

8 THE COURT: Okay. We are going to break in a

9 minute. My Principal Law Clerk, Allison G., has questions

10 for the attorneys about scheduling; okay?

11 MS. GREENFIELD: So we are starting off tomorrow

12 morning, continuing with the cross of Mr. Bender? Is that

13 correct?

14 MR. SUAREZ: That's correct.

15 MS. GREENFIELD: How long do you anticipate you

16 have, remaining?

17 MR. SUAREZ: Depending on the answers, I will

18 hope to be able to conclude.

19 MS. GREENFIELD: By the morning?

20 MR. SUAREZ: Tomorrow.

21 THE COURT: In the afternoon?

22 MR. SUAREZ: I think we got into pretty good

23 rhythm. If we can keep that going --

24 MR. WALLACE: We are prepared to stipulate that

25 each year Mazars issued Statements of Financial Condition.

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1 I'm not sure that we need to go through every line, to get

2 repetitive answers. We are prepared to enter into

3 stipulations to shorten this.

4 MR. KISE: I think we are back to the future. We

5 had this discussion, earlier. We'll make every effort,

6 overnight, to streamline it, so that we can be done as

7 rapidly as possible.

8 MS. GREENFIELD: Okay. Do you want to plan to

9 have another witness, just in case?

10 So, who is next?

11 MR. WALLACE: Jeffrey McConney is the next

12 witness.

13 MS. GREENFIELD: I imagine we are not going any

14 further than that tomorrow; correct?

15 MR. KISE: That's probably right.

16 MS. GREENFIELD: Okay. Thank you.

17 THE COURT: Counselors, come up, one minute.

18 (Whereupon, an off-the-record discussion took

19 place at the bench.)

20 * * * * *

21 (Whereupon, the proceedings were adjourned to

22 Thursday, October 5, 2023 at 10:00 a.m.)

23

24

25

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Table with 5 columns: Dollar amounts, and four columns of legal terms and their corresponding page numbers. The first column lists dollar amounts from \$10 to \$6,388,510,000. The other columns list terms like 'above', 'absolutely', 'accept', etc., with their respective page references.

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1 SUPREME COURT OF THE STATE OF NEW YORK
 2 COUNTY OF NEW YORK - CIVIL TERM - PART 37
 3 -----X
 4 PEOPLE OF THE STATE OF NEW YORK, BY LETITIA JAMES, ATTORNEY GENERAL OF THE STATE OF NEW YORK, Index No. 452564/22
 5 Plaintiff,
 6 -against-
 7 DONALD J. TRUMP; DONALD TRUMP, JR.; ERIC TRUMP; IVANKA TRUMP; ALLEN WEISSELBERG; JEFFREY MCCONNEY; THE DONALD J. TRUMP REVOCABLE TRUST; THE TRUMP ORGANIZATION, INC.; TRUMP ORGANIZATION, LLC; DJT HOLDINGS, LLC; DJT HOLDINGS MANAGING MEMBER; TRUMP ENDEAVOR 12, LLC; 401 NORTH WABASH VENTURE, LLC; TRUMP OLD POST OFFICE, LLC; 40 WALL STREET, LLC; AND SEVEN SPRINGS, LLC;
 12 Defendants.
 13 -----X
 14 BENCH TRIAL 60 Centre Street New York, New York October 6, 2023
 15 B E F O R E:
 16 HONORABLE ARTHUR S. ENGORON
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J. McConney - Direct/Amer

1 THE COURT: A court officer, very
 2 well-intentioned, nice guy. They all are. One or two
 3 times that my cell phone went off, he didn't realize
 4 that. So, he tells the audience, you should turn off
 5 those cell phones. It was my fault.
 6 Okay. We're back to Mr. McConney, right?
 7 MR. AMER: Yes.
 8 THE COURT: Let's get the witness.
 9 J E F F M C C O N N E Y, having been
 10 previously duly sworn, resumed the witness stand and
 11 continued to testify as follows:
 12 THE COURT: Let's continue.
 13 DIRECT EXAMINATION (cont'd)
 14 MR. AMER:
 15 Q Good morning, Mr. McConney. I want to clean up one
 16 issue from yesterday and then we'll move forward.
 17 You recall we were discussing Vornado cash and
 18 the various accounts that are listed in the spreadsheet we
 19 looked at yesterday?
 20 A Yes.
 21 MR. AMER: Let's go ahead and put that
 22 spreadsheet up. It's 2587 Native.
 23 Q Just to recall your testimony--
 24 MR. AMER: And can we collapse the columns that
 25 we collapsed before? I think it was D through N.

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 LISA CASEY,
 OFFICIAL COURT REPORTERS

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J. McConney - Direct/Amer

1 Q I believe it was your testimony, Mr. McConney, that
 2 it was your intent to represent that the Vornado cash
 3 accounts, those accounts that referenced 30 percent were held
 4 in Capital One accounts but they were different accounts than
 5 the Capital One accounts for the various Trump-controlled
 6 cash; is that correct?
 7 A Yes.
 8 Q Am I correct that from time to time, the Trump
 9 Organization received distribution of Vornado cash at the
 10 discretion of the general partner for the Vornado
 11 Partnerships; is that right?
 12 A That's correct.
 13 MR. AMER: If we could look at Exhibit 3106.
 14 Your Honor, this is a bank record that was
 15 produced to us by Vornado Realty Trust in response to a
 16 investigative subpoena. I ask it be admitted in as a
 17 business record.
 18 MR. SUAREZ: We object on the basis of Statute
 19 of Limitations. It is dated March 15, 2013.
 20 THE COURT: Overruled. Request granted. It's
 21 in evidence.
 22 Q You can confirm that the debit account name Hudson
 23 Waterfront Associates III is one of the Vornado cash
 24 partnerships, correct?
 25 A Correct.

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J. McConney - Direct/Amer Page 689

1 Q It's in the spreadsheet we were looking at before,
2 correct?
3 A Correct.
4 Q And this shows that the money being distributed by
5 this Vornado cash account is actually coming from Bank of
6 America, not Capital One, correct?
7 A That's correct.
8 Q Does this refresh your recollection that the Vornado
9 cash accounts were actually held at Bank of America and not
10 Capital One?
11 A This -- yes, this transfer came from Bank of
12 America.
13 Q That wasn't my question. My question was whether it
14 refreshes your recollection that all of the Vornado cash
15 accounts were actually sitting in Bank of America, not Capital
16 One?
17 A I don't know where all-- where Vornado puts all of
18 their money. Without looking at our specific backup for that
19 statement, I can't say all their accounts were at Bank of
20 America. This transfer did come from Bank of America.
21 Q Just pick up the exhibit again. Page two is a
22 different transfer from a different Vornado cash account.
23 That's Hudson Waterfront Associates V, right?
24 A Yes, sir.
25 Q That is from Bank of America, correct?

J. McConney - Direct/Amer Page 690

1 A Yes, sir.
2 Q The third page, Hudson Waterfront Associates III is
3 another Vornado account, also from Bank of America, correct?
4 A That's correct.
5 Q Okay. I'd like to-- we were talking about 40 Wall
6 Street when we broke yesterday.
7 Do you recall that?
8 A Yes, sir.
9 Q I'd like to focus on the 2015 valuation and I'd like
10 to put up Exhibit 868 which is admitted into evidence.
11 And we looked at this yesterday. This is an
12 e-mail that includes excerpts from the 2015 Cushman appraisal
13 that you forwarded on to Mr. Bender, correct?
14 A Correct.
15 Q Just to note the date, it's December 29, 2015,
16 correct?
17 A Yes.
18 MR. AMER: If we could pull up Exhibit 3004.
19 Q This is a cover e-mail and then there were blank
20 sheets after that because it denotes native files, one of
21 which we'll put up.
22 That's an e-mail from you to Donald Bender, same
23 date as the prior e-mail we just looked at, December 29, 2015,
24 correct?
25 A Yes.

J. McConney - Direct/Amer Page 691

1 MR. AMER: Your Honor, I would move this exhibit
2 with the native files into evidence.
3 THE COURT: Granted it's in evidence.
4 MR. FIELDS: Objection. Statute of Limitations
5 if the documents are from 2015.
6 THE COURT: Objection overruled. It's in
7 evidence.
8 Q Do you see on the attachment line of this e-mail that
9 the first attachment is named 1-Jeff Supporting Data and it's
10 an XL file.
11 Do you see that?
12 A Yes.
13 Q So, this was your process for providing Mr. Bender
14 with copies of your Jeff Supporting Data spreadsheet, correct?
15 A Yes.
16 Q If we pull up native one, we'll see this is, in fact,
17 your supporting data spreadsheet which appears to be a
18 preliminary valuation spreadsheet that you're sending to him,
19 correct?
20 A I don't remember where we were in the process at
21 this point in time.
22 MS. HABBA: Your Honor, I'm going to do it one
23 time for you today and only one time. I'll object to any
24 backup data that is before the February 2016 date that we
25 believe, per my objection that's been standing for the

J. McConney - Direct/Amer Page 692

1 past four days.
2 THE COURT: Okay. Objection duly noted. We'll
3 call it a standing objection to anything before the magic
4 day.
5 MS. HABBA: Thank you.
6 THE COURT: Overruled.
7 Q Let's go ahead and go to row 117, and this is the row
8 that starts the analysis of 40 Wall Street in this valuation
9 that you provide to Mr. Bender in December, correct?
10 A Yes.
11 Q Now, on line 125 and 126, you state: Cushman &
12 Wakefield appraisal done June 2015 for lien refinancing with
13 Ladder Capital, and you put a value of \$540 million.
14 So, at this point in time, you were using the
15 Cushman 2015 appraisal as part of the valuation, correct?
16 A Yes.
17 Q And rows 118 through 123, if I'm reading this
18 correctly, is a calculation of an additional value of slightly
19 over \$120 million that you then add to the Cushman appraisal
20 value of 540 to get to a valuation of 660.3, correct?
21 A Yes.
22 Q This additional value is made up of additional income
23 from two spaces that you indicate are new lease signings after
24 Ladder Capital refinancing was completed; is that right?
25 A Yes.

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1 Q So, if I'm understanding this correctly, you are
 2 adding additional value based on additional net operating
 3 income from leases that you note were signed after the Ladder
 4 Capital refinancing, which, I take it to mean, you believe
 5 were not included within the Cushman appraisal; is that right?
 6 A Yes.
 7 Q Because they weren't, in your understanding, part of
 8 the Cushman appraisal. It's appropriate in your view to add
 9 that net operating income in as value by then dividing that
 10 income by the 3.04 cap rate, that we've talked about before,
 11 that you got from the generic market records, correct?
 12 A Correct.
 13 Q So, just to close the loop on the calculation.
 14 You've got 2.25 million of income from a Dean & DeLuca lease.
 15 You add that up, you divide it by 3.04, and you
 16 get the 120 million and change in additional value; is that
 17 right?
 18 A Yes.
 19 MS. HABBA: Your Honor, I'm going to object and
 20 ask that counsel ask direct questions instead of
 21 testifying. This isn't cross. Just please ask and let
 22 him testify to what he did.
 23 THE COURT: I believe your objection is that the
 24 questions are leading. Does that sound right?
 25 MS. HABBA: Correct, your Honor. It's not only

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1 Q We also had looked yesterday at the complete Cushman
 2 appraisal. You had sent excerpts to Mr. Bender but you had
 3 the full appraisal, correct?
 4 A Yes.
 5 MR. AMER: Why don't we put up Exhibit 118. It's
 6 in evidence. Let's go to page 137.
 7 Q You'll see there's a chart. It says: "Retail
 8 contract rent summary." Yes?
 9 A Sorry?
 10 Q Sure. It's page 137.
 11 A Okay. Got it.
 12 Q This chart appears on that page, correct?
 13 A Yes.
 14 Q You'll see under Wall Street frontage, it says:
 15 "Dean & DeLuca 18,500 square feet contract rent 1.4 million.
 16 Contract rents per square foot 75.68. You see that?
 17 A Yes.
 18 Q So, in fact, this Cushman appraisal does include the
 19 income from the Dean & DeLuca lease, right?
 20 A I can't make that statement. I didn't track this
 21 schedule back to the appraisal. So, I can't say yes or no.
 22 Q Did you see this chart and make note of it when you
 23 reviewed the appraisal?
 24 A No.
 25 Q Let's go to page 115. I'll wait for you to get

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1 leading, it's as if he's testifying himself.
 2 MR. SUAREZ: And they're also compound, Judge.
 3 THE COURT: Sorry?
 4 MR. SUAREZ: Compound.
 5 MR. AMER: Your Honor, this is a defendant. He
 6 is a hostile witness. I should be able to lead.
 7 MS. HABBA: He's not a hostile witness.
 8 THE COURT: He's a defendant.
 9 MS. HABBA: He is. He's a defendant, but he--
 10 yes, but -- your Honor, my objection-- I noted my
 11 objection. I'm sure you'll overrule it, but, I would
 12 prefer if counsel would just ask him a direct question
 13 and let him testify to what he did on the backup, just as
 14 he preferred that Chris not testify in any objections
 15 yesterday.
 16 THE COURT: He is a defendant. I'm considering
 17 him a hostile witness. Objection on the ground of
 18 leading is overruled.
 19 As for the compound question objection, yeah,
 20 there's a rule you shouldn't be asking compound
 21 questions. So, try to keep it discrete points.
 22 Should we have that read?
 23 MR. AMER: I think there is an answer, though.
 24 THE COURT: I think there was, also. He
 25 answered.

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1 there.
 2 A I'm there.
 3 Q Second chart says: "Retail tenants." See on line 17
 4 it says: "Dean & DeLuca." See that?
 5 A Yes.
 6 Q Doesn't that indicate that this appraisal includes
 7 the operating income from the Dean & DeLuca lease?
 8 A Again, I didn't go through this appraisal and try
 9 everything out. So, I can't answer the question.
 10 Q Well, you did a valuation on the assumption, as we
 11 just agreed, that the Cushman appraisal didn't include the
 12 Dean & DeLuca lease, right?
 13 A That's correct.
 14 Q This page shows that there's a reference to the Dean
 15 & DeLuca lease, right?
 16 A There is a reference to the Dean & DeLuca lease,
 17 yes.
 18 Q Did you make note of this chart when you were
 19 reviewing the 2015 appraisal?
 20 A No.
 21 Q Let's go to page 117. Let's do -- so, the bottom
 22 paragraph carrying over to the next page: "In addition to
 23 office space, the subject property is leased to four retail
 24 tenants that include Dean & DeLuca."
 25 You see that?

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1 A Yes.

2 Q It goes on to say that "Dean & DeLuca leases

3 15,500 square feet on the grade." You see that?

4 A Yes.

5 Q So, this appraisal includes the income on the Dean &

6 DeLuca lease, doesn't it?

7 A Again, I didn't go through and track all of this. I

8 can't make the statement yes or no.

9 Q Okay, but, you did a valuation in 2015 that was based

10 on the assumption that the Cushman appraisal did not include

11 the Dean & DeLuca lease?

12 MR. FIELDS: Objection. Asked and answered.

13 THE COURT: Was it asked and answered?

14 MR. AMER: I'll withdraw the question.

15 Q You missed this reference in the Cushman appraisal;

16 is that what you're saying?

17 A I'm saying -- yes.

18 Q Let's go to page 136. See the paragraph that says:

19 "Market rental rate retail space? This-- "The subject

20 property is leased to four retail tenants that include Dean &

21 DeLuca." See that?

22 A Yes.

23 Q Did you miss that, as well?

24 A Yes.

25 Q Can we agree, Mr. McConney, that by adding the income

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1 from the lease from Dean & DeLuca into your valuation that you

2 double counted the Dean & DeLuca income in your valuation?

3 MR. SUAREZ: Objection, your Honor. Mr.

4 McConney is not a valuation expert. He's not offered as

5 a valuation expert.

6 THE COURT: Overruled.

7 A Sorry. Can you ask me the question again?

8 Q Can we agree that by including the Dean & DeLuca

9 lease in your additional value that you added to the 540 from

10 the Cushman appraisal, that you, effectively, double counted

11 the Dean & DeLuca lease income in your valuation?

12 A Okay. I will say again that I didn't track all the

13 information in the appraisal. So, I can't answer that

14 question.

15 Q Well, I think you can answer the question, Mr.

16 McConney. So, I'm going to ask you to please answer it. The

17 question is: Based on what we just looked at, wouldn't you

18 agree that by including in your additional value the Dean &

19 DeLuca lease that you double counted the income from that

20 lease?

21 A I did not track the information on this appraisal

22 from A to B to C. I can't answer that question.

23 MR. AMER: Your Honor, he's not answering the

24 question I'm asking him. It's a simple question.

25 Q Based on what we've just looked at, you double

J. McConney - Direct/Amer Page 699

1 counted the Dean & DeLuca lease income. Isn't that the

2 practical effect of what you did in your valuation?

3 A Without looking at all this information and see how

4 it tracks from point A to point B within the appraisal, I

5 can't tell you if it's included or not.

6 MR. AMER: Your Honor, again, on math you can

7 check but I will just represent that if you back out the

8 \$1,406,000 from the additional value that's then divided

9 by the 3.04 percent cap rate.

10 MS. HABBA: Your Honor --

11 THE COURT: Let him finish.

12 MR. AMER: It equals 46,250,000.

13 MS. HABBA: Your Honor, objection. Counsel is

14 testifying.

15 THE COURT: Well, again, as often in this case,

16 there's no jury. So, there's no prejudice. I'll take

17 judicial notice of that, subject to a careful calculation

18 again.

19 Q Mr. McConney, if you want to confirm this by looking

20 at Exhibit 868, which was your e-mail to Mr. Bender with

21 excerpts from the 2015 Cushman appraisal, none of the four

22 pages that we just looked at that mention the Dean & DeLuca

23 lease from the Cushman appraisal are included in what you sent

24 Mr. Bender, correct?

25 A Can you please give me those page numbers again?

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1 Q Sure. They are page 137.

2 A What page of the appraisal? Sorry. 110?

3 Q It's not that many pages. You can just flip through

4 it and confirm that the chart is not there?

5 A I understand that, but, I'm saying on the bottom of

6 page 136 -- when I sent it to Mr. Bender, page 136 of 219 was

7 not on the document I sent to Mr. Bender.

8 Q 137 is Bates number 9451?

9 A That is CW. This is New York AG. On the upper

10 right-hand corner, you have page number page 111. That's

11 what I'm looking for.

12 Q Let's do it more simply. Let's flip through the

13 exhibit.

14 A I am.

15 Q And confirm -- okay.

16 MS. HABBA: Counsel, I think he has a point. If

17 you look at the top right, Mr. Amer, if you can just give

18 him the number.

19 MR. AMER: I've asked my question. Thanks.

20 MS. HABBA: I'm just trying to help.

21 A Can you ask the question one more time?

22 Q Can you confirm that none of the four pages that

23 reference the Dean & DeLuca lease in the Cushman appraisal

24 were included in the excerpts you sent to Mr. Bender in

25 Exhibit 868?

Page 701

1 A Yes.
 2 (Continued on following page...)
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J. McConney - Direct by Mr. Amer

1 A In general, over the 20 years, or --
 2 Q During the period that you were working on the
 3 valuations.
 4 A Yes.
 5 Q What mistake did you make that caused the valuation to
 6 go down?
 7 A I recall one on the cash sheet, or the cash
 8 spreadsheet we looked at with the Vornado cash on it. One year
 9 I included Mr. Trump's foundation cash, Mr. Trump's foundation's
 10 cash on that spreadsheet. Donald Bender said I can't do that,
 11 it's not controlled by Mr. Trump, it's controlled by the
 12 foundation, so I took that off.
 13 I believe on Trump Tower, once, we were valuing vacant
 14 space at a dollar amount, and Mr. Bender pointed out that we
 15 used a different dollar amount on a certiorari proceeding, and
 16 so we reduced the amount of my spreadsheet to the amount that he
 17 indicated on the certiorari proceeding? Can I just go back to
 18 the first mistake.
 19 Q You said Donald Bender said you can't include cash
 20 from Mr. Trump's foundation because it's not controlled by him.
 21 Is that your testimony?
 22 A I don't remember the exact words, but he had us -- he
 23 told me to take the cash from the foundation off that
 24 spreadsheet.
 25 Q And he told you it was because Mr. Trump didn't

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J. McConney - Direct by Mr. Amer

1 Q Thank you. That wasn't that hard.
 2 Okay. Let's -- let me ask you, just, we have
 3 discussed a couple of mistakes and oversights. We talked about
 4 the 30000-square-foot-triplex mistake; correct?
 5 A Yes.
 6 Q And we talked about your mistake in pulling the square
 7 footage for a comp at 157, instead of the price per square foot.
 8 Do you recall that?
 9 A Yes.
 10 MR. SUAREZ: Objection, your Honor. He did not
 11 testify to having made a mistake.
 12 THE COURT: He just said he did.
 13 MR. SUAREZ: No. He just -- it's in his
 14 question. It wasn't in his testimony from yesterday. He
 15 is mischaracterizing the testimony from yesterday.
 16 MR. AMER: I think yesterday he said it was a
 17 mistake. He pulled the wrong number from the email.
 18 THE COURT: He just said he did. Or am I hearing
 19 things?
 20 Q So, you have that second mistake, and then you have
 21 just testified that you missed seeing the Dean & DeLuca
 22 reference in the Cushman appraisal; right?
 23 A Yes.
 24 Q I may have missed it, but do you recall making any
 25 mistakes that caused the valuing to go down instead of up?

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J. McConney - Direct by Mr. Amer

1 control that cash; right?
 2 A He gave me -- I believed it to be, Mr. Trump really
 3 didn't control that cash anymore.
 4 Q But you continued to list the Vornado cash; right?
 5 A Yes.
 6 Q Why don't we turn to Park Avenue, Trump Park Avenue.
 7 MR. AMER: And let's put up the 2012 Jeff
 8 Supporting Data, which is Exhibit 793 in evidence.
 9 (Whereupon, a document was displayed, and handed
 10 to the witness.)
 11 MR. AMER: Let's go to row 166.
 12 Q Now, this shows, Mr. McConney, a value for the unsold
 13 units at Trump Park Avenue; correct?
 14 A Yes. Well, except for the super's apartment. The
 15 super's apartment was sold.
 16 Q And for 2011 and 2012, it's the same value. It's a
 17 little over \$293 million; correct?
 18 A Correct. Excuse me. Correct.
 19 MR. AMER: Let's pull up Plaintiff's
 20 Exhibit 1073. It's an email that has native files attached
 21 to it.
 22 MR. SUAREZ: Your Honor, I won't raise objections
 23 to documents that have already been admitted over our
 24 objection. Obviously, you would not be happy with me if I
 25 did that. But, we do object to this document that's being

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1 introduced right now, on the basis of statute of
 2 limitations.
 3 MR. AMER: And I'll move it into evidence, so
 4 that there's something he can object to.
 5 THE COURT: Objection overruled. It's in
 6 evidence. The statute of limitations bars claims, not
 7 evidence. Of course, they have to be connected, and we'll
 8 see whether Mr. Amer connected the dots or not, and his
 9 team.
 10 (Whereupon, the exhibit was received in
 11 evidence.)
 12 Q Mr. McConney, this email from you forwards an
 13 attachment that's entitled sponsor unit valuation, September 20,
 14 2012, Park Avenue; correct?
 15 MR. AMER: We'll put up the attachments in a
 16 minute.
 17 A Oh. There it is. Yes. The attachments. I was
 18 looking at the subject. Sorry.
 19 Q Okay. Is that correct?
 20 A I'm sorry. Could you ask again?
 21 Q Sure. The top email from you attaches a sponsor unit
 22 valuation; correct?
 23 A Yes.
 24 Q Okay. And let's go ahead and pull up the attachment.
 25 Do you recognize this as the backup for your valuation of the

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1 correct?
 2 A Correct.
 3 Q And if we put this -- so --
 4 MR. AMER: Withdrawn.
 5 Q The offering plan price is roughly \$57 million higher
 6 than the market value total; correct?
 7 A Correct.
 8 Q Now, let's go to Plaintiff's 796.
 9 (Whereupon, a document was handed to the
 10 witness.)
 11 Q Mr. McConney, do you recognize this as backup that you
 12 sent to Donald Bender in support of the supporting data
 13 spreadsheet?
 14 A Yes.
 15 MR. AMER: Your Honor, I move this into evidence,
 16 please.
 17 MR. SUAREZ: Objection. Statute of limitations.
 18 THE COURT: I thought someone said you are only
 19 going to do that once.
 20 MR. SUAREZ: No. I said I wouldn't do it for
 21 exhibits that have been moved into evidence, but they are
 22 bringing up with new witnesses.
 23 THE COURT: All right. Duly noted. Overruled.
 24 It's in evidence.
 25 (Whereupon, the exhibit was received in

J. McConney - Direct by Mr. Amer Page 706

1 unsold apartments?
 2 A Yes.
 3 Q And 502 Park Avenue, that's Trump Park Avenue;
 4 correct?
 5 A Yes.
 6 Q And there are three columns in this backup. There's
 7 Unit, which is the unit number of the apartment; is that right?
 8 A Yes.
 9 Q There's an offering plan price; correct?
 10 A Yes.
 11 Q And there's a current market value price column;
 12 correct?
 13 A Yes.
 14 Q We can agree that the value that you used in your
 15 supporting data spreadsheet that we were just looking at is the
 16 293 figure from the offering plan price column; correct?
 17 A Correct.
 18 Q And that was what you used for both 2011 and 2012;
 19 correct?
 20 A I believe so, yes.
 21 Q And is this spreadsheet prepared by the TIR sales
 22 office in order to give you valuations for the unsold units?
 23 A Yes.
 24 Q This is information that you asked TIR to provide you
 25 for preparing your valuation of Park Avenue for the statements;

J. McConney - Direct by Mr. Amer Page 708

1 evidence.)
 2 Q Mr. McConney, looking at what you sent Mr. Bender. It
 3 appears that you sent him a column that shows the unit number
 4 and column that shows the offering plan price, but you have cut
 5 off the column that shows the market value; right?
 6 A Yes.
 7 Q So this was not a mistake. You intentionally removed
 8 that third column from the material you forwarded to Mr. Bender,
 9 on purpose; right?
 10 A Yes.
 11 Q And you removed that column because you didn't want
 12 him to see the values that were labeled, current market values;
 13 correct?
 14 A No.
 15 THE COURT: That was a yes or no?
 16 THE WITNESS: No.
 17 Q The effect of your removing that column was that he
 18 didn't see it; right?
 19 A Correct.
 20 MR. AMER: I'm going to put up, from
 21 Exhibit 3041 -- which is the defendants' 202 response --
 22 paragraph 344, and if we can do it side by side,
 23 eventually, with the exhibit that we were just looking at.
 24 So, let's go to paragraph 344, which is page 126,
 25 I believe.

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1 (Whereupon, a document was displayed, and handed
2 to the witness.)
3 Q Paragraph 344, which defendants have admitted is that,
4 "In 2013, the following 11 units were stabilized," and then you
5 see there's a list of units; correct?
6 A Yes.
7 Q And we can agree that if a unit was rent stabilized in
8 2011, it was rent stabilized in 2012 and 20 -- I'm sorry. If it
9 was rent stabilized in 2013, it would have been rent stabilized
10 in 2012 and 2011; correct?
11 MR. SUAREZ: Objection, your Honor. That's a
12 legal conclusion. I don't know that Mr. McConney is a
13 lawyer.
14 (Whereupon, there was a pause in the
15 proceedings.)
16 THE COURT: Mr. Amer, is there some other way
17 that we can figure out what was rent stabilized and what
18 wasn't?
19 MR. AMER: There's a paragraph above it. Why
20 don't we use that paragraph. Defendants, in response to an
21 assertion of the units that were rent stabilized in 2011
22 and 2012, asserted that the following 12 units were rent
23 stabilized as of September 2011, and then there's a list of
24 units. So, if we can take judicial notice of that as an
25 admitted fact; your Honor?

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1 THE COURT: Yes. That was admitted by this
2 defendant; right?
3 MR. AMER: Yes, your Honor.
4 MR. SUAREZ: Your Honor, the response to 343,
5 actually, is disputed.
6 MR. AMER: I was reading what comes after,
7 disputed.
8 MR. SUAREZ: Okay.
9 THE COURT: All right. So 343 is disputed, but
10 what comes after it is undisputed.
11 MR. AMER: It's what they assert.
12 THE COURT: Well -- oh, sorry. That's how those
13 things work. That's an assertion by this defendant.
14 MR. AMER: Yes.
15 MS. HABBA: I'm sorry. Just to be clear for the
16 record, are we putting in the entire document, or just this
17 section? I would submit the same response, that we should
18 be putting in the entire document, if that is what --
19 MR. AMER: I thought I moved the whole document
20 into evidence.
21 MS. HABBA: It has been moved in? Then I have no
22 objection.
23 THE COURT: Well --
24 MS. HABBA: The entire document.
25 THE COURT: -- is it in evidence, the entire

J. McConney - Direct by Mr. Amer Page 711

1 document?
2 MR. AMER: I moved it into evidence. I believe
3 your Honor said yes.
4 THE COURT: Yes. It's in.
5 MS. HABBA: Okay. Good.
6 THE COURT: So, it's already in evidence.
7 Q Mr. McConney, you were aware that Park Avenue had
8 these rent-stabilized units when you prepared the valuations;
9 correct?
10 A Yes.
11 Q Okay. And if we just tick off, in the sponsor unit
12 spreadsheet for 2012, these 12 units. For 4A, 4A, 6B, 7A, 7B,
13 7D, 7E, 7G, 8E, 8H, 10E, 12E, 15AB, so all of these units you
14 knew, at the time that you were doing the valuations for this
15 year, were rent stabilized; correct?
16 A Correct.
17 Q And you valued them without any regard to their
18 rent-stabilized status; is that correct?
19 A I didn't value them. TIR valued them. But, I believe
20 that's correct.
21 Q You put them into your spreadsheet that is goes to
22 Donald Bender; is that correct?
23 A That's correct.
24 Q And the values you relied on when you put them in your
25 spreadsheet and sent them to Donald Bender were the offering

J. McConney - Direct by Mr. Amer Page 712

1 plan price values, knowing that these were rent-stabilized
2 units; correct?
3 A Correct.
4 Q And you followed that same approach for every
5 statement you reviewed; correct?
6 A Correct.
7 Q And it was intentional; correct?
8 A Yes.
9 Q And it was something you discussed with
10 Mr. Weisselberg; correct?
11 A I believe so, yes.
12 Q And he agreed that that was the way that you were
13 going to do it; correct?
14 A Yes.
15 Q Let's turn to Seven Springs.
16 MR. AMER: I'm going to put up the 2012 Jeff
17 Supporting Data, 793, which is in evidence.
18 Q Row 669, that starts the section on Seven Springs;
19 correct? Well, we'll get there in a second.
20 That's where it starts; correct?
21 A 669. Line 669, yes.
22 Q Okay. And did you understand at the time that the
23 property was in three different localities, New Castle, North
24 Castle and Bedford?
25 A Yes.

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1 Q Row 683 indicates that there were seven mansions
 2 approved to be developed in the Bedford portion; right?
 3 A Yes.
 4 Q Those are valued in the spreadsheet at 23 million per
 5 mansion, times seven, for value of 161 million in each year;
 6 correct?
 7 A In 2011 and 2012, yes.
 8 Q And row 674 mentions a September 16, 2011 telephone
 9 call with someone named Hal Goldman; correct?
 10 A Correct.
 11 Q That was a call you had with Mr. Goldman; right?
 12 A Yes.
 13 Q He was an independent contractor that the company had
 14 hired to get through the planning and approval process for the
 15 development; correct?
 16 A Yes.
 17 Q And row 679 referenced a call that you had with Eric
 18 Trump on September 24, 2012; correct?
 19 A Correct.
 20 Q And the information about the seven mansions being
 21 approved in Bedford was information that was provided to you by
 22 Hal Goldman in 2011; right?
 23 A Correct.
 24 Q And it was confirmed to you by Eric Trump in 2012;
 25 correct?

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1 the seven homes in Bedford?
 2 A No.
 3 Q Were you operating under the assumption, in doing this
 4 valuation, that the approval for the seven homes had been
 5 obtained?
 6 A Sorry. Can you ask that again?
 7 Q Were you operating under the assumption when doing
 8 this valuation in these two years that approvals had been
 9 obtained, all necessarily approvals had been obtained for these
 10 seven homes in Bedford?
 11 A Looking at this now, yes.
 12 Q And did you get that information from Mr. Goldman?
 13 A I would have to go back and say -- and correct myself.
 14 He, yes Hal probably gave me that information.
 15 Q And that was confirmed again by Mr. Trump, Eric Trump,
 16 in the call the later in the next year?
 17 A I don't remember if I asked Eric that or not.
 18 Q It's fair to say that you didn't learn anything
 19 between the 2011 valuation and the 2012 valuation that lead you
 20 to conclude differently concerning the approval necessary for
 21 those seven homes; right?
 22 A That's correct.
 23 Q Now, as the controller of a large company,
 24 Mr. McConney, with a finance background, you do understand the
 25 concept of time value of money; correct?

J. McConney - Direct by Mr. Amer Page 714

1 A Correct.
 2 Q And that was conveyed to you in both of those calls;
 3 correct?
 4 A I'm sorry. Ask you ask that question again?
 5 Q Sure. The information from Mr. Goldman was conveyed
 6 to you in that phone call that is reflected here with him;
 7 correct?
 8 A Correct.
 9 Q And the information from Eric Trump was conveyed to
 10 you during the phone call with him that's reflected here;
 11 correct?
 12 A That's correct.
 13 Q And you were trying to value Seven Springs for the
 14 2012 statement, and you knew Eric Trump was involved with the
 15 property, so you asked him if he could give you -- if he could
 16 give you a valuation for the statement, or provide some insight
 17 into the value; is that correct?
 18 A Yes.
 19 Q And Eric Trump confirmed, during the call in September
 20 of 2012, that all necessary approvals had been obtained to build
 21 the seven homes in Bedford; correct?
 22 A Never asked him that question. So, I guess the answer
 23 is no.
 24 Q Okay. Had you heard from Hal Goldman during the call
 25 at 2011 that all necessary approvals had been obtained to build

J. McConney - Direct by Mr. Amer Page 716

1 A I do not have a finance background. I have an
 2 accounting background.
 3 Q As the controller of a large company with an
 4 accounting background, you do understand the concept of time
 5 value of money; right?
 6 A Yes.
 7 Q The concept is essentially that a dollar paid today is
 8 worth more than a dollar paid, say, five years from now, based
 9 on inflation; right?
 10 A Yes. Excuse me. Yes.
 11 Q And if you wanted to know how much the dollar that
 12 gets paid five years from now would be worth today, you apply a
 13 discount factor to determine the present value; correct?
 14 A I'm not a finance guy, so I can't really answer that
 15 question.
 16 Q So that concept is not something you understand?
 17 A I understand the concept. I don't know the
 18 computation, to get to that point.
 19 Q I'm asking you a much simpler question. As a general
 20 matter, if you want to know how much a future payment is going
 21 to be worth today, you do something called, apply a discount
 22 factor, to get to the present value. Is that something you have
 23 an understanding of?
 24 A Not really. I know you have to discount it. I just
 25 don't know the exact computation, or where you get the

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1 percentages from.

2 Q Okay. My question wasn't going beyond just the simple

3 concept of having to discount it. So, we agree you have to

4 discount it in order to get to present value; correct?

5 A Yes.

6 Q And the concept of discounting future income to

7 present value, that is a very standard accounting practice;

8 isn't it?

9 A It could be a standard finance practice. I never use

10 it, really.

11 Q Different question. My question was whether you would

12 agree that it's a standard accounting practice. Yes or no.

13 A No.

14 Q It's not. Okay. Am I correct that the value of

15 \$161 million for the seven homes in Bedford does not apply any

16 discount factor to take in account how long it would take to

17 construct the infrastructure, build the homes, and then sell the

18 home for \$35 million each?

19 A That's correct.

20 Q You didn't factor into the valuation whether the homes

21 were going to be built today, tomorrow, or in a number of years;

22 correct?

23 A Correct.

24 Q And if it took five years to complete the homes, and

25 they were sold two years after that, your valuation doesn't

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1 account for that at all; correct?

2 A Correct.

3 Q Can we agree that this \$161 million attributable to

4 these seven homes is, by necessity, going to be future income,

5 because the homes don't exist as of the date of these

6 valuations?

7 A Correct.

8 Q You have treated, for purposes of this valuation, the

9 profit of \$23 million per home for all seven homes as if it were

10 realized immediately, as of June 30 in each year; correct?

11 A Yes.

12 MR. AMER: Let's go to the 2014 Jeff Supporting

13 Data, which is Plaintiff's Exhibit 719.

14 (Whereupon, a document was displayed, and handed

15 to the witness.)

16 Q And row 655, again, the section on Seven Springs -- as

17 soon as we get there.

18 MR. AMER: I think we have to shift it over to

19 the left. Great.

20 (Continued on the next page.)

21

22

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25

J. McConney - Direct/Amer Page 719

1 Q Mr. McConney, for the valuation in 2014 and 2013,

2 it's the same calculation, correct?

3 A I'm sorry. Can you ask that again? I think I heard

4 the question, but, just ask it again, please.

5 Q For the valuation of the seven mansions at Seven

6 Springs for 2013 and, 2014, it is precisely the same

7 calculation that we saw in 2011 and 2012, right?

8 A Yes.

9 Q So, all your answers that apply to 2011 and 2012

10 apply equally to these valuations here, correct?

11 A Yes.

12 Q Row 662 states a June 30, 2013 -- states that for

13 June 30, 2013, it's per telephone conversation with Eric Trump

14 on August 20, 2013, correct?

15 A Yes.

16 Q This reflects that you had a phone call with Eric

17 Trump on that date August of 2013 where he confirmed you

18 should continue to value the seven mansions in Bedford for the

19 Statement of Financial Condition, the same as you did for the

20 year before, right?

21 A Yes.

22 Q In row 660, it references a different call with

23 Mr. Trump, Eric Trump, on September 12, 2014, correct?

24 A Correct.

25 Q That note reflects you had a phone call with Eric

J. McConney - Direct/Amer Page 720

1 Trump on that date, September 2014, where he confirmed you

2 should continue to value the seven mansions in Bedford for the

3 Statement of Financial Condition, the same as you did for

4 2013, right?

5 A Yes.

6 Q As with the prior years, we just discussed your

7 valuation of the seven homes did not factor in whether the

8 homes were built today, tomorrow, or in a number of years in

9 the future, correct?

10 A Correct.

11 MR. AMER: Let's go to Jeff Supporting Data for

12 2015 and let's go to row 699.

13 Q Now, Mr. McConney for 2014, it has the same valuation

14 calculation for the seven mansions that we spoke about before,

15 correct?

16 A Correct.

17 Q And there is a reference for the June 30, 2014 value,

18 per telephone conversation with Eric Trump, September 12,

19 2014, correct?

20 A Correct.

21 Q And that note reflects that you had a phone call.

22 That's the same phone call we just spoke about, correct?

23 A Yes.

24 Q Okay. I noticed that there's no value for 2015 and

25 that's per the note that says: "Conservation easement

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1 property moved to other assets." You see that?
 2 A Yes.
 3 Q So, if we want to find the valuation for Seven
 4 Springs for 2015, we have to go to the section of the
 5 spreadsheet that addresses other assets, correct?
 6 A Correct.
 7 Q Let's go to row 895. Row 895, we can see Seven
 8 Springs per easement and the value now drops down to 56
 9 million, correct?
 10 A Yes.
 11 Q That's pursuant to the easement donation?
 12 A Yes.
 13 Q Let me ask you a few questions to get a basic
 14 understanding of a conservation easement donation. You
 15 understood, at the time, that a conservation easement donation
 16 is where the owner of the property agrees to donate rights to
 17 develop the land, and the value of those rights is then taken
 18 as a tax deduction; is that right?
 19 A I've got a peripheral knowledge of easement. So,
 20 yes, I know the land is donated; and, yes, I know there's a
 21 charitable contribution taken on the tax returns.
 22 Q When you say the "land is donated," isn't it that the
 23 development rights on the land are donated?
 24 A I have a limited knowledge of it, so I don't know
 25 exactly what's donated.

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1 THE COURT: I'll take judicial notice, the land
 2 is not donated, just certain rights.
 3 Q In order to get the tax deduction for a conservation
 4 easement donation, you need an appraisal that values the
 5 property before and after the donation.
 6 Is that consistent with your understanding?
 7 A I don't know that.
 8 Q Are you aware that Seven Springs obtained an
 9 appraisal for the purpose of making the easement donation?
 10 A Yes.
 11 Q That's the appraisal value, the before value of the
 12 property. That is before the donation at the \$56 million
 13 figure that you put in your valuation, correct?
 14 A Correct.
 15 Q You used the before value as opposed to the after
 16 donation value because as of the valuation date, the donation
 17 had not yet been made, correct?
 18 A I believe that's correct, yes.
 19 Q So, the \$56 million is actually the value put on the
 20 property by the appraiser before the donation of development
 21 rights, correct?
 22 A Before the donation, yes. I don't know what they
 23 donated.
 24 Q So, before donating anything, the appraiser valued it
 25 as 56 million, whereas, you have been valuing it, before any

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1 donation, at 161 million, correct?
 2 A Correct.
 3 Q You understood it was correct to use the before value
 4 rather than the after value because, as of this valuation
 5 date, the development rights had not yet been donated,
 6 correct?
 7 A I believe that's correct.
 8 MR. AMER: If we can just put up the Seven
 9 Springs demonstrative PDX-3.9, just to look at the
 10 values.
 11 Q So, we have the statement values and, by the way, the
 12 161 million, just to clarify, that was just the value of the
 13 seven homes in Bedford, correct?
 14 A Seven homes. I don't remember in which of the three
 15 areas they're located.
 16 Q The statement values here are much higher than 161
 17 from 2011 through 2014 because they include other parts of the
 18 property, correct?
 19 A Correct.
 20 Q Then the value drops to 56 million in 2015 because
 21 you now have the appraisal in your hand that gives you that as
 22 the before appraised value, correct?
 23 A Correct.
 24 Q So, you deemed it appropriate to use an appraised
 25 value, correct?

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1 A Yes.
 2 Q And just so we're clear, the additional value in the
 3 prior years come from the mansions on the property, right?
 4 A Yes.
 5 Q And the next year, 2016, that is now after the
 6 conservation easement donation, correct?
 7 A Correct.
 8 Q So, you then use 35.4 million because that's the
 9 after appraised value, correct?
 10 A After the donation, yes.
 11 Q So, the value of the development rights, according to
 12 the appraiser, is the difference between 56 million and 35.4
 13 million, correct?
 14 A I don't know. Development rights, I don't remember
 15 exactly what the difference is. I can tell you the
 16 difference is \$21 million before and after the donation.
 17 Q Okay. So, the value of the donation is the
 18 \$21 million, correct?
 19 A Correct.
 20 Q What's being donated are the development rights,
 21 correct?
 22 A I'll take your word for that.
 23 Q Okay. It's not 161 million, is it?
 24 A What isn't 161 million?
 25 Q The value of the development rights. The appraiser

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1 did not value the development rights at any amount more than
 2 \$21 million; isn't that right?
 3 A That's correct.
 4 MR. AMER: I'm ready to move on to the golf
 5 clubs. I don't know where we are in terms of when we
 6 want to take a break. I'll keep going. I'm just going
 7 to a new subject.
 8 THE COURT: We can go until 11:30.
 9 MR. AMER: Okay.
 10 Q Let's talk about the golf club valuations. Why don't
 11 we go ahead and look at the 2011 Jeff Supporting Data
 12 spreadsheet which is Exhibit 788; and, let's go to line 264.
 13 This is the valuation for Briarcliff Manor,
 14 correct?
 15 A It's-- that's the line that's highlighted, yes.
 16 Q This is where that begins, correct?
 17 A That's correct.
 18 Q One component of the Briarcliff value, based on your
 19 valuation, is comprised of nonrefundable membership fees; is
 20 that right?
 21 A That's correct.
 22 Q And column G includes your numbers to value
 23 Briarcliff for 2011, right?
 24 A Yes.
 25 Q The first set of numbers, which are in rows 280 to

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1 284, that reflects the value of nonrefundable memberships for
 2 2011, right?
 3 A Can you ask that question again?
 4 Q Sure. Rows 280 to 284 have the value that you
 5 calculated for the nonrefundable memberships for 2011, right?
 6 A Correct.
 7 Q Line 266 states that there were 67 memberships
 8 available as of June 30, 2011; is that right?
 9 A That is correct.
 10 Q You get this information from the golf clubs. They
 11 send you back this information, right?
 12 A Yes.
 13 Q Line 268, your note states: "Current membership
 14 asking price 150,000. Getting 150,000." Correct?
 15 A Yes.
 16 Q That's also information you're getting from people
 17 who work at the golf course, correct?
 18 A I believe that's correct, yes.
 19 Q But when you value the memberships available for
 20 sale, as I read this, you only value 20 of the 67 memberships
 21 at 150,000. Right?
 22 A That's correct.
 23 Q And you value another 47 memberships at prices
 24 ranging from \$175,000 all the way up to \$250,000, correct?
 25 A Correct.

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1 Q Was the use of the higher price for memberships from
 2 175,000 to 250,000 just your speculation as to what amount a
 3 membership might get in the future?
 4 A There was a-- based on a conversation I had with
 5 Allen Weisselberg, who was more familiar with the golf
 6 courses, and these were his estimates.
 7 Q It wasn't based on anything you heard from the people
 8 who worked at the golf course, right?
 9 A I believe that's correct, yes.
 10 Q The nonrefundable membership fees are amounts you're
 11 expecting someone to pay in the future, right?
 12 A Yes.
 13 Q Line 275 shows that for 2010, the prior year, there
 14 were 69 memberships, correct?
 15 A Memberships available for sale, yes.
 16 Q So, between 2010 and 2011, there were only two
 17 memberships that were sold, correct?
 18 A Correct.
 19 Q And would you agree with me that at that pace, it
 20 would take about 30 years to sell all these memberships?
 21 A Using that pace, yes.
 22 Q Now, when you listed the number of memberships to be
 23 sold at each price point, you did not do any estimate as to
 24 how far out it would take into the future to actually sell all
 25 those memberships; isn't that right?

J. McConney - Direct/Amer Page 728

1 A That's correct.
 2 Q You did not perform any discounted analysis to
 3 determine the present value of the income that you would --
 4 that the company would receive from the sale of these
 5 memberships in the future, correct?
 6 A That's correct.
 7 Q Let's look at the 2011 Statement of Financial
 8 Condition, which is Exhibit 787 in evidence. Let's go to page
 9 ten. This provides, under club facilities and related real
 10 estate, a description -- this club facilities and related real
 11 estate, this relates to the golf clubs, right?
 12 A The golf clubs and Mar-a-Lago, yes.
 13 Q There's a description that appears that says:
 14 "Entities wholly owned by Mr. Trump have acquired certain
 15 properties for the purposes of developing"-- "for the purpose
 16 of developing them into club facilities. Several of these
 17 clubs will also contain residential units that they will sell.
 18 The estimated current value of 1,314,600,000 is based on an
 19 assessment of the cash flow that is expected to be derived
 20 from club options. The sale of residential units after
 21 subtracting the estimated costs to be incurred or recent sales
 22 of properties in a similar location."
 23 You see that? It says that?
 24 A Yes.
 25 Q That assessment was prepared by Mr. Trump working in

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1 conjunction with his associates and outside professionals?
 2 A Yes.
 3 Q This paragraph identifies three alternative methods
 4 for valuing the clubs, one of which is an assessment of the
 5 cash flow that is expected to be derived from club operations?
 6 A Correct.
 7 Q A second is the sale of residential units after
 8 subtracting the estimated costs to be incurred, right?
 9 A Yes.
 10 Q The third method is recent sales, properties in
 11 similar location, right?
 12 A Yes.
 13 Q Can we agree that the third method was not a method
 14 that was used by you for Briarcliff, right?
 15 A Correct.
 16 Q If we split the screen and pull up 788 at lines 295
 17 to 298, you listed information about a projected sale of
 18 mid-rise units approved but put on hold, correct?
 19 \$43.3 million?
 20 A The 43.3 is a sellout price, yes.
 21 Q So, you subtracted the costs related to that
 22 development and you have the net profit, right?
 23 A Yes.
 24 Q You added that potential profit of, I think it's
 25 \$25.1 million to the valuation of Briarcliff, correct?

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1 correct?
 2 A Correct.
 3 Q What you used is a method that includes just income
 4 from selling memberships, right?
 5 A It's a little more than that. You had the income
 6 from the memberships. You had the sale of the mid-rise
 7 units. You had the value for the clubhouse. If you could
 8 scroll up, please.
 9 There were receivables on membership deposits
 10 and from operations from the food, dues, whatever. There
 11 were a few other items included.
 12 Q Let me see if I can shortcut this. You disclosed in
 13 the statement three different alternative methods for valuing
 14 clubs, correct?
 15 A Correct.
 16 Q We agree the third method is not relevant. You
 17 didn't use it, correct?
 18 A Correct.
 19 Q You used the second method based on the 31 units,
 20 right?
 21 A Correct.
 22 Q There is no attempt at the first method, which is
 23 cash flow from operations, and, instead, you use a different
 24 method that just includes income from selling memberships,
 25 right?

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1 A Correct.
 2 Q So, that method is the second disclosed method in the
 3 Statement of Financial Condition, correct?
 4 A Yes.
 5 Q As with other valuations that include future income,
 6 there's no attempt to determine how long into the future it
 7 would take to build and sell these homes, these units,
 8 correct?
 9 A Correct.
 10 Q There's no discounted cash flow analysis to bring
 11 those amounts to the present value, correct?
 12 A Correct.
 13 Q So, I think we said the third method in the Statement
 14 of Financial Condition didn't apply. We've now seen, at least
 15 with respect to these additional units, you've used the second
 16 method. I don't see any line items that would reflect for
 17 Briarcliff any cash flow analysis as described in the first
 18 method. Am I correct?
 19 A As described in the first method?
 20 Q The first method in the statement says that the
 21 estimated current value is based on one method. The first
 22 method, is assessment of the cash flow that is expected to be
 23 derived from club operations. You see that?
 24 A Yes.
 25 Q That is not a method you're using for Briarcliff,

Page 732

1 A Correct.
 2 (Continued on following page...)
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J. McConney - Direct by Mr. Amer Page 733

1 Q So, anybody reading this statement and this
 2 description would have no understanding that estimated current
 3 value includes, as a component, selling memberships, without a
 4 more complete assessment of cash flow; right?
 5 MR. FIELDS: Objection. Speculating as to what
 6 other people reading the statement would know.
 7 THE COURT: Do you want to phrase it slightly
 8 differently?
 9 MR. AMER: Sure.
 10 Q There's nothing in this paragraph containing the three
 11 alternate methods disclosed that indicates you have based the
 12 valuation on simply taking membership sales and including that
 13 in the value; right?
 14 A Not specifically, no.
 15 Q And an assessment of cash flow from operations would
 16 include looking at things such as payroll; right?
 17 A Yes.
 18 Q And taxes; right?
 19 A Yes.
 20 Q And repairs and upkeep and maintenance of the golf
 21 course; right?
 22 A Yes.
 23 Q And that's nowhere in your valuation analysis; right?
 24 A For this property, no.
 25 Q Let's look at how you value Briarcliff in 2012.

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1 MR. AMER: And we can pull up the 2012 Jeff
 2 Supporting Data, Plaintiff's 793, and let's go to line 258
 3 [sic].
 4 Q And line 287 [sic] shows your valuation of Briarcliff
 5 jumped from 68.7 million in 2011 to 99.5 million, roughly, in
 6 2012; correct?
 7 A Yes.
 8 Q And that's an increase of almost \$31 million; right?
 9 A Yes.
 10 Q And line 285 shows that your projected profit from the
 11 sale of the future residential units remained the same from the
 12 prior year; correct?
 13 A Yes.
 14 Q And so, all of your responses about how you calculated
 15 that would be the same for this year; correct?
 16 A Correct.
 17 Q And lines 273 to 275 show very little change in
 18 additional value from 2011 to 2012, based on listed membership
 19 receivables; right?
 20 A Correct.
 21 Q So, almost the entire increase, close to \$30 million,
 22 is attributable to your change in methodology, to using
 23 something called fixed assets; right?
 24 A Correct.
 25 Q Let's look at 2013, and that's Jeff Supporting Data

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1 708, and let's look at lines 253 to 270?
 2 THE COURT: Ten-minute warning.
 3 Q Mr. McConney, in 2013, for the development of the
 4 units, the value jumped from 25.1 million to 101 million and
 5 change; correct?
 6 A Yes.
 7 Q And you increased the value of the Briarcliff
 8 development in that amount based on a September 25th, 2013,
 9 telephone conversation with Eric Trump; correct?
 10 A Correct.
 11 Q And this increase was based on the sale of 71 midrise
 12 units, approved but put on hold; correct?
 13 A Correct.
 14 Q So the number of units increased from 31 to 71; is
 15 that right?
 16 A I'm not too sure. If you show me the other
 17 spreadsheet with the number -- I just don't remember.
 18 Q Okay. We don't have to go back. But at any rate,
 19 it's based on an increase in the number of units to 71; correct?
 20 A To 71.
 21 Q To, T-O, 71; correct?
 22 A Yes.
 23 Q And your information about the number of units came
 24 from Eric Trump in that call; right?
 25 A Yes.

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1 Q And he also, by the way, told you that the project was
 2 put on hold; right?
 3 A Yes.
 4 Q But you're still accounting for the profit from those
 5 71 midrise units that were put on hold, as if it's immediately
 6 realized as of June 30, 2013; correct?
 7 A Yes.
 8 MR. AMER: Now, let's look at Exhibit 205.
 9 (Whereupon, a document was displayed, and handed
 10 to the witness.)
 11 MR. AMER: Your Honor, this is an appraisal by
 12 Cushman & Wakefield of the Briarcliff club, and I move that
 13 this be admitted me into.
 14 MR. SUAREZ: We have an objection, both based on
 15 the statute of limitations and on hearsay.
 16 MR. AMER: Your Honor, this was an appraisal that
 17 the Trump Organization obtained.
 18 THE COURT: It comes in, not for the truth of its
 19 contents, but for what the Trump Organization knew or
 20 thought, or whatever information they had.
 21 MR. AMER: It's also an admission against
 22 interests, your Honor. It's their appraisal. Their agent.
 23 They hired Cushman to do the appraisal for them, and
 24 therefore it's their appraisal.
 25 MR. SUAREZ: Your Honor, it was sent to Sheri

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1 Dillon at Bingham McCutchen. It's a Cushman & Wakefield
 2 Bates stamped out of Trump Organization Bates documents.
 3 There's certainly no testimony that Mr. McConney has seen
 4 it yet. Cushman is not here.
 5 THE COURT: Well, we haven't gotten to that part,
 6 yet.
 7 MR. AMER: Just so you know, your Honor, just so
 8 you are aware, Bingham McCutchen were counsel to the Trump
 9 Organization. Their lawyers.
 10 THE COURT: And that makes it an admission
 11 against interests?
 12 MR. AMER: Yes. It's a document created by their
 13 agent.
 14 THE COURT: The point of the hearsay exception
 15 for an admission against interests is, you won't say
 16 something that will hurt you. When this was drafted, put
 17 together, whatever you call it, it wasn't necessarily going
 18 to hurt them. So, I'm only letting it in to show what
 19 the -- and I think that's all you need, unless I'm missing
 20 something -- to show what the defendants knew or had access
 21 to. There's nothing about the appraisal itself that hurts
 22 them. But, you can tell me otherwise. Go ahead. Why?
 23 MR. AMER: Because it comes up with a value
 24 that's much lower than the value that they used.
 25 THE COURT: Well, that's my point. You want to

J. McConney - Direct by Mr. Amer Page 739

1 A I see its value of 43.3.
 2 Q It says market value of conservation easement;
 3 correct?
 4 A Correct.
 5 Q And as we discussed before, these type of appraisals,
 6 you have a before value and after value, and you subtract the
 7 two, and that's the value of the development rights being
 8 donated?
 9 THE COURT: Subtract one from the other. You
 10 don't subtract the two.
 11 MR. AMER: Yes. One from the other, your Honor.
 12 Thank you.
 13 Q Correct?
 14 A Correct.
 15 Q And so, the value of the development rights related to
 16 the 71 units, according to this professionally-done appraisal,
 17 is \$43.3 million; correct?
 18 A Again, I don't know what this appraisal was for, so
 19 it's hard for me to comment.
 20 Q I thought you were aware. So, you were not aware that
 21 there was an appraisal done for an easement donation?
 22 A I know there was easement donation. I am pretty sure
 23 I knew there was an appraisal, but I don't think I was involved
 24 in this.
 25 Q And in 2014, according to the Jeff Supporting

J. McConney - Direct by Mr. Amer Page 738

1 show that it's lower than the value that they used, but the
 2 fact that internally -- I'm sorry. I just still don't see
 3 it, but it's in for the purpose that I think you need.
 4 MR. AMER: Okay.
 5 (Whereupon, the exhibit was received in
 6 evidence.)
 7 Q 2014, the Trump Organization sought to value a
 8 potential easement over the five-acre development site. That
 9 was the site for the 71 housing units; correct?
 10 A I have no knowledge of that.
 11 Q Were you unaware of the appraisal?
 12 A I knew there was an appraisal, but I don't know what
 13 it was for. I -- sorry. I knew it was for a conservation
 14 easement, but I don't know the details of the appraisal.
 15 Q Are you aware of the value that the appraisal came to
 16 for the 71-unit development?
 17 A I don't believe so.
 18 Q If we turn to page two of the exhibit, this is the
 19 cover letter that the appraiser sends to Bingham McCutchen. Did
 20 you understand that they were the Trump Organization's counsel
 21 for purposes of this easement donation?
 22 A Yes.
 23 Q If we turn to the third page, you see it says the
 24 value of the easement donations is 43.4 -- 43.3 million;
 25 correct?

J. McConney - Direct by Mr. Amer Page 740

1 spreadsheet, which is Exhibit 719 --
 2 MR. AMER: Can we put that up?
 3 Q You continue to value the --
 4 A This is Westchester.
 5 Q Yes.
 6 A I'm sorry.
 7 Q Yes. We need to go back to Briarcliff. Sorry.
 8 You continue to value the Briarcliff 71 midrise units
 9 in 2014 at \$101 million, even though there an appraisal that the
 10 company has that says 43.3; correct.
 11 A Again, the appraisal is appraising -- I'm not too sure
 12 what it appraises. We did complete the same 101 million
 13 valuation for the 71 midrise units.
 14 Q Well, let's look at page two of the appraisal, and
 15 let's look at the third paragraph. You will see it says the
 16 owner of the subject golf club is planning on donating a
 17 conservation easement over approximately 5 acres of the
 18 property. This is a development site entitled with 71 attached
 19 housing units. Do you see that?
 20 A Yes.
 21 Q So, that's what this appraisal relates to; right? The
 22 71 units that you value in your spreadsheet?
 23 THE COURT: Hold on.
 24 MR. SUAREZ: Your Honor, again, there's no
 25 foundation. I believe the ruling from the Court was that

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1 it was not admitted for the truth of the matter asserted.
 2 He testified that he's not sure if he ever saw this
 3 appraisal. The appraisal wasn't sent to Mr. McConney. It
 4 wasn't sent to anyone at the Trump Organization. It says
 5 what it says. He is not sure what it's for. There's no
 6 foundation to have him testify about.
 7 MR. AMER: Your Honor, just an objection, not a
 8 speaking objection. The witness is on the stand.
 9 THE COURT: Well, time for the break; right?
 10 Saved by the bell. We'll address it on the way back.
 11 As usual, we are going to take a ten-minute break
 12 that will take 15 minutes.
 13 (Whereupon, a recess was taken.)
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J. McConney - Driect/Amer Page 743

1 going to testify about it, I'd like to condition the
 2 testimony on the fact it hasn't been admitted yet for the
 3 truth of the matter asserted, and, also, I'd like to
 4 bring to the Court's attention that this is a document
 5 that has limitations.
 6 It's a document that has three pages of
 7 different limitations that include what it can be used
 8 for and what it can't be used for.
 9 MR. AMER: This is improper.
 10 MR. SUAREZ: May I finish?
 11 MR. AMER: He is discussing an exhibit in front
 12 of the witness. If he wants to do cross-examination with
 13 this document when I'm done with my examination, he can
 14 do that.
 15 MR. SUAREZ: The witness is a party and, more
 16 so, even the document says "draft" on it.
 17 THE COURT: That's what cross-examination is
 18 for. I'll allow it, the questioning, although I don't
 19 know exactly where it's going.
 20 Q I want to continue talking about valuation of
 21 Briarcliff in 2015.
 22 MR. AMER: If we can put up the supporting data
 23 spreadsheet 731 and go to lines 255?
 24 Q Now, the valuation of the 71 mid-rise units in 2015
 25 remained as it was in 2014 as 101 million point 748 and

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1 THE COURT: Let's pick up from that interesting
 2 issue from where we left off. I want to first make sure
 3 I understand the context of the dispute.
 4 The Trump Organization, through agent, through a
 5 third party, commissioned appraisal. The plaintiff wants
 6 the appraisal in, both for the truth of its contents and
 7 to show notice. I already said I'm allowing to show
 8 whatever notice there is but not for the truth of its
 9 content because that's what hearsay is for. Hearsay
 10 rule.
 11 However, if plaintiff wants to pursue this,
 12 wants to admit it for the truth of its contents, pursuant
 13 to some hearsay exception, if you say you want to do
 14 this, I'll ask both sides whether you want to submit
 15 two-page memos by, two-page memos by next week or Tuesday
 16 or something. Monday is a holiday.
 17 MR. AMER: Let me confer with my colleagues to
 18 see if we need it for the truth of the matter asserted or
 19 notice is sufficient. If we want it for the truth of the
 20 matter asserted, we'll submit it.
 21 THE COURT: And the other side can oppose or --
 22 when will you consult with your colleagues?
 23 MR. AMER: Later today.
 24 MR. SUAREZ: I don't want to keep popping up
 25 during the witness's testimony but if the witness is

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1 change, correct?
 2 A Yes.
 3 Q So, we're all oriented, the appraisal we were looking
 4 at, that's Exhibit 205 admitted for purposes of notice, was
 5 from the letter, cover letter to Ms. Dillon -- if you want to
 6 put it up -- is dated April 18, 2014, correct?
 7 A Correct.
 8 Q So, certainly, by the time you're doing your
 9 valuation for June 30, 2015, this appraisal was done, right?
 10 A Yes.
 11 Q You were aware there was an appraisal, correct?
 12 A Correct.
 13 Q And is it your testimony you didn't ask to see the
 14 appraisal?
 15 A Yes.
 16 Q It didn't matter to you for purposes of your
 17 valuation; is that what you're saying?
 18 A Yes.
 19 Q The original -- the value for 2014 was based on the
 20 note in 272, row 272 of the spreadsheet. This September 25,
 21 2013 telephone conversation, you had with Eric Trump, correct?
 22 A I'm sorry. I was reading something. Can you just
 23 ask that again?
 24 Q Sure. The value in 2014, that you put on your
 25 spreadsheet, was based on a telephone conversation with Eric

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1 Trump on September 25, 2013, as indicated in line 272, right?
 2 A That's correct.
 3 Q The value remaining the same in 2015 was based on a
 4 telephone conversation that you had with Eric Trump in
 5 November 17th -- on November 17, 2015, where Eric Trump said
 6 to you, "leave value as is," correct?
 7 A Correct.
 8 Q So, notwithstanding the fact that there was this
 9 appraisal, Eric Trump told you to leave the value as is,
 10 correct?
 11 A Correct.
 12 Q I'd like to see if we could shorten this. So, I'll
 13 just make a statement to you; and, if you're uncomfortable, we
 14 can go through all of the spreadsheets; but, the spreadsheets
 15 for 2016, 2017, and 2018 continue to use the same \$101 million
 16 value for the mid-rise units and all attributed to this phone
 17 call with Mr. Trump that you should leave the value as is.
 18 Is that consistent with your recollection?
 19 MR. SUAREZ: We object to the grouping together
 20 of different years for purposes of testimony. If there's
 21 a specific question about specific years in specific
 22 spreadsheets, that should be the question. Not lumping
 23 them altogether.
 24 THE COURT: I'm allowing the lumping together.
 25 Objection overruled. Let's be clear. He's asking about

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1 million and change and it's attributable, in your note on line
 2 312, to your conversation with Eric Trump, leave value as is,
 3 correct?
 4 A Yes, but, I'd like to make the statement that
 5 between June of '16 and June of '17, Patrick Birney was
 6 taking over the Statement of Financial Condition. I don't
 7 think I was involved in the June of '18 statement.
 8 Q Okay.
 9 A So --
 10 Q Looking at the control spreadsheet, though, that is
 11 what is being indicated as the source for keeping the value
 12 the same in 2018, correct?
 13 A That's correct.
 14 Q It's your phone call, right? It's your phone call
 15 with Eric Trump?
 16 A I had the phone call back in 2015, yes.
 17 Q Okay. I want to switch topics with respect to golf
 18 courses. It is correct that you included in your valuation of
 19 some of the golf clubs starting in 2013 a 30 percent grand
 20 premium, correct?
 21 A Yes.
 22 Q The inclusion of that grand premium was something
 23 that you and Allen Weisselberg decided to do, right?
 24 A Yes.
 25 Q At some point after adopting that 30 percent premium,

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1 all three years. We're just lumping them together.
 2 A Can we just take a look at the three years to make
 3 sure?
 4 Q Absolutely. Why don't we look at 2017 because it
 5 will give us 2017 and 2016, and that's 758 and it's line --
 6 278.
 7 You'll see, Mr. McConney, the value remains the
 8 same for both '17 and '16 and it has the note that attributes
 9 that to Eric Trump saying "leave value as is," correct?
 10 A Correct.
 11 Q So, those values remained as is based on your
 12 telephone conversation with Eric Trump, correct?
 13 A Correct.
 14 MR. AMER: Let's go to 2018. It's plaintiff's
 15 774 native and we'll go to line 295. Just so the record
 16 is clear, in the prior exhibit we were looking at lines
 17 278 to -- we just have to straighten out the line
 18 numbers, the row numbers.
 19 Q So, it's row 298 has the profit being 101 million and
 20 the conversation with Mr. Trump is on line 301, correct.
 21 A Correct.
 22 Q Okay. That's for both 2016 and 2017, correct?
 23 A Correct.
 24 Q Let's go to 2018. Exhibit 774, line 295 is where
 25 Briarcliff starts and, again, 2018 stays the same at 101

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1 you changed it to a 15 percent premium, but, it was still a
 2 premium that was added to the same golf clubs, correct?
 3 A Yes.
 4 Q Was that change to 15 percent also something that you
 5 and Mr. Weisselberg decided to do together?
 6 A Yes.
 7 Q If we could pull up the 2013 statement, it's
 8 Exhibit 707 in evidence -- 708.
 9 Exhibit 707 in evidence, the Statement of
 10 Financial Condition, if we go to page six where it says "basis
 11 of presentation."
 12 The bottom paragraph that begins: "Pursuant to
 13 GAAP." Do you see that?
 14 A Yes.
 15 Q The last sentence of that paragraph says: "The
 16 goodwill attached to the Trump name has significant financial
 17 value that has not been reflected in the preparation of this
 18 financial statement."
 19 Do you see that?
 20 A Yes.
 21 Q That sentence is in every one of the statements under
 22 "basis of presentation" from 2011 to 2021; isn't that right?
 23 A I can -- I believe up until 2016/2017 it was there.
 24 I really wasn't involved after that.
 25 Q Okay. So, you can confirm that, at least from 2011

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1 to 2016 or '17, this sentence appears in the "basis of
 2 presentation" section, correct?
 3 A Yes.
 4 Q And every year that you were, from 2013 forward, that
 5 you were adding the 30 percent premium or the 15 percent
 6 premium, you were aware that this sentence was contained in
 7 the "basis of presentation" section of the statement, correct?
 8 A Correct.
 9 Q Am I correct that the Trump Organization in 2012
 10 shifted away from valuing golf clubs based on projected income
 11 from future membership sales, like we saw with Briarcliff, and
 12 started to use something known as a fixed assets approach?
 13 A We changed at a point in time. All the golf courses
 14 that were using that valuation method changed at the same
 15 time. I'm getting to it.
 16 So, if the statement, the spreadsheet we were
 17 looking at before -- I don't remember the years when we
 18 switched. So, if you look at Briarcliff when we switched, I
 19 can give you an answer.
 20 Q I think it's just enough to get your confirmation
 21 that at some point you switched from using an approach that
 22 valued the sale of memberships to a fixed assets approach,
 23 correct?
 24 A That's correct.
 25 Q Every year that you use the fixed assets approach for

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1 A I'm sorry. Can you ask that question one more time?
 2 MR. AMER: Sure. Actually, let's back up.
 3 Q We looked at membership sales and those were
 4 nonrefundable memberships, correct?
 5 A Correct.
 6 Q There was something different called refundable
 7 membership deposits, right?
 8 A At one time, yes, and, I guess, they still exist, to
 9 some extent.
 10 Q Right. Those are deposits that members make that at
 11 some point in the future they may be entitled to get back; is
 12 that right?
 13 A That's correct.
 14 Q And am I correct that the refundable membership
 15 deposits are different from the nonrefundable membership fees,
 16 that those refundable membership deposits were for Jupiter
 17 included in the purchase price of the club for purposes of
 18 valuing the fixed assets number?
 19 A Part of them, yes.
 20 Q Let's take a look at how that worked, and I'm going
 21 to put up plaintiff's Exhibit 3055.
 22 Mr. McConney, the first page is an e-mail. The
 23 second page is a slip sheet for the attachment that we're
 24 going to pull up in a minute, and, this is an e-mail that you
 25 sent to a gentleman by the name of Frank Lucas. It's about

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1 a particular golf club, you'd ask the controller at each golf
 2 club for the value of the club's fixed assets and then you'd
 3 enter that in your spreadsheet, correct?
 4 A Correct.
 5 Q I'd like to look at the valuation for Jupiter, and,
 6 that's a course that the Trump Organization purchased in 2013;
 7 is that right?
 8 A It purchased it. I'm not sure -- I don't remember
 9 the exact year.
 10 Q Let's go ahead and put up the 2013 supporting
 11 spreadsheet in native, I think it's 708. It's in evidence.
 12 If we go to row 462, this is the row that starts
 13 the valuation for Jupiter, correct?
 14 A Yes.
 15 Q You'll see it has on line 465, value of fixed assets,
 16 correct?
 17 A Correct.
 18 Q So, for Jupiter, at least in 2013, you're using the
 19 fixed assets approach, right?
 20 A Yes.
 21 Q And am I correct that under the fixed assets
 22 approach, you included, in the purchase price of the club,
 23 that you then included, as part of the value of the fixed
 24 assets, the amount of liability associated with refundable
 25 membership deposits?

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1 Jupiter and the attachment is Jupiter purchase. You see that?
 2 A Yes.
 3 MR. AMER: Your Honor, I ask that this exhibit
 4 be admitted with the attachment.
 5 MR. SUAREZ: We object on the basis of the
 6 Statute of limitations.
 7 THE COURT: Overruled. It's in.
 8 (Whereupon, said exhibit was received in
 9 evidence as Plaintiff's Exhibit 3055)
 10 Q Let's pull up the attachment, which is Exhibit 3055,
 11 native one, and, you'll see it says: "Jupiter Golf Club, LLC
 12 allocation of purchase price."
 13 Do you see that?
 14 A Yes.
 15 Q This is the backup for calculating the purchase price
 16 for purposes of using it in the fixed assets valuation for
 17 this club, correct?
 18 A This is the journal entry that was booked to show
 19 however the purchase price was allocated. So, it could be
 20 fixed assets, goodwill. It could be allocated to a number of
 21 places.
 22 Q But you're using this for purposes of doing your
 23 valuation for the fixed assets basis for the Jupiter Club,
 24 correct?
 25 A Yes.

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1 Q What this shows is, on line five, cash of \$5 million.
 2 You see that?
 3 A Yes.
 4 Q That was the actual amount of money that was paid to
 5 purchase Jupiter?
 6 A I don't remember, off the top of my head, but, I
 7 believe so.
 8 Q Then there's a line item on line six called Member
 9 Deposit Liability Assumed, and it's over \$41 million, correct?
 10 A Correct.
 11 Q Then there are closing costs that are included and
 12 you get a total purchase price of over \$46 million, correct?
 13 A Correct.
 14 Q So, let me just understand what's happening here in
 15 calculating this purchase price. You have \$5 million in cash
 16 and you're assuming a liability to repay to members their
 17 deposits of over \$41 million and then you add closing costs
 18 and you get to the purchase price; is that right?
 19 A That's correct.
 20 Q So, this calculation of the purchase price, assumes
 21 that the member deposit liability will have to be repaid at
 22 face value, correct?
 23 A Correct. Can I clarify one thing? Face value being
 24 the amount that the member gave the club, right?
 25 Q Correct?

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1 A Yes.
 2 Q Okay. Now, if we could go to-- and this purchase
 3 price, by the way, including the member deposit liability at
 4 face value, is what you plug into your fixed assets
 5 calculation for the valuation of Jupiter in the statement,
 6 right?
 7 A Can you ask that again?
 8 Q Sure. The purchase price that we're looking at of
 9 over 46 million, is what you include for the purchase price in
 10 the fixed assets calculation for the statement, right?
 11 A Yes.
 12 (Continued on following page...)
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1 Q Now, let's go to the 2013 statement, which is
 2 Exhibit 707, and let's go to page 15.
 3 And this is the description for Jupiter; right?
 4 MR. AMER: If you just scroll down, so we can see
 5 the heading.
 6 Q See Jupiter?
 7 A Yes.
 8 Q Okay. So, let's look at that second paragraph.
 9 A Wait, something -- I'm looking at Doral. Sorry.
 10 Q That's okay. Are you there?
 11 A Yes.
 12 Q Okay. Second paragraph says, "One condition of
 13 membership was the contribution of a non-interest-bearing
 14 deposit that does not require repayment until certain terms are
 15 met, and then only upon the member's resignation. The fact that
 16 Mr. Trump will have the use of these funds for that period,
 17 without cost, and that the source of repayment will most likely
 18 be a replacement membership, has lead him to value this
 19 liability at zero."
 20 Do you see that?
 21 A Yes.
 22 Q It goes on to say, through 9/30/2013, these deposits
 23 amounted to \$41 million; correct?
 24 A Correct.
 25 Q So if I understand what's happening here, you are

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1 including the value of the membership deposits as a liability
 2 that increases the purchase price of the club to the tune of
 3 \$41 million; correct?
 4 A That's correct.
 5 Q And at the same time, you are representing, or the
 6 statement is representing, that those liabilities are being
 7 valued at zero; is that correct?
 8 A That's correct.
 9 Q And there is no entry on the liability side of the
 10 statement that would indicate any obligation to repay these
 11 membership deposits; is that right?
 12 A The liability side of which statement?
 13 Q The Statement of Financial Condition has assets and
 14 liabilities; right?
 15 A Correct.
 16 Q And there's no entry on the liability side on the
 17 statement that indicates any obligation to repay these
 18 membership deposits; correct?
 19 A There's no amount reflected. That's correct.
 20 THE COURT: Let me jump in a second. I'm the one
 21 that has to understand everything.
 22 Estimated current value, what would it sell for,
 23 basically, willing buyer, willing seller, the fixed assets
 24 approach, I think, is how much did it cost us to buy this
 25 thing and fix it up, develop it, whatever, and then the

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1 assumption is, well, what you pay for it is what it's
 2 worth; is that correct?
 3 MR. AMER: Yes, and it assumes that the liability
 4 is an obligation of the owner who buys it, so if I pay --
 5 let me see if I have a hypothetical that may clarify it.
 6 If I buy a piece of property for a million dollars, but it
 7 comes with an obligation to pay a million dollars, then
 8 it's really costing me \$2 million. It's costing me the
 9 million dollars I pay to buy it, and then I have an
 10 obligation to pay another million because there's some IOU
 11 on the property, let's say. So, it costs me \$2 million,
 12 but the point I'm making --
 13 THE COURT: But you have got something that's
 14 only worth \$1 million. Is that --
 15 MR. AMER: It is, but I've indicated in the
 16 statement that I've valued the liability that I'm assuming
 17 at zero, so that's the --
 18 Q The issue here is, you have valued the liability at
 19 face value for calculating the purchase price that you use;
 20 correct?
 21 A That's correct.
 22 Q And you simultaneously represent in the statement that
 23 you're valuing the liability at zero; correct?
 24 A Correct.
 25 Q Okay. And with respect to the membership liability

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1 deposits, even if they do have to be repaid at some point in
 2 time, that's way out into the future; correct?
 3 A Depends when the member joined, but it's sometime in
 4 the future.
 5 Q And you don't do any discount factor analysis to
 6 figure out, for the purpose of the fixed-asset approach, what
 7 the present value is, of that liability; correct?
 8 A Correct.
 9 Q And you include it as though it's a hundred percent
 10 due on the date of the valuation of the statement; correct? The
 11 valuation date of the statement?
 12 A Correct.
 13 Q Okay.
 14 MR. AMER: I intend to move on, unless the Court
 15 has more questions to clarify, at this point.
 16 THE COURT: Please just move on.
 17 MR. AMER: Thank you.
 18 Q I want to talk about Mar-A-Lago.
 19 MR. AMER: Let's look at the 2012 Jeff Supporting
 20 Data spreadsheet. It's Plaintiff's 93, and it starts at
 21 row 187.
 22 (Whereupon, a document was displayed, and handed
 23 to the witness.)
 24 Q Now, row 188 says, Value if sold to an individual. Do
 25 you see that?

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1 A Yes.
 2 Q And that applies to both of these years, 2011 and
 3 2012; correct?
 4 A Correct.
 5 Q And the entire basis of the valuation rests on the
 6 premise that Mar-A-Lago can be sold as a private residence to an
 7 individual; right?
 8 A Yes.
 9 Q If we put up demonstrative exhibit 3.10, this lists
 10 the value of Mar-A-Lago in each year, from 2011 to 2021.
 11 Mr. McConney, is it correct that every year, the value of
 12 Mar-A-Lago is based on the premise that the property can be sold
 13 as a private residence?
 14 A That's correct.
 15 Q And as of the date that you began preparing --
 16 A Sorry.
 17 Q Go ahead.
 18 A The year I was involved in preparing the statement.
 19 Again, June of '16, June of '17, I'm pretty sure. But I didn't
 20 work on June of '18 forward, so.
 21 Q So let's just clarify your testimony. Your testimony
 22 is that from every year from 2011 to 2016/2017, you were aware
 23 that the premise of the valuation was based on the fact that the
 24 property can be sold as a private residence; right?
 25 A That's correct.

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1 Q And you are not sure, one way or the other, what the
 2 premise was for the valuation in the years from 2018 through
 3 2021; correct?
 4 A Correct.
 5 Q And as of 2011, when you were preparing the valuation
 6 for Mar-A-Lago, you were aware, were you not, that there was a
 7 deed of development rights that Mr. Trump had entered into with
 8 the National Trust for Historic Preservation?
 9 A When the club initially opened, I know there were some
 10 documents relating to the deed. I don't know exactly what they
 11 were, but I know there was some rules you had to live by.
 12 Q Okay. Let me be more specific, because there are a
 13 number of deeds. You were aware, as of 2011, that there was a
 14 2002 deed of development rights with the National Trust for
 15 Historic Preservation; isn't that right?
 16 A I know there was something with the National Trust. I
 17 don't know what the exact title.
 18 Q Are you saying -- well, did you see the deed of
 19 development rights, prior to 2011?
 20 A I could have seen it when we first -- the club first
 21 opened. I just don't remember that far back.
 22 Q When you say, when the club first opened, when was
 23 that?
 24 A I'm thinking 1995.
 25 Q Did you see a deed of development rights around --

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1 later than that, in the 2000s, with the National Trust for
 2 Historic Preservation?
 3 A No.
 4 Q Are you sure?
 5 A I'm pretty sure.
 6 Q Okay. And were you aware that Mr. Trump had deeded
 7 away his right to use the club for any purpose other than a
 8 social club?
 9 MR. FIELDS: Objection. Speculation. The
 10 witness testified he didn't see the deed. How could he be
 11 aware?
 12 THE COURT: How could he be aware? Somebody told
 13 him, maybe?
 14 MR. FIELDS: Then objection to hearsay.
 15 MR. AMER: I'm entitled to --
 16 THE COURT: -- introduce it for the truth of its
 17 contents, its notice, I think.
 18 But Mr. Amer, see if you can get us through this
 19 tangled web.
 20 MR. AMER: I don't know what's tangled about this
 21 web, your Honor, but I'll try.
 22 Q You are doing valuations from 2011 forward; right?
 23 A Yes.
 24 Q Do you have an understanding as you are doing these
 25 valuations, based on the premise that you can sell this property

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1 as a private residence, that there was -- that Mr. Trump had
 2 deeded away his rights to use the property for any purpose other
 3 than a social club? Yes or no, or were you aware?
 4 MR. SUAREZ: Objection. It also assume facts not
 5 in evidences, mischaracterizing the trust and the deed that
 6 was referenced. It's just not the case, and there's no
 7 evidence in the record that that is the case.
 8 MR. AMER: I honestly didn't ask him, your Honor,
 9 how he knew. I just want to know if he is aware.
 10 THE COURT: Absolutely overruled.
 11 A Sorry. Could you ask the question again, please?
 12 MR. AMER: Can I get a read back, your Honor?
 13 THE COURT: Sure.
 14 (Whereupon, the requested portion of the
 15 proceedings was read back by the court reporter.)
 16 THE COURT: Please answer.
 17 A I was not aware.
 18 Q Now, the valuation that you prepared for Mar-A-Lago,
 19 that's largely based on comps; is that right?
 20 A Correct.
 21 Q Let's go ahead and look at the -- well, actually, let
 22 me see if I can do it this way. Let's go ahead and put up
 23 the -- oh, let's leave up the 2012. Sorry.
 24 Okay. Back to where we were. You have listed comps
 25 for 2012 and 2011; correct?

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1 A Correct.
 2 Q Now, I notice for 2012, you have two comps and they're
 3 based on asking price; correct?
 4 A Correct.
 5 Q And the two comps for 2011, also based on asking
 6 price; correct?
 7 A Correct.
 8 Q So these are not prices that a willing buyer actually
 9 paid; right?
 10 A I don't know what -- if these were purchased, I don't
 11 know what they were -- what the purchaser paid for these
 12 properties.
 13 Q Right. But as of the date that you used these prices,
 14 they were asking prices and not prices for properties that had
 15 actually sold; correct?
 16 A That's correct.
 17 Q And I notice that what you do is, you take the asking
 18 price and you divide it by the number of acres to come up with a
 19 number per acre; correct?
 20 A Correct.
 21 Q And then you then multiply that value per acre by the
 22 acreage of Mar-A-Lago, on line 214; correct?
 23 A That's correct.
 24 Q So, if I'm understanding this correctly, the actual
 25 square footage of the house that's being put up for sale is not

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1 relevant to your calculation?
 2 A I don't -- I'm not too sure I understand that
 3 question.
 4 Q Okay. You are taking the asking price, and you are
 5 dividing it by the acres that the property sits on, without any
 6 factoring in how large the house is; right?
 7 A But it does include a house, or some swimming pool,
 8 cabana. It does include something. It's not just the value of
 9 the land.
 10 Q Let me ask a different way. You are not calculating a
 11 price per square foot to do this comp; correct?
 12 A Correct.
 13 Q Okay. So, if you have two identical homes asking the
 14 identical selling price, and one is on a two-acre lot and the
 15 other is on a four-acre lot, the one on the 2-acre lot will have
 16 a value, for your purposes, that's twice as large as the house
 17 on the four-acre lot; correct?
 18 A Mathematically, yes. That's correct.
 19 Q Isn't the method you are using, which is to calculate
 20 a value per acre, the method one would use to value vacant land,
 21 as opposed to a house?
 22 MR. FIELDS: Objection. Speculation. Lack of
 23 foundation.
 24 THE COURT: Overruled.
 25 A Can you ask it again, please?

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1 Q Isn't the method that you are using, where you take
2 the asking price and divide it by the number of acres, a
3 valuation method used for valuing and comparing vacant land, as
4 opposed to a private residence?
5 A I guess you could do it that way. We took the whole
6 selling price, including the house, and divide it by the number
7 of acres. I guess you could use it for vacant land, but these
8 comps included whatever was being sold.
9 Q And the size of the house didn't matter in your
10 calculation, because you don't use it in the calculation; right?
11 A It was not used in the calculation. Correct.
12 Q Then, by the way, you add, if you can scroll down, you
13 add, on line 216, a premium for completed facility of
14 30 percent; right?
15 A Correct.
16 Q Did you -- so, you just take whatever number you get
17 from the comp and you gross it out by 30 percent, because it's a
18 completed facility; right?
19 A Correct.
20 Q But you are valuing it as if you are selling it as a
21 private residence; right?
22 A Correct.
23 Q Am I correct that when you started doing the valuation
24 for the following year, 2013, you realized that it was better to
25 use actual sale prices, rather than asking prices? Correct?

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1 A Somebody made that decision, yes. It was either Allen
2 or myself.
3 Q Okay. So some combination of you and Mr. Weisselberg
4 decided, in 2013, that it's better to use selling prices rather
5 than asking prices; correct?
6 A At some point in time we changed, yes.
7 Q Let's go ahead and look at 2014 Jeff Supporting Data,
8 Exhibit 719.
9 MR. AMER: And I may want you to put it up, side
10 by side, if we can, and let's go to row 207, where the
11 value began, where the Mar-A-Lago value begins. If you
12 could, just lift up the one on the left.
13 Q So, in 2013, you have, again, two comps.
14 MR. AMER: I just need to see a little below.
15 Q You have two comps; correct?
16 A Can we just scroll?
17 Q Yes.
18 MR. AMER: You have to go down, more. There we
19 go.
20 Q I'm sorry. Just one comp for 2013; correct?
21 A Can we just to be 100 percent sure, scroll over to
22 column G? I believe that's correct. I just want to make sure.
23 Yes. That's correct. Only one comp.
24 (Continued on the next page.)
25

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1 Q That compensation is 1220 South Ocean Boulevard,
2 right?
3 A Yes.
4 Q If you scroll down on the other one, other way.
5 Sorry. It's the same comp that you used the prior year,
6 right? 1220 South Ocean, Palm Beach, correct?
7 A Yes.
8 Q In 2012 -- we can go up a little more so I see the
9 price. In 2012, you're using the asking for the 2020 South
10 Ocean, Palm Beach of \$74 million?
11 A Yes.
12 Q That's the asking price and then the next year you
13 realized that the same property sold for \$42 million, correct?
14 A Correct.
15 Q In your description on line 224?
16 A Which? 1314?
17 Q On 1314.
18 A Yes.
19 Q You say actual selling price, not just selling price
20 but actual selling price, correct?
21 A Correct.
22 Q And on line 212, you just say selling price for the
23 other comp on line 212?
24 A On the same spreadsheet?
25 Q Same spreadsheet.

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1 A Yes.
2 Q The reason why you inserted that word "actual" is
3 because you realized you had used the same comp the year
4 before and you used the asking price and now it was an actual
5 selling price, correct?
6 A I don't know if I realized what you said but there
7 was a reason for it. It's the actual price, is the actual
8 price.
9 Q But using the word "actual" you're kind of
10 acknowledging you used the same comp from the year before but
11 used the selling price?
12 A I'm not acknowledging the same comp from the year
13 before. The actual comp we used is the selling price. I
14 don't remember --
15 Q Was this the reason you decided it was better to use
16 selling prices than asking prices because it dawned on you
17 that a property that you valued with an asking price of \$74
18 million actually ended up selling a year later for only
19 \$42 million?
20 A I don't remember that being the case, one way or the
21 other.
22 Q By the way, I noticed in 2012 the number of acres for
23 this property is 2.5 acres, correct?
24 A Correct.
25 Q A year later, the property is only 2.11 acres,

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1 correct?

2 A Correct.

3 Q So, the acreage changed?

4 A We'd have to look at the source documents each year.

5 Q The effect of changing the acreage from 2.5 to 2.11

6 increases the value per acre, correct?

7 A In 2013?

8 Q Yeah.

9 A Yes.

10 Q Let's go to PX-2374. Mr. McConney, is Exhibit 2374

11 the backup that you sent for the comps to Mr. Bender?

12 A Yes, I believe so. For Mar-a-Lago, I believe so,

13 yes.

14 Q It shows the 1220 South Ocean Boulevard house selling

15 for \$42 million, correct?

16 A Yes.

17 MR. AMER: Your Honor, I ask that this be

18 admitted into evidence.

19 THE COURT: Granted. It's in.

20 MR. SUAREZ: We only object if it's being

21 offered for the truth of the matter asserted because it

22 would be hearsay. The fact that, to the extent that he

23 testified that he sent it to Mr. Bender, that's a

24 different story.

25 THE COURT: Is that agreeable just for the fact

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1 A Yes.

2 Q You knew about that appraisal, right?

3 A Yes.

4 Q You had a copy of that appraisal, correct?

5 A I believe so, yes.

6 Q You relied on the page we saw from this appraisal for

7 purposes of valuing Mar-a-Lago, correct?

8 A Yes.

9 Q That was an appraisal done in contemplation of a

10 conservation easement donation over Mar-a-Lago back in 2007,

11 right?

12 A I don't know what the purpose was, off the top of my

13 head. It says "conservation easement" here on the bottom of

14 page 506. So, I believe that's what it was for.

15 MR. AMER: I'm going to ask to hand the witness

16 Exhibit 1444.

17 Q Mr. McConney, this is the full appraisal of

18 Mar-a-Lago, 169 pages. You had a copy of it, correct?

19 A I don't remember but it's possible.

20 Q Well, you attached the cover page to the backup you

21 sent to Mr. Bender, right?

22 A Right.

23 MR. AMER: I ask that this be moved into

24 evidence, your Honor.

25 MR. SUAREZ: Your Honor, we have an objection

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1 he sent it, the notice, as opposed to the truth of the

2 contents? That could be part of your two-page memo. You

3 can make it three pages now.

4 MR. AMER: That's fine, your Honor.

5 Q Let me ask, Mr. McConney, you relied on this backup

6 in performing your valuation, right?

7 A Yes.

8 THE COURT: So, is that sufficient?

9 MR. AMER: That should do it.

10 THE COURT: So, it's not going in for the truth

11 of its contents.

12 Q The third page, is this where you get your acreage

13 figure from for the comp at 1220 South Ocean Boulevard?

14 A Yes.

15 Q Let me ask you to turn to -- and you then had to take

16 the price per acre and multiply it by the acreage for

17 Mar-a-Lago to do your valuation, correct?

18 A Correct.

19 Q If you go to page five, and this highlighting is in

20 the original document, is this where you get the acreage

21 figure for Mar-a-Lago that you use in your valuation?

22 A Yes.

23 Q Now, Mr. McConney, can you turn to the page just

24 before this one. There was an appraisal done of Mar-a-Lago in

25 2007, correct?

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1 first on the basis of the Statute of Limitations. Second

2 with the appraisals, the fact that the appraisal exists,

3 the fact it was in the file, the fact he may have looked

4 at it, that certainly whatever his testimony is, it is,

5 but, we object to the appraisal to the extent it's being

6 offered for the truth of the matter asserted within it.

7 There are, obviously, issues in the appraisal,

8 limitations, whatnot. This wasn't prepared for a party

9 in this case. It wasn't prepared by a party in this

10 case. The appraisal company is not here. That would be

11 the extent of our objection to the extent it's being

12 offered for the truth of the matter asserted.

13 It's an out-of-court statement as well.

14 THE COURT: Maybe three-and-a-half-page memos.

15 MR. AMER: First of all, your Honor, the

16 statement that it wasn't prepared for the Trump

17 Organization is wrong. It's prepared for Mar-a-Lago

18 Club, LLC.

19 Q That's a Trump Organization, right, Mr. McConney?

20 A The --

21 THE COURT: I'll ask the witness to answer.

22 THE WITNESS: I don't know who goes first. The

23 Mar-a-Lago Club LLC was owned by, ultimately, the

24 President, yes.

25 MR. SUAREZ: My client is-- it's not a defendant

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1 in this case. It's not a party.
 2 THE COURT: Okay.
 3 MR. AMER: I'm going to do this quickly. We're
 4 stopping when, your Honor? Just so I know.
 5 THE COURT: Fifty.
 6 Q If we look at page two, this report says in the
 7 second sentence: "This report has been prepared for our
 8 client, Mar-a-Lago Club, LLC. The intended use was to assist
 9 and establish market value of a conservation of easement for
 10 possible donation." You see that?
 11 A Yes.
 12 Q In the second paragraph, just going to go down to the
 13 middle of the paragraph, it says: "The value of the property,
 14 before considering the terms of the easement, is compared to
 15 the value of the property after considering the easement. The
 16 difference in value, if any, is the value of the easement."
 17 It's an easement related to the development of
 18 11 single family lots. Do you see that?
 19 A Yes.
 20 Q To your knowledge, was there ever any approval given
 21 for the development of any single family lots on the
 22 Mar-a-Lago property?
 23 A I have no idea.
 24 Q Why don't you turn to page 88. There's a section of
 25 this appraisal entitled "Deed of Development Rights." "Deed

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1 Q And the next page, the next three pages, are the deed
 2 of development that was entered into in 2002, between Donald
 3 Trump and the National Trust. Do you see that?
 4 A Yes.
 5 Q And on page two of this deed it says that Mr. Trump is
 6 conveying his rights to develop the property for any usage other
 7 than club usage. Do you see that? That's the paragraph above
 8 the signature block. Next page, last line, above the, In
 9 witness whereof. Do you see that?
 10 A Yes.
 11 Q You knew about this appraisal, and you had a copy of
 12 it in your possession, prior to 2011; right?
 13 A Correct.
 14 Q And so you had a copy of this deed of development;
 15 correct?
 16 A Yes.
 17 Q And notwithstanding the fact that you had, in your
 18 possession, this deed, every year from 2011 through 2016 or '17,
 19 you valued the property as if it could be sold for private
 20 residence; right?
 21 A That's correct.
 22 Q Now, Mr. McConney, you testified that during the
 23 period of time when you were the controller, Allen Weisselberg
 24 was your boss; correct?
 25 A Correct.

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1 of conservation easement and exhibits."
 2 You see that?
 3 A Yes.
 4 (Continued on following page...)
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1 Q And am I correct that during the period of time when
 2 Allen Weisselberg was your boss, he asked you, on more than one
 3 occasion, to assist him in committing fraud? Isn't that right?
 4 A No.
 5 Q You gave testimony in the criminal trial of the Trump
 6 Organization brought by the District Attorney of New York;
 7 correct?
 8 A Yes.
 9 Q Isn't it the case that you testified in that trial
 10 that Mr. Weisselberg asked you, on more than one occasion, to
 11 assist him in committing tax fraud?
 12 A Yes.
 13 Q And at his request you helped him cheat on his tax
 14 returns; isn't that right?
 15 A I had nothing to do preparing his tax returns.
 16 MS. HABBA: Objection. I'm just going to ask
 17 what the relevance of this is.
 18 MR. AMER: I think it's highly relevant, your
 19 Honor.
 20 THE COURT: Overruled.
 21 Q Am I correct that you assisted him in receiving
 22 tax-free personal expenses, and then backed the value of those
 23 expenses out of his salary? Right?
 24 A That's correct.
 25 Q And Mr. Weisselberg directed you to process a payroll

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1 check to his wife for \$6,000 so that she could qualify for
 2 Social Security benefits, even though you knew she was not an
 3 employee of the Trump Organization; correct?
 4 A I'm not too sure the dollar amount, but the rest of
 5 the statement is correct.
 6 Q So, I'll rephrase it.
 7 Mr. Weisselberg directed you to process a payroll
 8 check to his wife so that she could qualify for Social Security
 9 benefits, even though you knew she was not an employee of the
 10 Trump Organization?
 11 MR. FIELDS: Objection. Improper impeachment.
 12 Relevance.
 13 THE COURT: Overruled.
 14 Q Mr. McConney, when you processed that payroll check
 15 for Mr. Weisselberg's wife, you knew it was illegal; correct?
 16 A I did not know it was illegal.
 17 Q You did not?
 18 A I did not.
 19 Q Can we put up, from Mr. McConney's testimony during
 20 the criminal trial, page 1407, line 5.
 21 (Whereupon, a document was displayed.)
 22 Q "Question: Did you testify on cross examination
 23 that the purpose of this was to have her qualified for
 24 Social Security?
 25 "Answer: Yes. Something to do with Social

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1 still on the stand, can we have an admonition that he not
 2 consult with his attorneys about his testimony?
 3 THE COURT: Yes. I so direct him.
 4 MS. GREENFIELD: Just one scheduling question,
 5 Mr. Amer. How much more, how much longer do you think you
 6 are going to be with Mr. McConney before we move on to
 7 Mr. Weisselberg on Tuesday?
 8 MR. AMER: Maybe I wasn't clear, but I finished
 9 my examination.
 10 MS. GREENFIELD: Oh, sorry. I wasn't clear on
 11 that. Sorry.
 12 MR. AMER: It seemed like a good point to end.
 13 THE COURT: So, we are starting just with
 14 Weisselberg?
 15 MS. FAHERTY: Unless they have cross.
 16 MS. HABBA: Can we reserve the right -- I don't
 17 think we do. Think we are going to let him go.
 18 You know, I'm not going to cross. Just --
 19 THE COURT: So we are starting with Weisselberg?
 20 MS. HABBA: We are starting Weisselberg on
 21 Tuesday morning.
 22 MS. FAHERTY: Tuesday morning, Weisselberg.
 23 THE COURT: Tuesday at 10:00.
 24 MR. SOLOMON: Mr. Weisselberg.
 25 THE COURT: Have a great three-day weekend.

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1 Security benefits.
 2 "Question: Did you think it was legal to pay her
 3 for a job she did not perform, so that she would qualify
 4 for a benefit to which she was not entitled?
 5 "Answer: No.
 6 "Question: So you knew that that was illegal?
 7 "Answer: Yes. Yes. You can say that. Yes.
 8 Yes."
 9 Four yeses. That was your sworn testimony during the
 10 criminal trial; correct?
 11 A Yes.
 12 Q And even though you knew that these activities that
 13 you engaged in at Mr. Weisselberg's request was illegal, you
 14 continued to engage in them; isn't that right?
 15 A Continued in what way?
 16 Q You kept doing it; correct?
 17 A Yes.
 18 Q And you engaged in this illegal conduct because
 19 Mr. Weisselberg was your boss, and you were afraid that if you
 20 refused his requests, you would probably lose your job; right?
 21 A Yes.
 22 MR. AMER: That's all I have, your Honor?
 23 THE COURT: I guess we'll break for the day.
 24 Monday is a holiday, and we'll resume Tuesday at 10:00.
 25 MR. AMER: Your Honor, because the witness is

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1 MS. FAHERTY: Your Honor, Colleen Faherty, on
 2 behalf of the People, and I can speak separately with
 3 counsel just to double check, but there were some
 4 corrections to the transcript that I do think require us to
 5 put on the record, because I don't think we can back-date
 6 the corrections to exhibits as they are contained in the
 7 record, so I'll speak with counsel, and I can even just
 8 submit it in a letter to the Court, if that works.
 9 What is your preference?
 10 THE COURT: Sure. My preference is whatever your
 11 preference is. Whatever you can work out with the other
 12 side. How long would it take if we did it right now?
 13 MS. FAHERTY: I have an email right now that I
 14 can read from that identifies the corrections, and then if
 15 counsel has an issue, we can respond.
 16 THE COURT: All right. Let's do it.
 17 MS. FAHERTY: Okay. So at the trial transcript,
 18 at page 119, lines 11 through 12, Plaintiff's Exhibit 75
 19 was admitted, and is currently in the record as PX75. It
 20 needs to be corrected to 785.
 21 THE COURT: Any objection or --
 22 MS. FAHERTY: Typographic.
 23 MR. SUAREZ: No.
 24 MS. HABBA: No objection.
 25 MS. FAHERTY: Thank you. The second is

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1 Plaintiff's Exhibit 788 was admitted into evidence, but
 2 identified on the record by Bates number as
 3 Mazars-NYAG-00003154. The exhibit number needs to be
 4 added. It is from the trial transcript at 157, line's 2
 5 through 11, and so the exhibit number that we would add to
 6 the record is Plaintiff's Exhibit 788.
 7 MS. HABBA: No objection.
 8 MS. FAHERTY: Thank you, Ms. Habba.
 9 The third issue, your Honor, is Plaintiff's
 10 Exhibit 791 was admitted into evidence on October 3rd, but
 11 the exhibit number is not in the record. Plaintiff's
 12 Exhibit 791 needs to be added. That's at the trial
 13 transcript at 191, lines 5 through 18. It was admitted
 14 into evidence, but the number was not --
 15 MS. HABBA: No objection.
 16 MS. FAHERTY: Your Honor, I have two more,
 17 apparently. Trial transcript at 471, 19 through 472, 11,
 18 Plaintiff's Exhibit 1354 was admitted into evidence on
 19 October 4, but the exhibit number was not on the record.
 20 So, Plaintiff's Exhibit 1354 needs to be added, please.
 21 MS. HABBA: No objection.
 22 MS. FAHERTY: And the last one is at trial
 23 transcript page 477, lines 10 through 11, Plaintiff's
 24 Exhibit 1501 was admitted on October 4, but was identified
 25 on the record, or in the record, as Plaintiff's

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1 Exhibit 50101 and it just needs to be corrected to say
 2 Plaintiff's Exhibit 1501.
 3 MS. HABBA: No objection.
 4 I just want to make the record clear and state
 5 that obviously I have no objection to these administrative
 6 changes, but if we had any prior to objections to the
 7 exhibits themselves, that they still stand.
 8 THE COURT: Of course. No waiver.
 9 MS. FAHERTY: Thank you, your Honor.
 10 Okay. Now, have a good three-day weekend.
 11 * * * * *
 12 (Whereupon, the proceedings were adjourned to
 13 Tuesday, October 10, 2023 at 10:00 a.m.)
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 3 ----- X
 4 PEOPLE OF THE STATE OF NEW YORK, BY
 5 LETITIA JAMES, ATTORNEY GENERAL OF
 6 THE STATE OF NEW YORK,
 7
 8 Plaintiff,
 9
 10 Index No.
 11 -against- 452564/2022
 12 DONALD J. TRUMP; DONALD TRUMP, JR.; ERIC TRUMP;
 13 IVANKA TRUMP; ALLEN WEISSELBERG; JEFFREY MCCONNEY;
 14 THE DONALD J. TRUMP REVOCABLE TRUST; THE TRUMP
 15 ORGANIZATION, INC.; TRUMP ORGANIZATION, LLC;
 16 HOLDINGS, LLC; HOLDINGS MANAGING MEMBER;
 17 TRUMP ENDEAVOR 12, LLC; 401 NORTH WABASH VENTURE,
 18 LLC; TRUMP OLD POST OFFICE, LLC; 40 WALL STREET,
 19 LLC.; AND SEVEN SPRINGS, LLC,
 20
 21 Defendants. ----- X
 22 Supreme Courthouse
 23 60 Centre Street
 24 New York, New York
 25 October 10, 2023

BEFORE:
 HONORABLE ARTHUR F. ENGORON,
 Justice, Supreme Court

APPEARANCES:
 OFFICE OF THE ATTORNEY GENERAL
 OF THE STATE OF NEW YORK - LETITIA JAMES
 Attorneys for Plaintiff
 28 Liberty Street
 New York, New York 10005
 BY KEVIN WALLACE, ESQ.
 COLLEEN K. FAHERTY, ESQ.
 ANDREW AMER, ESQ.
 ERIC HAREN, ESQ.
 LOUIS M. SOLOMON, ESQ.

(Appearances continued on the next page.)

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PROCEEDINGS

1 THE COURT OFFICER: All rise. Part 37 is now in
 2 session. The Honorable Judge Arthur Engoron presiding.
 3 Make sure all cellphones are on silent. Latops and
 4 cellphones will be permitted, but only to members of the
 5 public, members of the press. There's absolutely no
 6 recording or photography of any kind allowed in the
 7 courtroom. Please be seated and come to order.
 8 THE COURT: Welcome. Good morning. Hope you all
 9 had good long weekends.
 10 Counsel, I understand there's some agreements on
 11 scheduling.
 12 So plaintiff, why don't you set forth and then we
 13 will hear from defendants.
 14 MR. WALLACE: Certainly, your Honor. So obviously,
 15 this morning, the first witness will be Allen Weisselberg.
 16 Our expectation is that his testimony will take the rest of
 17 the day today and could extend into tomorrow. Pursuant to
 18 our agreement to take one witness out of order, though,
 19 tomorrow morning we'll start with Nicholas Haigh and we will
 20 continue his testimony until it is completed because he's
 21 the witness who's leaving the country.
 22 After that, we will either continue with any
 23 unfinished testimony from Mr. Weisselberg. Although, I
 24 understand defendants are not planning to cross-examine him
 25 after our exam or are reserving, but they can give that when

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 Senior Court Reporters

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PROCEEDINGS

1 his exam comes up. The next witness is Patrick Birney who
 2 is a Trump Organization employee.
 3 Then after that Mark Hawthorn, another Trump
 4 Organization employee followed by Donna Kidder and we expect
 5 that between Mr. Hawthorn and Ms. Kidder, that will take us
 6 through the end of this week and into Monday. We are then I
 7 think going to begin Michael Cohen on Tuesday. So that is
 8 the current plan as far as the order of witnesses.
 9 THE COURT: Thank you. That's fine with me.
 10 Defendant.
 11 MR. KISE: That sounds correct, your Honor.
 12 THE COURT: Okay. All right. Plaintiff, call your
 13 next witness. First, wait. One of these days, I'll
 14 remember. I think we have some photographers that want to
 15 come in, so look your best.
 16 (Whereupon, there was a pause in the proceedings.)
 17 THE COURT: Plaintiff, would you like to call your
 18 first witness now.
 19 MR. SOLOMON: Good morning, your Honor. Louis M.
 20 Solomon on behalf of the People. We call Allen Weisselberg.
 21 THE COURT: Good morning.
 22 THE COURT OFFICER: Good morning, sir. Please
 23 raise your right hand. Do you solemnly swear and affirm any
 24 testimony you give will be the truth, the whole truth and
 25 nothing, but the truth?

A. WEISSELBERG - DIRECT(MR. SOLOMON) Page 787

1 THE WITNESS: I do.

2 THE CLERK: Please take a seat. Please state your

3 name and either home or business address on the record, as

4 close to the mic phone as you can.

5 THE WITNESS: Allen Weisselberg, 6554 Piemonte

6 Drive, Boynton Beach, Florida.

7 THE COURT: Okay. I'll ask the witness, as he is

8 doing already, to speak loudly, right into the microphone.

9 THE WITNESS: Yes, sir.

10 THE COURT: Clearly and slowly, et cetera. Okay.

11 Please proceed.

12 MR. SOLOMON: Thank you, your Honor.

13 DIRECT EXAMINATION

14 BY MR. SOLOMON:

15 Q Good morning, sir.

16 A Good morning.

17 Q I would like to begin with some questions about your

18 background. Did you receive a degree from Pace University in or

19 about 1971?

20 A It was actually Pace College at that time.

21 Q And was that in business administration?

22 A Yes.

23 Q Were you ever a CPA?

24 A No.

25 Q Do you have any formal or informal accounting training

A. WEISSELBERG - DIRECT(MR. SOLOMON) Page 788

1 since graduating from Pace?

2 A I worked for a short time in accounting, but not very

3 long.

4 Q That was prior to about 1976, correct?

5 A I would say so, yes.

6 Q Are you aware of any accounting standards that apply to

7 the preparation of a personal financial statement?

8 A I'm sorry. I don't quite understand. Am I aware of

9 them?

10 Q Yes.

11 A Not being a CPA, the answer is I know of GAAP. I've

12 heard the term used before, but I -- that's about it.

13 Q And when you say GAAP, you're referring to the

14 Generally Accepted Accounting Principles in the United States,

15 correct?

16 A I've heard that term, yes.

17 Q Yes.

18 Do you know any of the components of GAAP?

19 A No.

20 Q Do you know Jeffrey McConney?

21 A I do.

22 Q Do you know his level -- withdrawn.

23 Did you know his level of familiarity with GAAP in or

24 about 2011?

25 A It's quite some time ago. I've been through quite a

A. WEISSELBERG - DIRECT(MR. SOLOMON) Page 789

1 bit the last few years as you all know, and thinking back to

2 2011, I know he worked for a CPA firm. I hired him from that

3 firm at the time. His level of knowledge of GAAP, I don't know.

4 Q Did you ever come to have an understanding as to Mr.

5 McConney's level of knowledge of GAAP?

6 A Not that I could recall.

7 Q Let's talk about your work history.

8 Did there come a time that you began working with Fred

9 Trump?

10 A I began my career with the Trump family, Fred Trump in

11 particular, in 1973.

12 Q And did Mr. Fred Trump's business involve real estate

13 in New York?

14 A Yes.

15 Q Is it fair to say, sir, that you have been involved in

16 real estate in New York for almost 50 years?

17 A Yes.

18 Q Did there come a time that you began working with

19 Donald Trump --

20 A Yes.

21 Q -- was in or about 1986?

22 A That's correct.

23 Q And when you began working with Donald J. Trump, did

24 you have a title?

25 A I came into his office to work as the controller.

A. WEISSELBERG - DIRECT(MR. SOLOMON) Page 790

1 Q And were you the controller for the Trump Organization?

2 A Yes.

3 Q Did you eventually become the CFO, Chief Financial

4 Officer, of the Trump Organization?

5 A Yes.

6 Q Do you recall if that was approximately in 2002?

7 A Sounds about right, yes.

8 Q Did you report to Donald Trump at that time?

9 A I did.

10 Q Did you report to Donald Trump between that time and

11 when you left the company?

12 A Well, when he became president and he was no longer

13 there, the reporting was more little more informal and I dealt

14 mostly with Eric Trump.

15 Q When Mr. Trump became president, did you also deal with

16 Donald J. Trump, Jr.?

17 A Periodically.

18 Q Did you also deal with Ivanka Trump at that time?

19 A No, she had already left and was in Washington, D.C.

20 Q Had you dealt with her prior to Mr. Trump becoming

21 president?

22 A To a degree, yes.

23 Q In connection with various loans that the Trump

24 Organization was soliciting from lenders?

25 A Correct.

A. WEISSELBERG - DIRECT(MR. SOLOMON) Page 791

1 Q When do you recall Mr. McConney -- withdrawn.
 2 THE COURT: Withdrawn.
 3 MR. SOLOMON: Withdrawn.
 4 Q Do you recall when Mr. McConney began working for the
 5 Trump Organization?
 6 A I don't recall the timing exactly. I would say
 7 somewhere maybe in 1987, give or take.
 8 Q Did Mr. McConney report to you when he began working in
 9 the Trump Organization?
 10 A Yes.
 11 Q And when you were promoted to CFO in 2002, did Mr.
 12 McConney continue reporting to you?
 13 A Yes.
 14 Q Did he report to you until you left the Trump
 15 Organization?
 16 A Yes.
 17 Q Do you know Patrick Birney?
 18 A I do.
 19 Q Did he work at the Trump Organization?
 20 A Yes.
 21 Q When did he begin his employment with the Trump
 22 Organization?
 23 A I don't recall the exact date. I don't know -- a few
 24 years -- six years ago.
 25 Q Approximately 2016/2017 time period?

A. WEISSELBERG - DIRECT(MR. SOLOMON) Page 792

1 A Sounds about right.
 2 Q When he began his work at the Trump Organization, did
 3 he report to you?
 4 A No.
 5 Q Did he report to Mr. McConney?
 6 A No.
 7 Q To whom did Mr. Birney report?
 8 A Ron Lieberman.
 9 Q And up until the time you left the Trump Organization,
 10 did Mr. Birney report to Mr. Lieberman?
 11 A Mr. Birney had multiple tasks that he performed. He
 12 came there -- he came through our company from Aon, so that was
 13 an insurance brokerage firm and Ron Lieberman handled our
 14 insurance. So most of his reporting was to Ron Lieberman, but
 15 if over time he began doing some work in finance because he is a
 16 financial analyst, he would report to myself or to Jeffrey
 17 McConney, either/or.
 18 Q In fact, did Mr. Birney work on the Statements of
 19 Financial Condition between 2017 and your departure from the
 20 Trump Organization?
 21 A I don't know when he actually began to work on it.
 22 Jeffrey McConney was the one who prepared the Statement of
 23 Financial Condition and when he engaged Patrick Birney to work
 24 with him, I don't have that date in my mind.
 25 Q But at some point in time, you are aware that Mr.

A. WEISSELBERG - DIRECT(MR. SOLOMON) Page 793

1 Birney started working on the preparation of the Statements of
 2 Financial Condition?
 3 A Correct.
 4 Q That work continued, to your knowledge, until your
 5 departure from the Trump Organization, correct?
 6 A Correct.
 7 Q From 2011 until your departure, did you have an office
 8 at the Trump Organization?
 9 A I did.
 10 Q Was that at 725 Fifth Avenue?
 11 A Yes.
 12 Q Did you have the same office throughout the entire time
 13 period 2011 to your departure?
 14 A Yes.
 15 Q At any point in time, was there a bookshelf, bookcase
 16 or filing cabinet outside your office, sir?
 17 A There were many filing cabinets and bookcases.
 18 Q I'm talking about one located right outside your
 19 office.
 20 A There was a filing cabinet there.
 21 Q Do you recall whether there were appraisals for
 22 property owned by the Trump Organization in this filing cabinet?
 23 A There were appraisals that were done probably back in
 24 the early or late 1990s for golf courses.
 25 Q Were there any more recent appraisals, to your

A. WEISSELBERG - DIRECT(MR. SOLOMON) Page 794

1 knowledge, in that filing cabinet?
 2 A I don't -- I don't recall.
 3 Q But there could have been?
 4 A I just don't recall.
 5 Q You don't recall one way or the other, sir?
 6 A Yeah. I just don't recall whether there were any or
 7 not.
 8 Q At some point in time, did you become a trustee of the
 9 Donald J. Trump Revocable Trust?
 10 A Yes.
 11 Q Was this in or about January of 2017?
 12 A Yes.
 13 Q Could we please look at PX 769.
 14 Sir, you've been shown what's been marked as PX 769.
 15 Do you recognize this document?
 16 A Yes.
 17 Q What do you recognize it to be?
 18 A Acceptance of the trustee becoming a trustee under the
 19 Donald J. Trump Revocable Trust.
 20 Q On the first page, do you recognize Donald Trump, Jr.'s
 21 signature?
 22 A Yes.
 23 MR. SOLOMON: Please turn to the next page.
 24 Q On this page, do you recognize Eric F. Trump's
 25 signature?

A. WEISSELBERG - DIRECT(MR. SOLOMON) Page 795

1 A Yes.

2 Q On this page, is that your signature?

3 A Yes.

4 MR. SOLOMON: We offer PX 769 into evidence.

5 THE COURT: Granted. It is in evidence.

6 (Whereupon, the Document was marked in evidence as

7 People's Exhibit 769.)

8 Q Sir, did you resign as a trustee in or about January of

9 2021?

10 A I don't recall the date. If you can show me something

11 to refresh my memory, that would be helpful.

12 MR. SOLOMON: Put up PX 1016, please. Scroll down.

13 Q You will see there is a whereas clause; by removal of

14 trustee executed prior to this appointment and acceptance of

15 trustee, settle or removed Allen Weisselberg as trustee under

16 the agreement of trust.

17 MR. SOLOMON: Go back to the top.

18 Q This is dated January -- as of January -- I'm sorry.

19 The last amendment was January 15, 2021. Do you see that?

20 A Yes, I do.

21 Q Does that refresh your recollection that it was in or

22 about January of 2021?

23 A It does.

24 Q Does the trustee -- withdrawn.

25 Does the trust hold title to Mr. Trump's assets?

A. WEISSELBERG - DIRECT(MR. SOLOMON) Page 796

1 A I'm not familiar with the -- with the way ownership of

2 properties is handled. The legal department of the

3 organization, they have all that information. I don't recall

4 exactly the ownership structure.

5 Q So you are a trustee of the trust, but you don't know

6 the legal ownership structure of the assets of the trust?

7 A That's correct.

8 Q During your time as a trustee, what work, if any, did

9 you do on behalf or for the benefit of the trust?

10 A I continued my daily routine that I had all the years

11 that I was the CFO. If there came a point in time where Eric

12 Trump needed to discuss something with me or something he was

13 thinking about, we would sit down and go over it, bounce some

14 ideas back and forth; but other than that, my routine really

15 hadn't changed.

16 Q So when you became -- is it your testimony, sir, that

17 when you became a trustee, your routine, your daily routine

18 hadn't really changed?

19 A No, it hadn't really changed.

20 Q Do you currently work for the Trump Organization, sir?

21 A I do not.

22 Q When did that employment relationship end?

23 A As I mentioned before, so many things have happened

24 over the last number of years with me and my family and it's

25 taken its toll, I don't recall exact dates. If you have

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1 something you can show me to refresh my memory again, that would

2 be helpful.

3 Q Sure. I will in a moment, but I would like to know do

4 you have an understanding as to why the employment relationship

5 ended?

6 A I assume when I was convicted of felony. I guess at

7 that point.

8 Q What is the basis for your understanding that was the

9 reason for the termination of your employment relationship?

10 A I don't -- I don't have a basis for it.

11 Q Did you execute a severance agreement, sir?

12 A I did.

13 MR. SOLOMON: Can we please mark for identification

14 PX 01751.

15 Q Let me know when you have had an opportunity to review

16 the document, sir.

17 (Witness reviewing document.)

18 MR. SOLOMON: Your Honor, while the witness is

19 reviewing that document, we would move PX 1016 into

20 evidence.

21 THE COURT: Granted. It is in evidence.

22 (Whereupon, the Document was marked in evidence as

23 People's Exhibit 1016.)

24 A I am not going to read the entire document, but I'm

25 familiar with the document.

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1 Q Does that appear to be your severance agreement or

2 separation agreement, sir?

3 A Yes.

4 Q Can you turn to page 7 of 8, on the bottom, if you see

5 the number?

6 A Yes.

7 Q Is that your signature?

8 A It is.

9 Q Did you sign it on or about January 9, 2023?

10 A Yes.

11 Q Do you recognize the signature on behalf of the Trump

12 Corporation?

13 A I'm trying to figure it out. It looks like Eric's or

14 Eric Trump.

15 MR. SOLOMON: Your Honor, the People offer PX 01751

16 in evidence.

17 THE COURT: Granted. It is in evidence.

18 (Whereupon, the Document was marked in evidence as

19 People's Exhibit 01751.)

20 Q Mr. Weisselberg, if you perform your obligations under

21 the separation agreement, how much money will you receive?

22 A \$2 million.

23 Q That's payable over two years, correct?

24 A Correct.

25 Q Let's talk about Mr. Trump's triplex at Trump Tower.

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1 Are you familiar with that argument?
 2 A Yeah, I know of the apartment; sure.
 3 Q It was one of the assets that was included in the
 4 Statement of Financial Condition as of June 11th. Excuse me, as
 5 of June 2011?
 6 A Yes.
 7 Q And it was on the Statement of Financial Condition as
 8 of June 2012, correct?
 9 A Yes.
 10 Q In fact, the triplex is included in every Statement of
 11 Financial Condition between at least 2011 and your departure
 12 from the Trump Organization, correct?
 13 A I mean, I could ask to see a statement to look at it,
 14 but --
 15 Q Is it your understanding that it is one of the assets
 16 reflected on the Statement of Financial Condition, sir?
 17 A Yes. Yes.
 18 Q In 2012, the value of the triplex was determined by
 19 multiplying the number of the square feet of the apartment by a
 20 price per square foot; is that correct?
 21 A Correct.
 22 Q In fact, multiplying the square footage by a price per
 23 square foot was how the value of the triplex was determined
 24 every year in the Statements of Financial Condition between
 25 June 2012 and June 2016, correct?

A. WEISSELBERG - DIRECT(MR. SOLOMON) Page 800

1 A I'm not sure that's correct. I don't know whether it
 2 was some years either comps that we used without the -- there
 3 were times when it was not used as the method. I believe it may
 4 have been, and this is from memory, some years where there was a
 5 comp that we were able to use to value.
 6 Q Wasn't the comps used to determine the square foot?
 7 A I don't recall that. That's a question Jeffrey
 8 McConney would have to answer. I don't have the work papers.
 9 If you would like to show me his work papers, I would be happy
 10 to look at it.
 11 Q We will go through it.
 12 In 2012, do you recall the size of the triplex was
 13 assumed to be 30,000 square feet?
 14 A I do not know the -- I don't walk around knowing the
 15 size of square footages of the apartments in the building
 16 including Mr. Trump's.
 17 Q Sir, you do recall that there was an issue raised with
 18 respect to the size of the triplex, don't you?
 19 A I found it out later on, years later.
 20 Q Years later. And at some point in time, you knew that
 21 the number for the -- excuse me.
 22 You knew that the square footage number that was
 23 assumed by the Trump Organization was wrong, didn't you?
 24 A In 2011?
 25 Q No. I'm asking if you recall that the size of the

A. WEISSELBERG - DIRECT(MR. SOLOMON) Page 801

1 triplex, the assumption made by the Trump Organization in 2012
 2 was wrong?
 3 A I -- when the report was completed, I did not go
 4 through every work paper of Jeffrey McConney and look at all his
 5 calculation.
 6 Q Sir, that wasn't my question.
 7 In 2012, an assumption was made as to the number of
 8 square feet for the triplex, right?
 9 A Jeffrey McConney had at his disposal.
 10 Q The answer to my question is yes?
 11 A Yes.
 12 Q At some point, you learned that the assumption was
 13 wrong?
 14 A Subsequently, that's correct.
 15 Q In 2013, there was an assumption made as to the number
 16 of square feet of the triplex, correct?
 17 A Correct.
 18 Q You subsequently learned that assumption was wrong?
 19 A Correct.
 20 Q 2014, an assumption was made, correct?
 21 A Correct.
 22 Q And you learned that assumption was wrong?
 23 A Correct.
 24 Q 2015, an assumption was made and you learned it was
 25 wrong?

A. WEISSELBERG - DIRECT(MR. SOLOMON) Page 802

1 A Correct.
 2 Q 2016, an assumption was made, correct?
 3 A I don't believe that in 2016 we used the same number.
 4 I think something -- I think we got a notification from Forbes
 5 looking into it and that at that point, we went back -- I had a
 6 young lady in our office actually check our -- excuse me. Do
 7 you want me to continue?
 8 Q Please.
 9 A Okay. No, we had to check the offering plan to go back
 10 and check the amount of square footage that Mr. Trump owned and
 11 we came up with a number that was different and once we did
 12 that, we immediately changed the Statement of Financial
 13 Condition for the year 2016.
 14 Q Are you sure it was 2016 and not 2017?
 15 A I'm pretty sure it was 2016 that the change was made,
 16 yeah.
 17 Q And are you certain, sir, that this was done as soon as
 18 you looked back at the offering plan?
 19 A It was -- well, we were in the process -- when we
 20 prepared the June 30th statement, which started probably in
 21 July, at that point in time when -- when Jeffrey McConney was
 22 going through the assets -- if you had his work papers -- I
 23 don't have the benefit of those work papers. I'd like to see to
 24 confirm what I am saying is correct, but I believe at that point
 25 in time, he made -- he made a change to what the square footage

A. WEISSELBERG - DIRECT(MR. SOLOMON) Page 803

1 should have been.

2 Q In fact, sir -- well, prior to making the change in the

3 Statements of Financial Condition, you were put on notice that

4 the 30,000-square foot number was wrong, weren't you?

5 A I don't -- I don't recall that.

6 Q Let's look at, please, PX 0632.

7 At the moment, I'm just going to ask you to focus on

8 the cover e-mail, not the attachments to this. Who is -- for

9 the record, this is Sharon -- from Sharon Hwang on February 2,

10 2012 at 6:44 p.m. It is to several people at DLA Piper with

11 cc's to Jack Weisselberg. That's your son, correct?

12 A Correct.

13 Q He was at Ladder Capital at the time?

14 A Correct.

15 Q And to you, the Trump Organization, correct?

16 A Correct.

17 Q And Jason Greenblatt at the Trump Organization?

18 A Correct.

19 Q And Bradley Cox at the Trump Organization?

20 A Correct.

21 Q And the subject is Trump Tower organizational

22 documents, structure chart and contact list. Do you see that?

23 A Correct.

24 Q Did you receive this e-mail on or about February 2,

25 2012?

A. WEISSELBERG - DIRECT(MR. SOLOMON) Page 804

1 A I recall receiving the cover e-mail. I don't recall

2 seeing any attachments with it since they were already -- these

3 documents were already in our office. So there would be no need

4 to send all the attachments to go with it.

5 Q Let's look at the next document. Withdrawn.

6 Just so we can set the stage here, at this point in

7 time, the Trump Organization was in discussions with Ladder

8 Capital about potential loan for Trump Tower?

9 A Refinancing, yes.

10 Q It would be secured by Trump Tower? The Trump

11 Organization's assets at Trump Tower, correct?

12 A The asset -- when you say Trump Tower, are you

13 referring to the commercial side, not the residential side?

14 Q Either.

15 A The residential side would not be part of the

16 collateral, no.

17 Q It would only be the commercial side?

18 A Correct.

19 Q But in order to make a determination, Ladder Capital

20 wanted information, due diligence as they say the parlance,

21 correct?

22 A They wanted that information to understand the

23 deprivation of how the residential and commercial sides of the

24 building operated.

25 MR. SOLOMON: Let's pull up -- withdrawn. The

A. WEISSELBERG - DIRECT(MR. SOLOMON) Page 805

1 people offer PX 0632 in evidence.

2 THE COURT: Granted. It is in evidence.

3 (Whereupon, the Document was marked in evidence as

4 People's Exhibit 0632.)

5 MR. SOLOMON: Will you, please, pull up PX 0633.

6 Q We marked as PX 0633 another e-mail from Ms. Hwang to

7 the same group of people. Is that right, sir? Do you see that?

8 A I do.

9 Q It is also on February 2nd?

10 A Yes.

11 Q This is at 6:47 p.m., about three minutes after the

12 first one, right?

13 A Correct.

14 Q And she writes, and I'm reading from her e-mail, "As

15 indicated in the previous e-mail, attached please find a Trump

16 Tower Condominium declaration amendments 1-13." Do you see

17 that?

18 A I do.

19 Q Did you receive this email February 2, 2012?

20 A I received a cover e-mail. I don't recall receiving

21 any attachments with it since all of those attachments, again,

22 is -- were already part and parcel of our offering plan and was

23 sitting in our office.

24 Q In fact, sir, you previously testified that you didn't

25 believe you received it because all those documents were in the

A. WEISSELBERG - DIRECT(MR. SOLOMON) Page 806

1 office all the time, what would I do with them, I have no need

2 for them. Does that sound about right?

3 A Meaning they were already in the office.

4 Q Right.

5 A I wouldn't need to get them a second time. They were

6 already there.

7 Q Let's look at one of the documents attached to this,

8 shall we, one of the documents you said you didn't need.

9 A Because -- again, because they were already in our

10 office.

11 THE COURT: Off the record for a moment.

12 (Whereupon, a discussion was held off the record.)

13 Q Mr. Weisselberg, let's assume that your prior testimony

14 under oath, your testimony today here was accurate that you had

15 these attachments in your office, okay. Let's look at one

16 specifically. It is also one that you were shown in your prior

17 testimony. Page 13 of the exhibit, please. This document is

18 titled "First Amendment to the Declaration of Trump Tower

19 Condominium". Do you see that?

20 A Yes.

21 Q That's a document you had in your office, right?

22 A Not in my office, in the office generally.

23 Q You had access to it, though, if you wanted it?

24 A If I needed to go to it for some purpose, I would do

25 that.

A. WEISSELBERG - DIRECT(MR. SOLOMON) Page 807

1 Q Do you see there is a stamp on the top right, Reel 2159
 2 PG333. Do you see that?
 3 A Yes.
 4 Q You've been in New York you told us for approximately
 5 50 years. Do you know what that stamp means?
 6 A That it has been recorded someplace.
 7 Q Right. Reel and page, does that sound familiar, sir?
 8 A I don't know what this really means.
 9 Q But you understand that it is being recorded someplace?
 10 A Yes.
 11 Q And that it is publicly available, right?
 12 A Okay.
 13 Q We established this was in the Trump Organization's
 14 offices and it was publicly available.
 15 MR. SOLOMON: Scroll down, please.
 16 Q Under "unit designation," see that on the left?
 17 A Yes.
 18 Q Unit designation. Then there is tax number. Do you
 19 see that?
 20 A Yes.
 21 Q And then there is a column "approx" for the approximate
 22 area in square feet. Do you see that?
 23 A Yes.
 24 Q 10,996.39, do you see that, sir?
 25 A Correct.

A. WEISSELBERG - DIRECT(MR. SOLOMON) Page 808

1 Q And that happens to be the exact number of the square
 2 footage of Mr. Trump's triplex, right?
 3 A Okay. Well, based on what you're showing me, yes.
 4 Q So in the document you testified had been "in the
 5 office all the time," since at least prior to February 2012,
 6 right?
 7 A Yes.
 8 Q The square footage is disclosed as 10996.39 square
 9 feet?
 10 A Yes.
 11 Q It is your testimony -- withdrawn.
 12 MR. SOLOMON: Can we go to page 15 of the exhibit.
 13 That's the first amendment. Scroll down, please. Okay.
 14 Right there.
 15 Q Do you see that this was executed October 11, 1994 by
 16 the residential board of Trump Tower Condominium, right?
 17 A Correct.
 18 Q Let's look at the consent now, the 20th page of this
 19 exhibit.
 20 MR. SOLOMON: Scroll down.
 21 Q There is a consent to the first declaration. Do you
 22 see that document in front of you, sir? You can take a look at
 23 the 20th page of the exhibit.
 24 A Yes.
 25 Q Do you recognize the signature?

A. WEISSELBERG - DIRECT(MR. SOLOMON) Page 809

1 A Donald J. Trump.
 2 Q That was executed in or about October of 1994, correct?
 3 A Right.
 4 Q So as far as back as October 1, 1994, Mr. Trump
 5 executed a consent to the first amendment to the declaration of
 6 the condominium that reflected the triplex was 10996.39 square
 7 feet, correct?
 8 A Correct.
 9 Q Notwithstanding the fact that this goes back to 1994,
 10 you are aware, sir, that in 2012, 2013, 2014, the triplex is
 11 identified as 30,000 square feet on the Statements of Financial
 12 Condition, right?
 13 A No. That's where I was trying to explain before.
 14 These -- the triplex was part of the other assets of Mr.
 15 Trump's including other things that he owned, airplane,
 16 whatever, and they were all lumped together in one number. I
 17 never focused on that number when renewing Mr. McConney's draft
 18 or the Mazars draft of the financial statement. I wasn't aware
 19 at that time of the -- I didn't go through the details of that
 20 apartment. I was looking at -- what I was looking at is
 21 Statement of Financial Condition. There were much, much larger
 22 items on there that I was more concerned about, things like
 23 commercial buildings or golf courses and things of that nature
 24 that I was focused on.
 25 The apartment itself, relatively speaking when you look

A. WEISSELBERG - DIRECT(MR. SOLOMON) Page 810

1 at the value of that apartment relative to his net worth is
 2 non-material. It is not a material adverse type change. The
 3 number of 200 million or whatever difference may have been in
 4 dollars, that in and itself is a large number; but when you
 5 compare it to the net worth of the statement itself, 6 billion,
 6 it is less than one percent or about one percent.
 7 We were always taught -- our accounting firm always
 8 told us if it is less than five percent, five percent or less,
 9 that's considered non-material. So I didn't have a reason to
 10 focus on this apartment at that time.
 11 (Continued on the next page.)
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A. Weisselberg - Petitioner - direct (Solomon) Page 811

1 EXAMINATION BY
 2 MR. SOLOMON:
 3 Q There was several parts to that answer, sir.
 4 Respectfully, I don't think any of them answered my question,
 5 which was the Statements of Financial Condition contained
 6 inaccurate square footage for the triplex in 2012, 2013, 2014
 7 and 2015; right? I'm not asking if you knew it. I'm not asking
 8 what you did to confirm it. Yes or no, was it inaccurate in
 9 those years?
 10 A I'll say it again. Without seeing -- without being
 11 argumentative, without seeing the work papers as part of our
 12 assets, I won't say yes or no. If you'd like to show me the
 13 work papers of Mr. McConney, I'll be happy to respond.
 14 Q Okay. We will get to the work papers later in the
 15 testimony and we will go back over those, but in your answer you
 16 gave a couple of points to be made.
 17 Anything -- according to what you understood, anything
 18 less than five percent wasn't material?
 19 A According to our accounting firms that we spoke with,
 20 they always felt that five percent was the number that we can
 21 use -- that should be utilized to determine materiality.
 22 Q And is it fair to say anything over five percent would
 23 be material?
 24 A I would think so.
 25 Q You mentioned the apartment was one percent on a

A. Weisselberg - Petitioner - direct (Solomon) Page 812

1 \$6 billion net worth?
 2 A In the year that we made the change.
 3 Q Are you saying one percent was the change or one
 4 percent was the value of the apartment?
 5 A Change.
 6 Q Do you recall what the change was?
 7 A I don't recall.
 8 Q We'll get to that when we get to the SOFCs and the
 9 backup data.
 10 Do you recall in August and September of 2016 a
 11 reporter from Forbes reached out to you directly for comment
 12 about Mr. Trump's net worth?
 13 A I don't recall.
 14 Q Let's mark PX -- withdrawn.
 15 MR. SOLOMON: Before I do that, Your Honor, we move
 16 PX 0063 into evidence.
 17 THE COURT: Granted. It's in evidence.
 18 MR. SOLOMON: Can we please mark PX 1280 for
 19 identification?
 20 Q Please take a moment, sir. These are a number of
 21 e-mails with Luisa Kroll, who appears to be at Forbes.
 22 And as you note in the e-mails the last page is the
 23 oldest e-mail and it works its way more recent. You may want to
 24 look at it in that direction.
 25 A Okay.

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1 Q Okay. Do you recognize the series of e-mail chain that
 2 you had with Luisa Kroll in or about August and September of --
 3 A I recall it vaguely. If I see it, yes.
 4 Q And that's your e-mail address at the Trump
 5 Organization?
 6 A I'm sorry?
 7 Q That's your e-mail address at the Trump Organization?
 8 A Yes.
 9 MR. SOLOMON: We move this into evidence.
 10 THE COURT: Granted. It's in evidence.
 11 Q Let's turn to page four of eight of the exhibit, Issue
 12 Number 6. Do you see Ms. Kroll is raising a question about who
 13 actually owns certain units at Trump Tower? Do you see that?
 14 A I do.
 15 Q Sir, did you do anything in response to Ms. Kroll's
 16 question or Issue Number Six?
 17 A I don't recall.
 18 Q Did you contact in-house counsel at the Trump
 19 Organization?
 20 A I don't recall.
 21 Q Did you direct anyone to look into this issue?
 22 A I think at this point in time I don't recall.
 23 Q If you scroll up on the e-mail chain you'll see that
 24 you did respond to certain other issues; right?
 25 Sir, you can look at the document in front of you?

A. Weisselberg - Petitioner - direct (Solomon) Page 814

1 Do you see she responds "thanks for getting back to
 2 me?"
 3 A Yes, I do recall I may have asked her about -- it may
 4 have been a million things. At one point she was discussing --
 5 I don't recall. I don't recall what it was specifically that I
 6 got back to her with.
 7 Q But you got back to her on other issues?
 8 A On some things. I don't know what they were again.
 9 Q So someone from Forbes reaches out to you, questions
 10 whether your boss, Donald J. Trump, actually owns the units in
 11 the condo he claims to own and it's your testimony you don't
 12 remember what, if anything, you did?
 13 A At this point in time I don't recall.
 14 Q Do you recall in February 2017 another reporter from
 15 Forbes reaching out to you directly for comment about
 16 Mr. Trump's net worth?
 17 A Reporters from Forbes contacted us every year in doing
 18 their list. It reached a point in time where we would -- when I
 19 say "we," I'm talking about myself, at one point and then Jeff
 20 McConney would take it over and then when Patrick Birney, he
 21 took it over and they would have a list of all of our assets and
 22 the value they placed on him and we spent inordinate amount of
 23 time going back and forth with them and it got to a point in
 24 time where Forbes would listen and never make any changes. They
 25 would periodically early on. Then that stopped and at this

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1 point I stopped talking to them. I felt it was no need to
 2 because no matter what we told them and showed them evidence of
 3 things they would just ignore it and I just stopped speaking
 4 with them.
 5 MR. SOLOMON: Let's mark PX 1324 for
 6 identification, please.
 7 Q Sir, does this appear to be an e-mail from Dan
 8 Alexander at Forbes to you and Jeff McConney at the Trump
 9 Organization from February 2017?
 10 A Yes.
 11 MR. SOLOMON: We offer PX 1324 in evidence.
 12 THE COURT: Granted. It's in evidence.
 13 Q Sir, if you look at the second page of this e-mail,
 14 Number 11?
 15 A Yes.
 16 Q Trump Tower penthouse. That's the triplex; right?
 17 A Yes.
 18 Q And this reporter from Forbes in February of 2017 is
 19 telling you he believes it's only 10,996 square feet; right?
 20 A It was in his e-mail. This e-mail was probably dealt
 21 with by Jeff McConney, but I wouldn't speak to Forbes at that
 22 point, so, yes, I do see the reference to the 10,996.
 23 Q And you're a recipient of this e-mail; correct?
 24 A Correct.
 25 Q Did you reach out to Mr. Alexander to tell him the

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1 10,996 square foot number was inaccurate?
 2 A As I indicated before I stopped speaking with the folks
 3 from Forbes.
 4 Q Did you direct Jeff McConney to reach out to Forbes and
 5 tell them their number was inaccurate?
 6 A I don't recall.
 7 Q Do you know if Mr. McConney ever reached out to Forbes
 8 to tell them their number was inaccurate?
 9 A I don't know.
 10 Q So although you believed, sir, that Forbes was wrong on
 11 an objective fact in connection with Mr. Trump's net worth;
 12 namely, the square footage of his triplex, you don't recall if
 13 you did anything to confirm who was right?
 14 A As I said before --
 15 Q It's a yes-or-no question, sir. You don't recall if
 16 you did anything to confirm who was right?
 17 A I didn't personally.
 18 Q And you don't recall if you directed him not to;
 19 correct?
 20 A I don't recall. I may have. I don't recall.
 21 Q As you sit here today, you have no idea if you did
 22 anything or directed anyone; right?
 23 MS. HABBA: Objection. Asked and answered. Please
 24 move on.
 25 THE COURT: Well, I'm going to tell the witness --

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1 direct the witness, as I do with many witnesses, if there is
 2 a yes-or-no question and you can answer it yes or no, answer
 3 it yes or no; if you can't, you can try to explain why not.
 4 You can say "I can" and we'll ask you why not -- the
 5 attorney may ask you why not.
 6 I think there was so much back and forth there that
 7 it was hard to know. So why don't we do it from scratch
 8 right now. You can just ask that one question and if you
 9 can answer yes or no, listen carefully, answer it yes or no.
 10 Q As you sit here today, you don't recall if you did
 11 anything or directed anyone to do anything in connection with
 12 correcting Forbes as to the square footage of the apartment in
 13 or about February of 2017; is that correct?
 14 A What I did -- are you looking for a yes-or-no answer?
 15 THE COURT: Yes.
 16 Q Sir, either you recall or you don't.
 17 A I don't recall.
 18 Q Okay. Sir, is that because by this time, February of
 19 2017, you knew the triplex was only 10,996 square feet?
 20 A I don't recall that. I never focused on the triplex,
 21 to be honest with you. As I said before, my testimony -- I look
 22 at the bigger numbers on Jeff's spreadsheets -- Jeff McConney's
 23 spreadsheets. I won't focused on Donald's triplex at that time
 24 or -- it was part of other assets. It was almost de minimis
 25 relative to his net worth, so I didn't really focus on it.

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1 Q My question wasn't whether you focused on it, my
 2 question wasn't whether it was relevant size-wise to anything
 3 else. My question was very simple: Did you fail to respond to
 4 Forbes in February of 2017 because by that point in time you
 5 knew the triplex was only 10,996 square feet; yes or no?
 6 A I did not respond to Forbes. Jeff McConney was --
 7 MS. HABBA: Your Honor, I'm sorry. I'm going to
 8 object again. Asked and answered with a yes or no.
 9 MR. SOLOMON: Your Honor, with all due respect,
 10 this witness has not answered that question. The reason why
 11 -- I'm not asking what he did or didn't do at this point.
 12 I'm asking the reason why was whether or not it was because
 13 he knew at that point in time. It's a simple yes or no.
 14 THE COURT: Yes or no? You either know or you
 15 didn't know; right? Is that --
 16 MR. SOLOMON: Right.
 17 A I don't remember. I don't remember it back in 2017
 18 what took place. I did not respond to this.
 19 MS. HABBA: Your Honor, he doesn't remember. We
 20 can't force him to do yes or no. I think that's clear. Can
 21 we just move on? He's made the same answer, the same
 22 question asked seven different ways. He doesn't remember.
 23 THE COURT: Counselor, can we --
 24 MR. SOLOMON: Your Honor, I'll move on, but I'll
 25 just note for the record they are different questions. One

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1 is what he did, what he directed someone to do and why.
 2 Those are all different questions, respectfully, but I will
 3 move on.
 4 THE COURT: Before you do, there was a famous --
 5 semi-famous Colombian philosopher named Sidney Morgenbesser.
 6 One day a student asked him, "Professor Morgenbesser, can a
 7 statement be true and false at the same time?" And his
 8 answer was "yes and no." Let's move on.
 9 Q Sir, with respect to the communications from Forbes
 10 that we were just looking at in 2016, 2017, did you ever go back
 11 and check the first amendment to the condo dec that was in your
 12 offices?
 13 A I never did, no.
 14 Q Did it ever cross your mind to do that?
 15 A No.
 16 Q Did you ever discuss that with anyone?
 17 A Again, again --
 18 THE COURT: Did you ever discuss it with him? That
 19 should be a yes or no.
 20 THE WITNESS: No.
 21 MR. SOLOMON: Can we please look at PX 1345 for
 22 identification?
 23 Q 1345 is an e-mail chain. Do you see that?
 24 A I do.
 25 Q And if you'll see the latest was from Amanda Miller to

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1 A Yes.
 2 Q And he asks if that is accurate and up to date.
 3 Do you see that?
 4 A Yes.
 5 Q And he tells you -- he tells the Trump Organization --
 6 excuse me -- in this e-mail that it shows President Trump's
 7 apartment is 10,996.39 square feet, that same number we saw
 8 earlier in the dec; right?
 9 A Correct.
 10 Q Did there come a time that you had a conversation with
 11 Amanda Miller about how to respond to the report from Forbes?
 12 A I -- no. I think at that point I may have had a brief
 13 conversation regarding Trump Tower as a commercial which he
 14 reiterated to me she asked about Trump World Tower and Trump
 15 Tower. I was working at Trump Tower in a commercial part of the
 16 building which is a big asset that we focussed on and Trump
 17 World Tower we only had one apartment that we owned in that
 18 building at that point and I think a small shopping area and a
 19 garage, so there was nothing really for me to even discuss with
 20 her. I said just leave it alone then. Trump Tower is fine and
 21 Trump World Tower is fine. I wasn't focused on this e-mail
 22 behind it. I'm not even sure I remember seeing it, to be
 23 honest.
 24 Q So, sir, just so I understand, is it your testimony
 25 that you recall having a conversation with Amanda Miller about

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1 Alan Gartner, A-I-a-n, at the Trump Org and Matthew Hilson at
 2 the Trump Org. Do you see that?
 3 A Yes, I do.
 4 Q Who is Ms. Miller?
 5 A She worked in our office dealing with press inquiries,
 6 things of that nature.
 7 Q If you take a look and go further down the chain from
 8 the beginning of the third page of this exhibit, Mr. Kirsch
 9 identifies himself as a reporter from Forbes. Do you see that?
 10 A Yes.
 11 Q And then if you go further up, Mr. Hirsch has certain
 12 questions?
 13 A Yes.
 14 Q And on page four, one of those questions again relates
 15 to the Trump Tower penthouse; right, page four?
 16 A Yes, I see it.
 17 Q And now he specifically refers to the "1994 Amended
 18 Condo Declaration." Do you see that?
 19 A Yes.
 20 Q Dated October 11, 1994.
 21 Do you see that third line of number one?
 22 A Yes. You're referring to a portions of --
 23 Q Sure. Trump Tower penthouse. Do you see that, sir?
 24 A Yes.
 25 Q Second to third line, "October 11, 1994?"

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1 Trump Tower?
 2 A Trump Tower -- again, looking at it from the commercial
 3 side of it --
 4 THE COURT: Again, it's a yes-or-no question.
 5 Did you have a discussion with --
 6 THE WITNESS: Yes.
 7 THE COURT: Okay.
 8 Q And is it your testimony that in that discussion the
 9 issue of your boss's apartment never came up?
 10 A With Amanda Miller, I don't recall that -- discussing
 11 that with her. I don't recall.
 12 Q And you don't recall whether you told her, Amanda
 13 Miller, to leave it alone with respect to the size of the
 14 apartment?
 15 A Again, I -- when I talked to Amanda Miller, my thinking
 16 of Trump Tower was always about the commercial side of the
 17 building. I never focused on the apartment Mr. Trump owned,
 18 even though it was on the list of many other things, including
 19 Puerto Rico and Toronto and Panama. There are many, many pages
 20 here. As I said before, we began -- we sort of stopped dealing
 21 with Forbes, so I wasn't going to read the entire e-mail.
 22 Q Well, you actually didn't stop dealing with Forbes at
 23 that point in time because you spoke to Amanda Miller about it
 24 before I said it; right?
 25 A I didn't get the request. Amanda Miller got the

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1 request.

2 Q So you were in fact responding to Amanda Miller about

3 Forbes; right?

4 A About Forbes and about Trump Tower. Again, I --

5 Q Okay. And Trump Tower is one of the items the reporter

6 rates; right?

7 A Correct.

8 Q Specifically Trump Tower penthouse, that's the -- that

9 is text across the top; right?

10 A That's what the text is.

11 Q Right. And then this reporter lists ten different

12 questions about Trump Tower; right?

13 A Yes.

14 Q And you don't recall whether you bothered talking to

15 Amanda Miller about a response because you only focused on the

16 commercial portion of Trump Tower; is that right?

17 A Commercial portion and I didn't correlate the square

18 footage of Donald's apartment. I never focused on it. It was

19 always in my mind a de minimis asset of the overall of Donald J.

20 Trump's Statement of Financial Condition. That was never a

21 concern of mine. I never even thought about the apartment. It

22 was de minimis in my mind.

23 Q Didn't you certify to Mazars every year that the

24 information that the Trump Organization provided to them for

25 every year between 2011 and 2020, that the information of the

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1 Q But then the information from this was given to Mazars;

2 right?

3 A Yes.

4 Q And you reviewed it before it went to Mazars; right?

5 A No, I did not review every line of 3,300 pages of

6 supporting documentation.

7 Q Did you review the totals that were given to Mazars

8 with respect to the assets?

9 A I reviewed the totals, for example, of all the other

10 assets. I may have. I did not review individual line items

11 that comprised that. So there could have been situations where

12 some assets went up or some assets went down and the net effect

13 of all that could have been an up or down in the total of other

14 assets. So I did not look -- as you can see from the document

15 there are many lines here in probably the last item shown on the

16 Statement of Financial Condition -- probably the last item. I

17 don't recall from memory. And it was not something that was

18 that important to me in looking at a \$6 billion or \$5 billion

19 net worth when I see 327 -- again, not a small number, I

20 understand that, but again, using the de minimis and --

21 Q Let's do your de minimis test, shall we?

22 6 billion. Let's assume 6 billion, that's the number.

23 What's five percent of that?

24 A 6 billion?

25 Q Yes.

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1 Trump Organization provided to them was fairly presented? It's

2 a yes or no.

3 A Yes.

4 Q And that it was accurate?

5 A Yes.

6 Q And that the Trump Organization was responsible for the

7 information it provided to Mazars that went into the

8 compilation; right?

9 A Yes.

10 Q Every year?

11 A Yes, without seeing all the -- without seeing all the

12 engagement letters and so on, yes.

13 MR. SOLOMON: Can we pull up the Jeff Supporting

14 Data for the 2016 SOFC? I believe that's PX 0742. It's

15 already in evidence, Your Honor.

16 And Your Honor, we would move PX 1345 in evidence.

17 THE COURT: Granted. It's in evidence.

18 Q Sir, we've put up the Jeff Supporting. That's been

19 identified previously, the JSD, Jeff Supporting Data, the 2016

20 Statement of Financial Condition.

21 Is this what you were referring to earlier when you

22 said Jeff McConney took care of all the backup information?

23 A Right.

24 Q It's your understanding Mr. McConney prepared this?

25 A Yes.

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1 A 300 million.

2 Q How much?

3 A Excuse me. That's the full value and that's the

4 difference between --

5 Q I understand, sir.

6 A -- the 11,000 square feet and the 30,000.

7 Q My question was different, though.

8 This asset comprises -- you just did the math,

9 \$6 billion. 300 million is five percent. This asset is

10 identified on line 913 as \$327 million; right?

11 A But that wasn't the question you asked earlier. You

12 asked about --

13 Q I'm asking that question now.

14 A The question you asked earlier was 30,000 square feet

15 versus 11,000 square feet and that differential times the

16 developer square foot is the number that we looked at as being

17 below the five percent.

18 Q I understand.

19 A Okay.

20 Q This number, however, isn't below the five percent, is

21 it, 327 million? It's simple math. You just told me 300

22 million is five percent --

23 A I don't have the exact number of 6 billion, six billion

24 nine or six billion eight. I don't know if that worked out to

25 five percent.

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1 Q That wasn't the number you gave me earlier, sir. You
2 said 6 billion.

3 A I used a round number without having to --
4 MS. HABBA: Your Honor --
5 THE COURT: Overruled.

6 Q Can we agree that if it's 6 billion, 327 million is
7 more than five percent? It's a yes-or-no question. Can we
8 agree? It's math.

9 A I cannot agree to anything. I'd have to see the actual
10 Statements of Financial Condition and see if it's five percent
11 or not.

12 Q That wasn't my question.

13 THE COURT: You're not answering his question. You
14 are -- I won't try to categorize it, but it's a simple
15 question. Is 327 million more than five percent of 6
16 billion; right? Is that the question?

17 MR. SOLOMON: Yes, Your Honor.

18 THE WITNESS: Your Honor, that's a simple answer.

19 THE COURT: Then give us the answer.

20 A The answer to that is yes.

21 Q Thank you, sir.

22 You had to sign a management representation letter for
23 Mazars each year before they would issue the SOFC; right?

24 A You mean a representation letter?

25 Q Is that how you refer to it, a rep letter?

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1 A Yes.

2 Q Okay. We'll use your terminology.

3 Did you sign to your recollection a rep letter for the
4 2016 SOFC?

5 A I don't recall.

6 Q We'll pull it up and take a look at it.

7 MR. SOLOMON: Let me look at, please, PX 00754,
8 which I believe is already in evidence Your, Honor.

9 I'm sorry. That's the wrong document. I'm sorry,
10 sir. I had the wrong number. I couldn't read my own
11 handwriting.

12 Q We put up PX 741, a letter on Trump Organization
13 letterhead, dated March 10, 2017 to Mazars. Do you see that?

14 A Yes.

15 Q Go to the last page. Is that your signature?

16 A Yes.

17 Q Do you recall the communications with Ms. Miller were
18 in early March 2017, March 6, 2017; right?

19 A Yes, I think that was the date, yes.

20 Q Okay. Four days after the issue of the size of the
21 penthouse was brought to the attention of the Trump Organization
22 and there was a response from Ms. Miller that Allen W.,
23 referring to you, said "leave it alone."

24 You signed this rep letter; right?

25 A We never correlated that as being a major or a material

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1 change to the numbers of Mr. Trump's financial statement. I
2 never correlated the letter, the rep letter, to the Forbes. We
3 were looking into it, who wanted to go back and check to see
4 whether or not the actual number was correct.

5 So I had the young lady in my office go back and check
6 all the offering plan. We didn't do it immediately. It wasn't
7 that vital, that large of a number, the difference between the
8 10,996 and 30,000. So we gave it sometime to go back and check
9 it. This was a day or two later or four days later. We may
10 have done it a week later or seven days later or eight days
11 later. We didn't jump on it immediately.

12 THE COURT: Can you read back the question?
13 (Whereupon, the requested portion of the
14 proceedings was read back by the court reporter.)

15 THE COURT: So the question is whether you signed
16 the letter. Mr. Weisselberg, we all have our own --
17 Mr. Solomon's role is to ask questions; your role is to
18 answer the questions, not to give speeches or explanations.

19 THE WITNESS: Okay.

20 THE COURT: Your -- there are other people here who
21 might be able to delve into that deeper, but, please, just
22 answer the questions.

23 Did you sign this?

24 THE WITNESS: Yes.

25 THE COURT: Thank you.

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1 Q Now, as we saw on the Jeff Supporting Data, the
2 penthouse was still being listed at 30,000 square feet; right?

3 The Excel spreadsheet we just saw?

4 A Yes.

5 Q As it turns out we know that Forbes was actually right
6 about the square footage; right?

7 A Correct.

8 Q You didn't do anything to check who was right -- to
9 check who was right before providing a rep letter, did you?

10 A I did not. What typically would happen is rep letters
11 -- well, if you -- these would go to Jeff McConney. He'd review
12 them for me, bring it into my office and ask me to sign it, then
13 I would sign it.

14 THE COURT: I forgot to bring up. My role is to
15 make sure that the questions are proper and the answers
16 answer the question. You did not answer the question.

17 THE WITNESS: Okay.

18 THE COURT: And please don't make speeches. Just
19 answer the question.

20 THE WITNESS: Okay.

21 THE COURT: Mr. Solomon, do you want a read back,
22 do you want to ask it again?

23 Q You didn't do anything to check who was accurate, the
24 Trump Organization or Forbes, before signing the rep letter;
25 right?

A. Weisselberg - Petitioner - direct (Solomon) Page 831

1 A Correct.

2 Q As it turned out Forbes was right. The triplex is only

3 10,996 square feet; right?

4 A That's correct.

5 Q Number 14, sir.

6 "No events have occurred subsequent to the date of the

7 Statement of Financial Condition and through the date of this

8 letter that would require adjustments to or disclosure in the

9 personal financial statement."

10 The date of the statement is June 30, 2016; right?

11 A The statement.

12 Q The date of the Statements of Financial Condition is

13 June 30, 2016; right?

14 A Correct.

15 Q Subsequent to that we've seen in September of '16

16 Forbes raised questions about the triplex; right? We have seen

17 in March of 2017 four days before you signed this there are

18 questions about the size of the penthouse, the triplex; right?

19 A Correct.

20 Q Yet you were comfortable certifying that nothing

21 occurred subsequent to the date of the statement that would

22 require adjustment; right? It's a yes-or-no question, sir.

23 You were comfortable certifying that to Mazars to

24 induce them to issue the SOFC; right?

25 A Yes.

Page 832

1 Whereupon, the proceedings continue on the

2 following page....

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A. WEISSELBERG - DIRECT(MR. SOLOMON) Page 833

1 Q Now, sir, did there come a time that the two sides of

2 the penthouse became a very public matter?

3 A Public matter? Can you -- can you just --

4 Q Sure. Do you recall in May of 2017 Forbes published an

5 article that Mr. Trump had been misrepresenting the size of his

6 triplex?

7 A I think, yes. And I think that's when we began to do

8 our investigation as to, you know, what the number really was at

9 that point.

10 Q Okay. So you didn't do it when the issue was raised --

11 THE COURT: Let's take our ten minutes break. See

12 you back at 11:30 and hopefully the feed will be fixed.

13 THE COURT OFFICER: Sir, step down.

14 (Whereupon, a recess was taken.)

15 THE COURT OFFICER: All rise. Part 37 is back in

16 session. Please be seated and come to order.

17 THE COURT: Everything is fixed, so we can just get

18 back to business.

19 Please proceed, Counselor.

20 Q Mr. Weisselberg, before the break, we were starting to

21 talk about an article in Forbes Magazine from May of 2017. Do

22 you recall that?

23 A Yes.

24 Q And in fact, the title of this article is "Donald Trump

25 Has Been Lying About The Size Of His Penthouse." Do you recall

A. WEISSELBERG - DIRECT(MR. SOLOMON) Page 834

1 that?

2 A I recall it, yes.

3 MR. SOLOMON: I would like to mark this as

4 Plaintiff's Exhibit 1605 for identification.

5 Q Do you recall the article, sir?

6 A I never read the article, but I do recognize it.

7 MR. SOLOMON: Your Honor, we offer this in evidence

8 for notice, not necessarily for the truth of the matter as

9 asserted therein.

10 THE COURT: Granted. It is in evidence solely for

11 notice, not for the truth of its contents.

12 (Whereupon, the Document was marked in evidence as

13 People's Exhibit 1605.)

14 Q Mr. Weisselberg, it was only after this article was

15 published and the information became public that the Trump

16 Organization corrected the square footage for Mr. Trump's

17 triplex, right?

18 A That's correct.

19 Q Let's turn to, sir, we were talking about the

20 engagement letters and the rep letters earlier. Do you recall

21 that?

22 A Yes.

23 MR. SOLOMON: If we could pull up PX 785 which I

24 believe is in evidence already.

25 Q Mr. Weisselberg, PX 785 has been put in front of you.

A. WEISSELBERG - DIRECT(MR. SOLOMON) Page 835

1 A I'm sorry.

2 Q PX 785 has been put in front of you. Have you had a

3 chance to look at that?

4 A Okay.

5 Q Is this an engagement letter from WeiserMazars to the

6 Trump Organization?

7 A Yes.

8 Q Is that your signature on the fifth page of the

9 document?

10 A Yes.

11 Q Is it your normal practice to only sign a document

12 after you've read it, right?

13 A I sign a document after others have read it and tell me

14 it's okay to sign.

15 Q So from time to time, you rely on others when you sign

16 your name to a document binding the Trump Organization to

17 certain commitments?

18 A No, I rely upon Jeffrey McConney who has been through

19 this before and when he tells me he's read it carefully and has

20 gone through it and I sign it at that time.

21 Q Would you have signed this if you didn't understand it?

22 A If I didn't under -- probably not.

23 Q So we can assume if you signed it, you understood what

24 was in the document, right?

25 A Yes.

A. WEISSELBERG - DIRECT(MR. SOLOMON) Page 836

1 Q Let's turn to the terms of the document. Did you

2 understand that pursuant to this agreement, WeiserMazars was

3 going to provide a compilation of a Statement of Financial

4 Condition of Donald J. Trump as of June 30, 2011?

5 A Okay.

6 Q Did you understand that?

7 A Yes. Yes.

8 Q If you look at the fifth paragraph on the first page,

9 did you understand that this was describing certain of the

10 differences between a compilation, an audit and a review?

11 A Yes.

12 Q You understood, sir, didn't you, that a compilation as

13 compared to a review or an audit was the lowest level of

14 independent confirmation by the outside accountants of the

15 information provided by the Trump Organization, right?

16 A That's correct.

17 Q Do you know who made the decision to have only a

18 compilation instead of a review or audit done for the 2011

19 Statement of Financial Condition?

20 A I don't.

21 Q Do you know who made the decision to have only a

22 compilation done for any of the statements of financial

23 condition of Donald J. Trump instead of a review or an audit?

24 A I don't.

25 Q We'll come back later to how the Statement of Financial

A. WEISSELBERG - DIRECT(MR. SOLOMON) Page 837

1 Condition itself is prepared, but once that's done, can we

2 please look at PX 786 which I believe is already in evidence.

3 This is a letter dated October 6, 2011 from you to WeiserMazars,

4 correct?

5 A Yes.

6 Q On the second page, that's your signature?

7 A On the back, yeah.

8 Q Is this what we were referring to -- you were

9 referring to earlier as a rep letter or representation letter?

10 A Yes.

11 Q So by this letter, it is your understanding the Trump

12 Organization was making certain representations to WeiserMazars,

13 right?

14 A Correct.

15 Q Did you understand that WeiserMazars was relying on

16 those representations in issuing the June 30, 2011 Statement of

17 Financial Condition?

18 A Yes.

19 Q You also understood, sir, didn't you, that WeiserMazars

20 would not have issued the June 30, 2011 Statement of Financial

21 Condition without this rep letter, right?

22 A Correct.

23 Q Let's look at the substance of this. In the first two

24 paragraphs, you use the word "we." You see that?

25 A Yes.

A. WEISSELBERG - DIRECT(MR. SOLOMON) Page 838

1 Q Do you intend by using "we" to refer to the Trump

2 Organization?

3 A Yes.

4 Q If you look at the fourth paragraph down, the data

5 presented in the statement was provided to you by members of Mr.

6 Trump's accounting department. Is that an accurate statement?

7 A Yes.

8 Q And it goes on and you, referring to WeiserMazars, have

9 compiled that information in an appropriate manner when

10 preparing the statement. Was that an accurate statement?

11 A Correct.

12 Q Next paragraph continues, the statement referred to

13 above is fairly presented in conformity with accounting

14 principles generally accepted in the United States of America.

15 Do you see that?

16 A Yes.

17 Q Is that reference to GAAP?

18 A Yes.

19 Q You told us earlier you were not familiar with the

20 components of GAAP, didn't you?

21 A Correct.

22 Q Yet, you are comfortable making a representation to the

23 accountant to induce them to issue the Statement of Financial

24 Condition that the information complied with GAAP; is that

25 right? It is a yes or no question, sir.

A. WEISSELBERG - DIRECT(MR. SOLOMON) Page 839

1 A There are some questions that are not black and white.

2 Q Okay. Let's break it down then. You didn't know GAAP,

3 right?

4 A Correct.

5 Q You represented that the Statement of Financial

6 Condition, the statement was presented in conformity with GAAP,

7 right, yes or no, your representation right here we just read?

8 A Again, it requires an explanation; but if the answer is

9 being forced to give a yes or no, I will be happy to do that.

10 THE COURT: I don't think it requires an

11 explanation.

12 A We relied --

13 Q What's in black and white in front of you, is that a

14 representation that the statement referred to you is presented

15 in conformity with GAAP; yes or no?

16 A Yes.

17 Q You didn't know GAAP. You made the representation and

18 at that time you were comfortable making that representation to

19 induce the accountants to issue the Statement of Financial

20 Condition, right?

21 A Yes.

22 Q In fact, you did that for every year until you left the

23 Trump Organization, right?

24 A Yes.

25 Q You continue on, all assets are presented at their

A. WEISSELBERG - DIRECT(MR. SOLOMON) Page 840

1 estimated current values and all liabilities were presented at

2 their estimated current amounts which have been determined in

3 accordance with guidelines promulgated by the American Institute

4 of Certified Public Accountants except to the extent noted in

5 the accountant's compilation report which was annexed to the

6 statement.

7 You made that representation to Mazars as well, right?

8 A The organization, yes.

9 Q You on behalf of the organization?

10 A Yes.

11 Q You use the term "we"?

12 A Yes.

13 Q American Institute of Certified Public Accountants, you

14 understand that's referred to as AICPA?

15 A Yes.

16 Q You heard that?

17 A I heard that, yes.

18 Q Are you aware if there are any publication, guideline

19 or glossary that defines estimated current value?

20 A I'm not aware of that. I do know there are differences

21 between a GAAP statement for a personal -- one's personal

22 financial statement versus a large corporation's statement.

23 There are differences between the two on how to present it.

24 Q So let's talk about the ASC 274-10 which relates to the

25 personal financial statements.

A. WEISSELBERG - DIRECT(MR. SOLOMON) Page 841

1 Can we, please, pull up PX 2757.

2 You mentioned you are familiar with the difference

3 between -- well, was it your testimony that you understood

4 there is a difference between personal and corporate financial

5 statements?

6 A Yes.

7 Q If you take a look under "General 274-10-05," basis of

8 presentation of personal financial statements, is that what you

9 were referring to, sir?

10 A There's more to it than just these two pages.

11 Q Understood, but this is the section that covers it,

12 right?

13 A Yes.

14 Q You will see that first sentence, "The primary focus of

15 personal financial statements is a person's assets and

16 liabilities and the primary user of personal financial

17 statements normally consider estimated current value information

18 to be more relevant for their decision than historical cost

19 information." Do you see that?

20 A Yes.

21 Q Do you understand that there is a definition that is

22 used for estimated current value and glossary?

23 A I see it now, yes.

24 Q No. No. This refers to estimated current value. My

25 question is a little different. I apologize if it wasn't clear.

A. WEISSELBERG - DIRECT(MR. SOLOMON) Page 842

1 Uses the term "estimated current value." Do you know what that

2 term means?

3 A No.

4 Q Have you ever heard it referred to as "for an asset,

5 the amount at which an item could be exchanged between a buyer

6 and seller, each of whom is well-informed and willing and

7 neither of whom is compelled to buy or sell"?

8 A Okay.

9 Q Are you familiar with that definition?

10 A I am now that you mention it.

11 Q Had you ever heard it before today?

12 A I don't recall.

13 Q Sir, you refer in your rep letter to estimated current

14 value.

15 A Okay.

16 Q And you told me you knew there was a difference between

17 personal financial statements and those for corporations, right?

18 A Correct.

19 Q Did you use a different definition for estimated

20 current value in your representation letter?

21 A I think -- I don't recall exactly what we thought at

22 the time, but there are many, many ways of valuing assets that

23 might fall under the category of estimated current value if

24 that's your question.

25 Q That wasn't my question, but --

A. WEISSELBERG - DIRECT(MR. SOLOMON) Page 843

1 A If you would like to repeat it --

2 Q Let's see if we can parse that down, though.

3 You have estimated current value, right?

4 A Correct.

5 Q And it is your testimony that there are many ways to

6 get to it. I can come at it from the left, the middle, the

7 center, many different ways to get to it, right?

8 A Correct.

9 Q But at some point, I have to get to estimated current

10 value, right?

11 A Correct.

12 Q And that's what you represented in the letter to Mazars

13 to induce them to issue the Statement of Financial Condition was

14 how you value the assets, correct?

15 A Correct.

16 Q And you don't know if you used the definition that I

17 just read to you, right?

18 A Correct.

19 Q Did you, sir, in connection with the 2011 Statement of

20 Financial Condition do any independent work to determine whether

21 the values reflected for the assets were presented at their

22 estimated current value except where noted?

23 A Did you say did I?

24 Q Did you?

25 A No.

A. WEISSELBERG - DIRECT(MR. SOLOMON) Page 844

1 Q So you made a representation to Mazars to induce them

2 to issue the Statement of Financial Condition without doing any

3 independent work, right?

4 A Again, I relied on others to do that for me, but I did

5 not personally.

6 Q Do you still have that letter in front of you, sir?

7 A No. Yes.

8 Q The management rep letter, 786.

9 A I have it.

10 Q You have it in front of you?

11 A Yes.

12 Q Can you point out where in that letter you told Mazars

13 that you were relying on others for your representation to that?

14 A Where we say Trump Organization, that encompasses a

15 group.

16 Q So now you have the entirety of the Trump Organization

17 doing the work --

18 A Not the -- I'm sorry. You want to finish --

19 Q Please.

20 A I am not saying the entire organization including

21 secretarial staff. I'm not saying the entire organization was

22 involved in the preparation of these numbers, but there were

23 people within the Trump Organization that were involved in

24 getting those numbers.

25 Q And you took the information they provided and then you

A. WEISSELBERG - DIRECT(MR. SOLOMON) Page 845

1 represented to Mazars --

2 A Or third parties were utilized to get information that

3 then our in-house folks would then take and prepare -- be able

4 to arrive at a valuation.

5 Q You told me a second ago that "I'm referring to the

6 people at the Trump Organization." It is now larger?

7 A It grows. It grows.

8 Q At the Trump Organization, you relied on Mr. McConney,

9 right?

10 A That's correct.

11 Q At some point in time, you relied on Mr. Birney?

12 A That's correct.

13 Q Did you rely on Eric Trump?

14 A No.

15 Q Not at all for any of the information contained in the

16 Statements of Financial Condition?

17 A Not me personally, no.

18 Q Do you know if anyone else relied on him up the chain

19 to give you information?

20 A It's possible. I just don't recall.

21 Q Donald J. Trump, Jr.?

22 A I don't recall.

23 Q Donald Trump?

24 A Not that I can recall.

25 Q Who do you recall beyond those people that I just

A. WEISSELBERG - DIRECT(MR. SOLOMON) Page 846

1 identified that provided information either directly to you or

2 up the chain that you used and relied upon in making the

3 representation to Mazars?

4 A So -- I think it might be a good idea to go through a

5 little bit of the process of how we got to the Statement of

6 Financial Condition.

7 Q We'll get there later, but if you want to sort of give

8 me highlights now, please feel free.

9 A I think it might be helpful.

10 Q Please.

11 A So Jeffrey McConney used Patrick Birney to work with

12 and then others in the accounting department would get pieces of

13 or numbers that were necessary to go on to the statement, cash

14 balances, mortgage balances. So others besides Patrick Birney,

15 Jeffrey McConney would get those numbers for him. Once all that

16 data was put together, then the work can first begin to assemble

17 the statement. Hope that clarifies something. Does that

18 clarify for you the process?

19 Q I understand the process, sir. Thank you.

20 A Okay.

21 Q Let's assume for a moment that you've given all the

22 information to WeiserMazars also known as Mazars at one point in

23 time, just a name change, right?

24 A Yes.

25 Q Assume for the moment, say, 2016 we looked at a little

A. WEISSELBERG - DIRECT(MR. SOLOMON) Page 847

1 earlier before the break.
 2 A Okay.
 3 Q That you had information in your files that
 4 contradicted information provided to Mazars in connection with
 5 compilation. I'm not asking whether you actually relied on that
 6 information, but assume you had it in your files. Can you do
 7 that?
 8 A I don't -- I didn't maintain files.
 9 Q The Trump Organization had it in its files.
 10 A Yes.
 11 Q Fair enough?
 12 A Yes.
 13 Q And again, I want to be clear, not whether you relied
 14 upon it, but it was in the files and it contradicted
 15 information. Say, for example, you had a first amendment to the
 16 condo dec that contradicted information that was provided to
 17 Mazars, okay.
 18 A Correct.
 19 Q Do you believe you were obligated to advise Mazars of
 20 the existence of this contradictory information?
 21 A As long as the people --
 22 Q It is a yes or no question, sir.
 23 A The answer is yes.
 24 MR. SOLOMON: Can we, please, pull up PX 740 which
 25 is in evidence.

A. WEISSELBERG - DIRECT(MR. SOLOMON) Page 848

1 Your Honor, I am cognizant of your admonition not
 2 to go through each one, one by one, but where there are
 3 changes between one year and another, I would like to spend
 4 a few minutes discussing that.
 5 THE COURT: Sure.
 6 MR. SOLOMON: Okay.
 7 Q Sir, it has been put in front of you and it is up on
 8 the board. PX 740, does that appear to be the engagement letter
 9 between Mazars and the Trump Organization dated January 21,
 10 2017?
 11 A Correct.
 12 Q Is that for the Statement of Financial Condition for
 13 the year ending June 30, 2016?
 14 A Correct.
 15 Q Could you, please, turn to the fifth page of the
 16 document. Is that your signature, sir?
 17 A Yes.
 18 Q In addition to signing as an executive vice-president
 19 and chief financial officer of the Trump Organization, you also
 20 sign as the trustee of the Donald J. Trump Revocable Trust dated
 21 April 7, 2014 as amended, correct?
 22 A Correct.
 23 Q Compared to what we saw earlier, I would like to focus
 24 your attention to the first page, our responsibilities. Did you
 25 understand that since this letter was from Mazars to be the

A. WEISSELBERG - DIRECT(MR. SOLOMON) Page 849

1 responsibility of Mazars?
 2 A Yes.
 3 Q Turn to the second page at the bottom. There's a
 4 section beginning "your responsibilities." Do you see that?
 5 A I do.
 6 Q Did you understand that since this letter was addressed
 7 to the Trump Organization to be the Trump Organization's
 8 responsibilities?
 9 A Yes.
 10 Q The last sentence on that paragraph, "you have the
 11 following "and "you" being the Trump Organization, right?
 12 A Yes.
 13 Q "You have the following overall responsibilities that
 14 are fundamental to our undertaking the engagement in accordance
 15 with SSARS. Is that pronounced SSARS?
 16 A I don't know what that means.
 17 Q But you understand that used the word "fundamental;"
 18 here. Mazars used the word "fundamental" here. You understood
 19 the letter before you signed it. You told us you wouldn't sign
 20 a document you didn't understand.
 21 A Okay.
 22 Q Okay. So these are fundamental responsibilities of the
 23 Trump Organization. The first one, the selection of accounting
 24 principles generally accepted in the United States of America as
 25 the financial reporting framework to be applied in the

A. WEISSELBERG - DIRECT(MR. SOLOMON) Page 850

1 preparation of the financial statement, do you see that?
 2 A Yes.
 3 Q Did you understand that to be a responsibility of the
 4 Trump Organization?
 5 A Yes.
 6 Q And did they fulfill that responsibility?
 7 A This is referring to GAAP, I assume, accounting
 8 principles.
 9 Q Do you understand that to be referring to GAAP?
 10 A Yes.
 11 Q So let's assume it refers to GAAP. Did the Trump
 12 Organization fulfill this fundamental responsibility? It is a
 13 yes or no question.
 14 A Can you be a little more specific? I mean as far as --
 15 a -- I see the language.
 16 Q Yes.
 17 A Are you referring to an asset or the statement in --
 18 Q I'm referring --
 19 A -- in totality?
 20 Q Are you done?
 21 A Yes.
 22 Q I didn't want to interrupt. Pardon me. I'm referring
 23 to "The selection of accounting principles under GAAP as you
 24 said, as the financial reporting framework to be applied in the
 25 preparation of a financial statement." We have established

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A. WEISSELBERG - DIRECT(MR. SOLOMON) Page 851

1 that's a fundamental obligation of the Trump Organization?
 2 A Yes. The answer was yes.
 3 Q Let me ask the question.
 4 Do you believe the Trump Organization fulfilled that
 5 fundamental responsibility, yes or no? You don't have to look
 6 at your counselor. I'm over here.
 7 A I was going to look at the judge actually.
 8 Q Okay.
 9 THE WITNESS: It requires some explanation getting
 10 back to materiality when we complied with the GAAP
 11 requirement.
 12 THE COURT: You can assume whatever you want, but
 13 the question is yes or no.
 14 THE WITNESS: Okay. No.
 15 Q Did you tell Mazars that you didn't fulfill this
 16 fundamental obligation?
 17 A Did I tell -- did I speak to Mazars and tell them --
 18 Q Let's start with you. Did you ever?
 19 A No.
 20 Q To your knowledge, did anyone at the Trump Organization
 21 ever tell Mazars that the Trump Organization did not fulfill
 22 this fundamental obligation?
 23 A Not that I'm aware of.
 24 Q Let's look at number two. Do you understand that there
 25 is a semicolon after SSARS, so this is a list of the

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1 Q The first bullet point is access to all information of
 2 which you are aware is relevant to the preparation and fair
 3 presentation of the financial statement such as records,
 4 documentation and other matters. Do you see that?
 5 A I do.
 6 Q That was a representation the Trump Organization was
 7 making to Mazars, right?
 8 A Correct.
 9 Q And do you believe the Trump Organization fulfilled
 10 that responsibility or obligation with respect to the 2011
 11 Statement of Financial Condition?
 12 A Yes. They had total access.
 13 (Continued on the next page.)
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A. WEISSELBERG - DIRECT(MR. SOLOMON) Page 852

1 obligations, right?
 2 A Okay.
 3 Q The fundamental ones, right? Yes?
 4 A Yes.
 5 Q Okay. Number two, "The preparation and fair
 6 presentation of the financial statement in accordance with
 7 accounting principles generally accepted in the United States of
 8 America and the inclusion of all informative disclosures that
 9 are appropriate for accounting principles generally accepted in
 10 the United States of America other than previously noted," do
 11 you see that?
 12 A I do.
 13 Q Did you understand that that was a fundamental
 14 obligation of the Trump Organization?
 15 A The preparation of the presentation.
 16 Q Yes. Did the Trump Organization fulfill that
 17 fundamental obligation? Yes or no question again, sir.
 18 A I'm going to -- again, it refers to preparation and
 19 presentation, so I think it was -- it was prepared. Yes, I
 20 think we fulfilled the obligation in the presentation and its
 21 preparation. So the answer is yes, I think we fulfilled the
 22 obligation.
 23 Q Number seven, "An obligation to provide us with" and
 24 you understand the "us is Mazars there, right?"
 25 A Correct.

A. Weisselberg - Petitioner - direct (Solomon) Page 854

1 MR. SOLOMON: Can we please turn to PX 741 in
 2 evidence?
 3 Q Sir, do you recognize this document?
 4 A I do.
 5 Q Is it another representation letter from the Trump
 6 Organization to Mazars or WeiserMazars?
 7 A Yes.
 8 Q You'll see this format is a little bit different than
 9 the one we looked at earlier. Do you see that?
 10 A Yes.
 11 Q Third paragraph, do you see, "We confirm to the best of
 12 our knowledge and belief," and the "we" there is the Trump
 13 Organization; right?
 14 A Correct.
 15 Q "As of March 10, 2017 the following representations
 16 made to you during your compilation." Do you see that?
 17 A Yes.
 18 Q Okay. "Number one, we acknowledge our" -- that's the
 19 Trump Organization again; right?
 20 A Correct.
 21 Q "Our responsibility and have fulfilled our
 22 responsibilities for the preparation and fair presentation of
 23 the personal financial statement in accordance with accounting
 24 principles generally accepted in the United States of America
 25 except for the following items." Do you see that?

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A. Weisselberg - Petitioner - direct (Solomon) Page 855

1 A I do.

2 Q Okay. And then there is a paragraph that lists the

3 exception; right?

4 A Yes.

5 Q Those are the exceptions to GAAP; right?

6 A Yes.

7 Q Okay. Did Mazars ever tell you you can only have one

8 paragraph of exceptions?

9 A I'm sorry?

10 Q You were free -- the Trump Organization was free to put

11 in as many exceptions to GAAP as they believe appeared in the

12 SOFCs; right?

13 A Sorry. Say it again.

14 Q Sure. Let's take a step back.

15 This paragraph lists certain exceptions to GAAP; right?

16 A Correct.

17 Q And those are the ones that the Trump Organization

18 believed appeared in the SOFC for June 30, 2016; right?

19 A Correct.

20 Q If the Trump Organization believed there were

21 additional exceptions to GAAP that appeared in the 2016 SOFC

22 they were free to add them to this paragraph; right?

23 A Correct.

24 Q Okay.

25 A Can I answer that or is that a yes or no?

A. Weisselberg - Petitioner - direct (Solomon) Page 857

1 compilation." Do you see that?

2 A Yes.

3 Q This is for the 2016?

4 A Correct.

5 Q And you signed it March of '17; right?

6 A Correct.

7 Q Four days after the conversation with Forbes; right?

8 A Correct.

9 Q And you also had in the files the first amendment to

10 the condo dec; right?

11 A Correct.

12 Q Did you tell Mazars you had that?

13 A Mazars --

14 Q Yes or no did you tell Mazars that you had the condo

15 dec showing the square footage of the triplex was 10,996 square

16 feet?

17 A Again, I didn't deal with Jeff McConney directly, so I

18 don't know what Jeff McConney told Mazars about that.

19 Q As far as you know?

20 A As far as I know I don't know what Jeff McConney told

21 them.

22 Q Do you think Mazars would have signed off on that

23 financial statement in March of '17 for June 30, 2016 if they

24 were aware that there was contradictory information?

25 A I don't know the answer to that question. I can't

A. Weisselberg - Petitioner - direct (Solomon) Page 856

1 Q It's a yes or no.

2 Were you free to do it? Yes. Mazars never said you

3 can't have anymore; right?

4 A We relied upon the Mazars firm to understand GAAP and

5 to understand what we couldn't adopt in there.

6 Q Sir, I'm glad you mentioned that.

7 Is it your testimony that in making a representation to

8 Mazars you were relying on Mazars in making the representation

9 back to them?

10 A But they didn't --

11 Q Yes or no? You just told me you were relying on

12 Mazars. Is it now your testimony that in making this

13 representation in the rep letter you were relying -- "you" being

14 the Trump Organization were relying on Mazars to make a

15 representation back to Mazars? Is that your testimony; yes or

16 no?

17 A Not -- no.

18 Q Okay, okay. So you weren't relying on Mazars in making

19 a representation back to Mazars? Okay, let's move on.

20 Number two. Can you scroll down to the next page?

21 "We have made available to you all financial records

22 and related data and any additional information you requested

23 from us for the purpose of the compilation. We have not

24 knowingly withheld from you any financial records or related

25 data that in our judgment would be relevant to your

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1 speak for Mazars what they would do.

2 Q So in your experience --

3 A Only because of the words -- if you read this in number

4 three, it says "all material transactions." Again, going back

5 to the word "material."

6 Q Good point. That's in number three, "material

7 transactions." You're absolutely right.

8 Does the word "material" show up in number two?

9 A I look --

10 Q It's yes or no. It's right there, number two. We've

11 highlighted it all. "All financial records." It doesn't say

12 "all material financial records," does it; yes or no?

13 A No, it doesn't.

14 Q It doesn't say "and material-related data," does it?

15 A No.

16 Q And then the second sentence "we have not knowingly

17 withheld from you any financial records or related data in our

18 judgment that would be relevant to your compilation." Doesn't

19 use the word "material;" right?

20 A Correct.

21 Q But if you wanted to use the word "material" such as in

22 number three you knew where to put it; right?

23 A I just happened to see it there.

24 Q Right, but you didn't put it in number two?

25 A We didn't --

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1 Q Yes or no it's not qualified by material, is it?

2 A No.

3 Q Turn to Number 14, please.

4 A Oh.

5 Q On that same document, please.

6 Here you're representing on behalf of the Trump

7 Organization that no events have occurred subsequent to the date

8 of the Statement of Financial Condition and through the date of

9 this letter that would require adjustments to or disclosure in

10 personal financial statement.

11 If you had known that the triplex was approximately a

12 third of the size would you have adjusted the SOFC to reflect

13 that change?

14 A Yes-or-no question?

15 Q It's a yes or no.

16 Would you have adjusted the SOFC to reflect that change

17 if you were aware that the square footage was recorded

18 incorrectly?

19 A No.

20 Q And is that because you don't think it was material?

21 A That's correct.

22 Q Does the word "material" appear anywhere in Number 14,

23 sir?

24 A It appeared in Number 3. I carried that throughout the

25 whole document.

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1 Q So when there are 16 things listed the fact that the

2 word "material" appears in Number 3, you wanted to apply to all

3 16?

4 A It's not what I wanted to do. It's how it was

5 interpreted.

6 Q By whom, by you?

7 A No. By whoever it was the one who told me it was okay

8 to sign this.

9 Q How do you know that's how they interpreted it? You

10 had a conversation with -- you told me it was Mr. McConney who

11 reviewed this; right?

12 A If they did.

13 Q Yes or no did Mr. McConney review this before you

14 signed it?

15 A Yes.

16 Q Did you and Mr. McConney discuss whether the word

17 "material" appearing in Number 3 applies to all 16 of those

18 listed?

19 A Not that I can recall.

20 Q Okay. But you're assuming that's how he intended it?

21 A I don't know what was in his thinking on how he got to

22 that conclusion. I got to that conclusion by reading the

23 documents today.

24 Q Okay. Not asking what you're reading today. I'm

25 asking what was intended when this was signed in 2017.

A. Weisselberg - Petitioner - direct (Solomon) Page 861

1 A I don't recall.

2 Q Okay. You don't recall a discussion from Mr. McConney

3 the materiality applies to the entirety of this letter, every

4 sentence?

5 A I don't recall.

6 Q Okay. But we can agree that the word "material" does

7 not appear in 14 at all?

8 A That's correct.

9 Q But you wouldn't have told Mazars that the numbers you

10 gave them were wrong because you didn't think that one

11 particular entry for the triplex was material; right?

12 A Sorry?

13 Q Sure.

14 You -- it's your testimony as you sit here today that

15 you would not have told Mazars about the error in the size of

16 the triplex because you didn't think it was material

17 notwithstanding the representation that no events have occurred

18 subsequent to the date of the Statements of Financial Condition

19 and the date of this letter that would require adjustments to or

20 disclosure in financial statement?

21 A Yes, I don't know what I would have done at the time.

22 I don't recall -- I don't --

23 Q So before you told me you wouldn't have told them

24 because it wasn't material?

25 A What I'm saying to you is that based on materiality I

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1 would have. If I was sitting in that seat and someone walked

2 into my office and said we found this, we should change it, I

3 would probably go ahead and do it and make the change.

4 Q So you would make the change before signing the letter;

5 right?

6 A Yes. If I was focused on it and somebody told me to do

7 it, yes.

8 THE COURT: Bearing in mind both participants,

9 please one at a time. We only have one reporter and she is

10 nodding her head yes. Don't talk over each other.

11 MR. SOLOMON: I apologize, Your Honor.

12 Q Sir, you mentioned earlier the process of creating a

13 SOFC, you wanted a moment to describe it. Do you recall that?

14 A Yes, I do.

15 Q Let's talk about that process.

16 Were you ever involved in selecting the methodologies

17 used to determine the estimated current value of an asset that

18 appeared on the SOFC?

19 A Was I ever involved in it?

20 Q Were you ever involved in it?

21 A I would say yes.

22 Q For some of the assets you used comparable sales, comps

23 as they're referred to; right?

24 A Amongst other things.

25 Q Well, let's talk about those other things.

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1 For others you might have used the operating income
 2 times a capitalization rate; is that right?
 3 A Correct.
 4 Q Others might be as we saw with the triplex the size of
 5 the asset times a price per square foot; is that right?
 6 A That's one method.
 7 Q Okay. And the method used to value an asset was
 8 consistent year over year from one SOFC to the next, so from '14
 9 to '15 was consistent; right?
 10 A Not every year. It could have been a change in
 11 methodology for one reason or another and -- yes.
 12 Q When there was a change in methodology was that change
 13 in methodology disclosed in the SOFC?
 14 A It was disclosed in the work papers that was provided
 15 to Mazars, if I remember correctly. I haven't been at the
 16 company for a couple years. The spreadsheets that provided by
 17 Mr. McConney were comparative. I could be wrong, but if there
 18 was a change, he may have noted it. That's something you'd have
 19 to -- sorry -- that's something you would have to go back and
 20 look at the documents of the spreadsheet or wait for
 21 Mr. McConney. I don't know if he disclosed it. He may have.
 22 Q My question was a little different.
 23 Is it disclosed in the subsequent year's Statement of
 24 Financial Condition?
 25 A I don't know. I don't recall.

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1 Q Do you know if there is any requirement under GAAP to
 2 disclose a change in methodology with a subsequent Statement of
 3 Financial Condition?
 4 A I'm not familiar with GAAP. I don't know.
 5 Q So in creating a following year's Statements of
 6 Financial Condition, let's say, '15, is the first step
 7 Mr. McConney takes 2014 and marks it up?
 8 A It's possible. I don't recall exactly what he did year
 9 to year.
 10 Q Is that one of the things you're aware that he did?
 11 A He may have. I don't recall.
 12 Q Do you have any understanding how the first step in
 13 creating the next year's SOFC is undertaken?
 14 A From what I remember the way it was done we have some
 15 young ladies in our office who begin to gather data that Jeff
 16 would need to do the SOFC; cash balances, mortgage balances. I
 17 mentioned that before. I believe that next step Jeff would
 18 probably contact appraisers or brokers to try to ascertain from
 19 them some reports that might have on it some comps, cap rate,
 20 things that he can use as source material to be able to value
 21 whether it was commercial property or a VTL site, things of that
 22 nature. And that would take sometime to gather that data and he
 23 would begin, I guess, the process. But again, I can't speak for
 24 Jeff what he did on a day-to-day basis. This took months to
 25 prepare this. This was not a simple task.

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1 Q Is it your understanding that for each year
 2 Mr. McConney or someone at his direction would contact outside
 3 persons for cap rates, comps, things of that nature, you just
 4 described?
 5 A That's my understanding, yes.
 6 Q And he did that for each year?
 7 A As far as I know.
 8 Q Are you aware of any situation in which Mr. McConney,
 9 let's say, took a conversation that he had in 2013 and used it
 10 to apply information to the 2015 SOFC?
 11 A I wouldn't know that.
 12 Q But you certified that those SOFCs were all in
 13 compliance with GAAP; right?
 14 A I did.
 15 Q And you don't know whether Mr. McConney used current or
 16 past information in the calculations; is that right?
 17 A Mr. McConney was with me for a long time. As you
 18 mentioned earlier, he had knowledge of what we were doing every
 19 year and I relied on him for all, sure.
 20 Q But you don't know if he used information from a
 21 telephone conversation that he had two years earlier in doing
 22 financial statements?
 23 A I don't know. I don't know, no.
 24 Q So let's focus on the time period precisely before
 25 Mr. McConney starts this process, okay?

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1 A Okay.
 2 Q Let's focus on that for each year.
 3 At that point in time have you met or discussed in any
 4 way with Donald Trump the Statement of Financial Condition or
 5 his views or expectations for his net worth for that year?
 6 A Not that I can recall.
 7 Q You don't recall that ever happening?
 8 A I didn't say never. I was there.
 9 Q I said you don't recall that ever happening; is that
 10 right?
 11 A I said -- I thought you said "ever," that it never
 12 happened. I was there for 20, 30 years, 30 years or more. I
 13 don't recall ever discussing his SOFC prior to Jeff working on
 14 it.
 15 Q Do you recall discussing it with him while Jeff was
 16 working on it?
 17 A I don't recall that. I don't recall that.
 18 Q Did you ever meet with Donald Trump and Michael Cohen
 19 where there was any discussion of a Statement of Financial
 20 Condition before it was finalized?
 21 A Not that I can recall.
 22 Q Are you saying it could have happened and you just
 23 don't recall or are you saying it never happened?
 24 A I don't recall. I don't recall it happening.
 25 Q Maybe I'm missing it and I'm not clear.

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1 You say you don't recall it happening. Is it possible
 2 it happened and you don't recall it or are you saying it did not
 3 happen?
 4 A I'm saying I don't recall it happening.
 5 Q But it's possible it did?
 6 A I mean, if he would have walked in Donald's office when
 7 I was there and he walked in for a second and walked out, it's
 8 possible. People would walk in and out of Donald's office all
 9 day long, whether he was one of those people that walked in --
 10 are you asking me whether it was a longwinded discussion about
 11 the statement? Is that what you're asking?
 12 Q I don't believe I ever used the word "longwinded."
 13 I've been called longwinded, but I don't think I ever used it.
 14 So let's take a step back. I'm asking any discussion
 15 at all concerning the SOFC before it was finalized; you,
 16 Mr. Trump and Mr. Cohen?
 17 A No.
 18 Q No, it never happened?
 19 A I don't believe it ever happened, no. I don't believe
 20 it happened, no.
 21 Q Did you ever meet with Donald Trump and Michael Cohen
 22 where there was any discussion at all about Mr. Trump's net
 23 worth prior to finalizing an SOFC?
 24 A Not that I can think of, no.
 25 Q Again, let's go back to this.

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1 Are you saying it never happened or you don't recall it
 2 might happen?
 3 A Well, I don't believe it happened, no.
 4 Q Did you ever meet with Donald Trump and Michael Cohen
 5 where Mr. Trump's net worth was discussed?
 6 A Not that I can recall. Again --
 7 Q Same question: Is it not that you recall it could have
 8 happened or it did not happen?
 9 A You're asking me to go back a number of years.
 10 Q Yes, I am.
 11 A And my memory doesn't -- again, I don't remember every
 12 meeting that ever took place in that office. As I sit here
 13 today, I don't believe it happened, no.
 14 THE COURT: That doesn't answer the question, does
 15 it? The question is could it have -- could it have happened
 16 and you just don't remember?
 17 MR. KISE: Your Honor, I'm not sure that was the
 18 question, respectfully.
 19 THE COURT: Well, I'm asking him. I think that was
 20 the question, maybe not in so many words.
 21 MR. KISE: I mean, anything is possible. I think
 22 he's asked and answered that question, respectfully.
 23 THE COURT: I disagree because he keeps saying I
 24 don't remember it happened, but he doesn't say no, it could
 25 not have happened. So that's what we're trying to get at.

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1 THE WITNESS: I hear you, Your Honor. I would say
 2 it did not happen. Did that answer your question?
 3 THE COURT: It did not happen -- all right. That
 4 answers the question. Thanks.
 5 THE WITNESS: I'm sorry.
 6 Q After Mr. McConney in the years that he was there had a
 7 draft of the SOFC put together, did he give it to you for
 8 review?
 9 A He did.
 10 Q And did you review it?
 11 A I reviewed -- I reviewed it from a 30,000 foot level,
 12 meaning just to make sure our liabilities would be shown
 13 properly, to make sure the assets -- that all the assets that we
 14 have was still on the statement, but I spent a lot of time
 15 reading the notes to his statement.
 16 The notes were a very important part for Mr. Trump.
 17 Besides this being a Statement of Financial Condition, it was
 18 also sort of a piece -- a little bit of a marketing piece for
 19 banks to read about our properties and how well they're taken
 20 care of and how they're first-class properties, world-renowned
 21 properties throughout the world. So those notes were kind of
 22 important to him.
 23 Q Are notes to a financial statement an integral part of
 24 that statement?
 25 A I believe if you read the statement you read it

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1 together, yes.
 2 Q Did you also from time to time give Mr. McConney
 3 suggestions on how to value a particular asset?
 4 A What would happen is we would sit down in an office --
 5 Q It's a yes-or-no question, sir.
 6 Did you from time to time give Mr. McConney suggestions
 7 on how to value an asset?
 8 A Suggestions, yes.
 9 Q Now tell me. You would sit down in an office?
 10 A And he would show me, for argument's sake, with comps,
 11 with cap rates and I might not always agree with him one he
 12 chose to use for one reason or another. What that reason is
 13 today, I don't know. And I would suggest maybe you ought to
 14 consider doing a different building as a comp; it's closer to
 15 what our building is like.
 16 For example, you could have a commercial building
 17 without a retail component where we do have a retail component.
 18 He may have overlooked that. So it's not a fair comparison to
 19 take a building without a retail component and compare it to a
 20 building with a retail component, so I would make that change.
 21 Q So Mr. McConney is someone you relied upon; right?
 22 A I relied upon, yes.
 23 Q Someone whose work you relied upon in signing
 24 representation letters?
 25 A Yes.

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1 Q You're saying it was possible he overlooked the fact
2 that one building had a retail component and the other one
3 didn't?
4 A That's a lot of work he was doing, so that one thing
5 could have happened. It's possible. We aren't all perfect.
6 That's a possibility he may have overlooked a fact that 40 Wall
7 Street for argument's sake or Trump Tower commercial has
8 something that another building didn't have or maybe he doesn't
9 know the physical makeup of one building versus another. He may
10 have better tenancy in one building than another. And then when
11 you do it on a comparison basis to what he was using, he may not
12 have known about every tenant.
13 I worked on -- I did a lot of lease work, so I knew the
14 makeup of the tenancy of a building where we have more
15 creditworthy tenants than maybe the building he chose to use,
16 which maybe he didn't have as many creditworthy tenants. So
17 that might change what building he use. I used retail just as
18 an example of something. It's not the only thing that would be
19 looked at on a comparison basis.
20 Q Understood. That is something though you used as an
21 example of something Mr. McConney might have overlooked; right?
22 That was the example you gave; right?
23 A Amongst other things.
24 Q Amongst other things.
25 So Mr. McConney, his work was not perfect, is that fair

A. Weisselberg - Petitioner - direct (Solomon) Page 873

1 would look at their financial statements. We would see what
2 kind of tenants they were. Jeff McConney was not part of
3 leasing at all, so he wouldn't know about the creditworthiness.
4 Q So you were on the creditworthy tenants that you were
5 sure to be able to pay the leases?
6 A Or a tenant that could provide us with enough
7 information about the company, where they're going. It could
8 have been -- we could have startups in some buildings, but they
9 could be well capped.
10 Q Did Dean & DeLuca rent space at 40 Wall Street?
11 A They did.
12 Q How did that work out?
13 A Well, they -- when Dean & DeLuca took the space they
14 were one company. They were bought over by somebody in later
15 years and they changed their entire dynamics. They began to
16 sponsor golf tournaments and tennis tournaments and they tried
17 to make Dean & DeLuca what it wasn't and in doing so they had a
18 problem and they couldn't succeed there.
19 Q And they filed for bankruptcy protection, didn't they?
20 A I don't know. I think they did, but I'm not really
21 sure. But they were -- their creditworthiness was day to day.
22 It's like any other company. They could be creditworthy today
23 and something happened, they could change their model of how
24 they operate their business and all of a sudden things don't
25 work out well. Bed Bath and Beyond and there are many other

A. Weisselberg - Petitioner - direct (Solomon) Page 872

1 to say?
2 A Well, I don't think any of us are perfect.
3 Q So you looked over his work and you made changes;
4 right?
5 A I would look at every line item of his work. I would
6 look over the higher valued assets to make sure they were
7 properly being valued. I always wanted -- I always tried to be
8 fair and so -- fair and reasonable in what we were showing and
9 sometimes it would come out with a lower value than he would,
10 but it would be more accurate and fair and a truer picture of
11 the comparison.
12 Q As you sit here today, do you recall a specific example
13 where you came out with a lower value for an asset than he did?
14 A I don't recall. It's so many years. The answer is no.
15 I can't recall.
16 Q You mentioned that you had a better sense of the
17 creditworthiness of the tenants in some of the retail space --
18 in some of the rental spaces; is that right?
19 A Are you talking about being in commercial?
20 Q In the commercial building. You had a better sense of
21 the creditworthiness?
22 A And the reason for is when we go through a lease
23 process we try to learn about the tenant coming into our
24 building. After all, if the tenant can't pay his rent in a year
25 from now, we don't want that tenant in our building. So we

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1 tenants as they're all creditworthy at one time. Unfortunately,
2 the world's changed. It happens.
3 Q So you never know what's going to happen in the future;
4 right?
5 A You have to work with what you have in front of you at
6 the time.
7 Q Right, so you can't predict --
8 THE COURT: I am --
9 MR. SOLOMON: I'm sorry.
10 THE COURT: One at a time.
11 MR. SOLOMON: It's just he's going on expanding
12 upon questions that are simple yes or nos or one-word
13 answers.
14 THE WITNESS: Oh, I'm sorry.
15 Q So you can't predict the future as you just said;
16 right?
17 A Correct.
18 Q In doing valuations for assets that appear on the
19 financial statements were you predicting future development for
20 those assets; yes or no, sir? Were you predicting the future
21 for those assets; yes or no?
22 A Yes.
23 Q Okay. Were you predicting future revenue streams; yes
24 or no?
25 A I don't recall. I don't recall what Jeff did in

A. Weisselberg - Petitioner - direct (Solomon) Page 875

1 valuing those assets.
 2 Q At one point in time in valuations for golf course
 3 assets do you recall using fixed asset methods for the
 4 valuation?
 5 A I do recall that.
 6 Q And do you recall directing Mr. McConney to add a
 7 30 percent premium to the fixed assets to reflect an operating
 8 --
 9 A I do recall that.
 10 Q Was that disclosed anywhere in the Statement of
 11 Financial Condition?
 12 A It was disclosed in the notes -- I'm sorry. It was
 13 disclosed in the work papers that were given to Mazars.
 14 Q Sir, I don't want to cut you off and interrupt you.
 15 That wasn't my question. I asked if it was disclosed in the
 16 Statement of Financial Conditions, not in the work papers to
 17 Mazars, not in conversations you might have had with someone.
 18 Was it disclosed in the Statement of Financial Conditions. It's
 19 a yes-or-no question.
 20 A What was the question? Was the 30 percent --
 21 Q Was the 30 percent premium that you directed
 22 Mr. McConney to add to the fixed assets disclosed in the SOFC;
 23 yes or no?
 24 A No.
 25 Whereupon, the transcript continues on the

A. WEISSELBERG - DIRECT(MR. SOLOMON) Page 877

1 Q You also solicited information as to valuation of golf
 2 courses from people outside of the organization from the
 3 Statements of Financial Condition, right?
 4 A I believe we may have used one or two people.
 5 MR. SOLOMON: Can we, please, mark PX 3116 for
 6 identification.
 7 Q We marked PX 3116 for identification. It is a cover
 8 e-mail and a letter that you were attaching. Do you see that?
 9 A Yes.
 10 Q Is that an e-mail that you sent to E. Carlyle at
 11 Forbes?
 12 A Yes.
 13 Q So actually --
 14 A I don't understand. It says first administrative
 15 group. What is that after my name on top? I don't know what
 16 that means. That's not my e-mail address. I don't know why
 17 that's there.
 18 Q That's actually not an e-mail address.
 19 A I don't know why that's there.
 20 Q If we can scroll down to the bottom of the page, you
 21 see it has a TT00 Bates number at the bottom.
 22 A I see that, but I don't know what administrative group
 23 is, first admitted. I don't know who that is.
 24 Q I'm not saying you put that on there, but this is an
 25 e-mail, though, that you sent to Ms. Carlyle, right?

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A. WEISSELBERG - DIRECT(MR. SOLOMON) Page 878

1 A Yeah. Again, it's from me. I just don't know
 2 what -- I wouldn't -- that would not be part of my e-mail,
 3 typical e-mail. I don't know where --
 4 THE COURT: I don't think you were asked that.
 5 THE WITNESS: The answer is yes, it is my e-mail.
 6 THE COURT: It is your e-mail. That's all we need
 7 to know.
 8 Q The second page, you attach a letter that you had
 9 received from Steven M. Ekovich. Do you see that?
 10 A Yes.
 11 Q Do you recall receiving that letter from Mr. Ekovich in
 12 or about July of 2013?
 13 A I remember it now. I just don't recall -- it was ten
 14 years ago. I don't recall.
 15 Q Do you recall receiving some communication from Mr.
 16 Ekovich -- please let me finish -- in which he told you what an
 17 appropriate gross review multiplier would have been for assets
 18 in the Trump golf portfolio?
 19 A Yes. That was his undertaking of what he felt it
 20 should be.
 21 MR. SOLOMON: We offer PX 3116 in evidence.
 22 THE COURT: Granted. It is in evidence.
 23 (Whereupon, the Document was marked in evidence as
 24 People's Exhibit 3116.)
 25 Q So this, according to what Mr. Ekovich is describing in

A. WEISSELBERG - DIRECT(MR. SOLOMON) Page 879

1 his letter to you, is a different way of calculating value for
 2 golf course assets, right?
 3 A It is another methodology.
 4 Q Another methodology. That takes gross revenue; is that
 5 right?
 6 A Yes, but I'm not sure -- but I'm not sure what he's
 7 including in gross revenue. That's a big -- that's a big
 8 difference.
 9 Q Understood. He's actually using it as a capitalized
 10 term gross revenue multiplier?
 11 A It is not defined anywhere.
 12 Q Understood. You take gross revenue and you multiply it
 13 by an appropriate multiplier, whatever the revenue may be and
 14 however it is calculated; is that right?
 15 A That's one method.
 16 Q That's one method.
 17 Now, if we go back to the first page, you'll see that
 18 you are telling someone at Forbes that this person is a top golf
 19 course advisor on buying and selling of courses, right?
 20 A Correct.
 21 Q Did you believe that to be true when you sent this to
 22 E. Carlyle?
 23 A I don't know him. I never met him. I was told by
 24 somebody else in the organization that he was, so I relied upon
 25 that person; but I don't know the person.

A. WEISSELBERG - DIRECT(MR. SOLOMON) Page 880

1 Q Your earlier letter was addressed directly to you?
 2 A Yes, because the person I asked to help me on this told
 3 him to send it to me.
 4 Q So you took this person's word? You took this person's
 5 advice or comment that this person was a top golf course advisor
 6 on buying and selling courses? You accepted that as true?
 7 A I did.
 8 Q Okay. And then you conveyed it on to Forbes, right?
 9 A Correct.
 10 Q And was that because you wanted Forbes to value the
 11 Trump Organization's golf courses in a particular methodology?
 12 A I don't -- I don't remember why I gave it to them. I
 13 don't -- I don't know the context of the conversation we had
 14 with Ms. Carlyle, what her questions were. It is sort of being
 15 taken out of context.
 16 Q I'm not trying to take it out of context.
 17 A Not this. Not this, why I gave her this letter.
 18 That's the point. I'm not quite putting together with giving
 19 her the letter as to what was she asking and why did I give it
 20 to her.
 21 Q Did you tell Mr. McConney that this was a method that
 22 he should use to value the Trump Organization's golf courses?
 23 A I don't recall. I don't recall.
 24 Q Do you know if the Trump Organization ever used this
 25 method to value its golf courses?

A. WEISSELBERG - DIRECT(MR. SOLOMON) Page 881

1 A Again, I don't recall.
 2 Q Do you know if the Trump Organization ever did a
 3 preliminary valuation using this method?
 4 A Again, I don't recall.
 5 Q You don't know if Mr. McConney ever did that?
 6 A I don't then.
 7 Q Do you know if Mr. Birney ever did that?
 8 A I don't know.
 9 Q Do you know if using this method would come out with a
 10 higher or lower value for the Trump Organization golf courses
 11 than appeared on the Statement of Financial Condition?
 12 A I don't know.
 13 Q Did you also provide information to Mr. McConney at
 14 some point in time that the 30 percent premium for the golf
 15 course should be reduced to 15 percent?
 16 A It's possible. I just don't recall it.
 17 Q You don't recall one way or the other?
 18 A I don't remember.
 19 Q Do you recall any discussion at all in which the
 20 subject of the 30 percent premium came up and there was a
 21 determination made that it was too high?
 22 A It's certainly possible. I just don't remember. It
 23 could have been -- I don't know what year it was, was there
 24 something going on in the economy to reduce -- I don't know.
 25 Q The letter that's the second page of this exhibit, did

A. WEISSELBERG - DIRECT(MR. SOLOMON) Page 882

1 you ever give it to Mr. McConney?
 2 A I don't recall. I may have. I just don't remember.
 3 You're going back a long time ago. I just don't recall.
 4 Q Understood. So did you ever provide it to Mazars?
 5 A I dealt very little with Mazars on these statements.
 6 Everything went through Jeffrey McConney, so if I gave it to
 7 him, hopefully he would have given it to them or maybe not; but
 8 I don't recall giving it to Jeffrey McConney sitting here today.
 9 Q But personally, you never gave it to Mazars, right?
 10 A Not that I can remember, no.
 11 Q Did you also send -- withdrawn.
 12 I believe you indicated earlier that you sent comps to
 13 Mr. McConney?
 14 A I sent comps.
 15 Q Or you provided comps to Mr. McConney?
 16 A No, I didn't. Mr. McConney would contact third
 17 parties, appraisers and request from them these reports that
 18 would give him the comps, cap rates and any other material that
 19 might be helpful in determining valuation.
 20 Q Did you give comps to Mr. Birney?
 21 A Again, this was -- all the work that was done to get
 22 valuations was all done by Jeffrey McConney, by himself for a
 23 while and then with Patrick Birney subsequently.
 24 MR. SOLOMON: Could we, please, mark as PX 1040.
 25 Q Sir, have you ever seen PX 1040 or any of the pages in

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1 it before today?

2 A Has to be as of the time when these things happened,

3 but yeah.

4 Q Do you recall one way or the other?

5 A No. I said possibly when I -- when it first happened,

6 the event itself that's on here.

7 Q You said possibly. So -- do you recall one way or the

8 other?

9 A I'm sure -- you know, I wish I would have seen the

10 publication it came from because there's some publications

11 I -- that would help me.

12 Q Okay. If you see on your first page of this exhibit,

13 there appears to be -- is that an adding machine tape, sir?

14 A Yes, that's not my handwriting.

15 Q That's what I was going to ask. That's not your

16 handwriting?

17 THE COURT: Ten-minute warning. Time goes fast

18 when we're having fun.

19 Q If you look at the second page, this is an e-mail from

20 you to Patrick Birney?

21 A Okay.

22 Q Forwarding and it is blank what's being forwarded, but

23 you indicated it is more info on the house purchase in PB.

24 That's Palm Beach, right?

25 A Yes.

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1 Q So you're sending him information about a sale in Palm

2 Beach, right?

3 A Correct.

4 Q And are you giving that in connection with his

5 valuation of a Trump asset?

6 A Yes.

7 Q Which one?

8 A Probably Mar-A-Lago.

9 Q Okay. So contrary to what you mentioned before, you

10 actually did send Patrick Birney comps?

11 A Well, no. What I said -- no, what I said -- what I

12 said to Patrick Birney -- you can call them comps. I said

13 during the course of the year. You stated this was done in

14 September?

15 Q Yes.

16 A Whenever I found something in a newspaper article, I

17 would just throw it in a file, when you work on Mr. Trump's

18 financial statement, just have it as a reference point because

19 we really had no one in Florida or I don't think he had anyone

20 in Florida. You can call, but when I found it myself, I said

21 you know what. Look at this. It may work. It may not work.

22 See what it was per acre, the sale. Maybe you could extrapolate

23 it. We may have things at our property that they don't have at

24 their property. We could add to it. But as far as when you

25 mentioned comps before, I was referring to Manhattan real

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1 estate. I was thinking of Manhattan real estate, commercial

2 buildings. That was in my mind. That was my mindset.

3 Q If I asked you the question comps for any asset on the

4 Statement of Financial Condition, you did send information about

5 what you believe to be comparables to Mr. Birney, right?

6 A The answer is yes.

7 Q Same question for Mr. McConney now.

8 A When he was doing it himself, the answer would

9 be -- the answer is yes.

10 Q Let's look at the next page 4 of 20.

11 A What number?

12 Q Page 4 of 20 --

13 A Okay.

14 Q -- on the exhibit. Again, an e-mail from you to

15 Patrick Birney, right?

16 A Okay.

17 Q You see that?

18 A Yes.

19 Q If you look at the next page, is that your handwriting

20 on that little yellow Post-It note there?

21 A On what? The -- on that tape?

22 Q Not on the tape. On the little yellow Post-It. If you

23 look on the screen.

24 A No.

25 Q All right. And I assume that's not your handwriting on

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1 the tape because you told me that handwriting earlier wasn't

2 yours?

3 A No. That's why too neat.

4 Q If you turn to the sixth page of this exhibit.

5 A Page six?

6 Q Yes. There is highlighted. Do you see that?

7 A Yes.

8 Q Did you put that highlighting on it before you sent to

9 Mr. Birney?

10 A I don't recall if I did or not.

11 Q This exhibit continues on with additional information

12 about other properties in that area, right?

13 A Yes.

14 Q And if you look at page 9 of 20 --

15 A Yes.

16 Q -- there's a larger yellow Post-It. Do you see that?

17 A Yes.

18 Q I assume that's not your handwriting, right?

19 A No, it's not.

20 Q Do you recognize whose handwriting that is?

21 A I don't.

22 Q Turn to the next page.

23 A Okay.

24 Q You'll see that Ed Raymundo, if I'm pronouncing that

25 correctly.

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1 A Yes.

2 Q Is sending an e-mail to Patrick Birney with the phrase

3 "comparison is attached." Do you see that?

4 A Yes.

5 Q Then you'll see two pages later, there's an article

6 that is cut out of -- it appears to be cut out of a good

7 old-fashioned newspaper. Do you see that?

8 A Yes.

9 Q That's on page 12 of 20?

10 A Yes.

11 Q Underneath that, there is a Post-It?

12 A That's my handwriting.

13 Q I was about to say have we gotten to your handwriting,

14 sir?

15 A You got it. That's it.

16 Q You instructed Patrick to take this Palm Beach estate

17 asking price of 135 million --

18 A Yes, and the note says hold it for next year DJT

19 financial statement. Let's see what it ends up selling for

20 because we don't know -- that's -- that's the asking price.

21 Q Why does it matter what it sells for?

22 A Because anybody can sell anything for a dollar amount.

23 It doesn't necessarily mean it is going to sell. We want to be

24 able to get a comparison that is the final number. He's asking

25 135. Maybe it will sell for 100 million. I will use 100

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1 million.

2 Q So it is the selling price that's relevant in the

3 comparison, not the asking price?

4 A Yes.

5 MR. SOLOMON: This might be a good time for a lunch

6 break.

7 THE COURT OFFICER: Remain seated.

8 (Witness exits the stand.)

9 (Whereupon, a luncheon recess was taken.)

10 A F T E R N O O N S E S S I O N

11 * * * * *

12 THE COURT OFFICER: All rise. Part 37 is back in

13 session. The Honorable Judge Arthur Engoron presiding.

14 Make sure all cellphones are on silent. Laptops and

15 cellphones will be permitted, but only to members of the

16 press. There is absolutely no recording or photography of

17 any kind allowed in the courtroom. Now, be seated and come

18 to order.

19 THE COURT: You all look happy. I guess that's

20 because you had an hour and-a-half, not just an hour and

21 15 minutes.

22 (Witness resumes the stand.)

23 THE COURT: We're back on the record. Let's

24 continue with the direct examination of Mr. Weisselberg.

25 BY MR. SOLOMON:

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1 Q Good afternoon, Mr. Weisselberg.

2 A Good afternoon.

3 MR. SOLOMON: One housekeeping matter my colleagues

4 have reminded me. I failed to move PX 1040 into evidence.

5 I would like to do that now.

6 MR. ROBERT: No objection, your Honor. I just want

7 to be clear this is from a McConney backup. Just because it

8 is so many different pages, I want to describe it as what it

9 is, as it is a series of documents, so we can agree this is

10 part of the McConney backup.

11 MR. SOLOMON: I'm comfortable with a backup.

12 MR. ROBERT: Fair enough.

13 MR. SOLOMON: Sufficient?

14 MR. ROBERT: Sufficient.

15 THE COURT: Granted. It is in evidence.

16 (Whereupon, the Document was marked in evidence as

17 People's Exhibit 1040.)

18 Q Mr. Weisselberg, before we broke for lunch, we were

19 talking about Mr. Steven Ekovich, if I'm pronouncing that

20 correctly?

21 A I think so, yes.

22 Q Do you recall him, sir?

23 A Yes.

24 Q I think you testified that you had some familiarity

25 with him, right?

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1 A I never met him. I know the name through someone else

2 in our office who is part of our golf division and that's the

3 extent of my knowledge of him.

4 Q Well, you actually had some direct communication with

5 him?

6 A He may have e-mailed me. I don't think we ever met

7 face to face is what I'm saying. I don't believe so.

8 Q Have you finished?

9 A Yes.

10 Q But you did, in fact, have several communications with

11 him about valuations of golf courses, right?

12 A Several. I know one you showed me earlier today.

13 MR. SOLOMON: Can we, please, identify PX 3143 for

14 identification.

15 Q Sir, if you look at what's been marked as 3143

16 excluding the top e-mail, if you look at the second one, it is

17 from you to Mr. Ekovich from August of 2015. Do you see that?

18 A Yes.

19 Q And you're asking him how much you would be able to

20 increase that value due to brand and intrinsic value. Do you

21 see that?

22 A Yes.

23 Q In fact, you're asking him how to quantify the premium,

24 right?

25 A Yes.

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1 Q Now, if you go down one further, Mr. Ekovich had
2 actually written to you telling you golf valuations are an art,
3 not a science. Do you see that?
4 A Yes.
5 Q And he provides certain gross revenue multipliers,
6 sixth line down .6-1 time gross revenue. Do you see that?
7 A Yes.
8 Q And then the next line, if the EBIT is below 400 to
9 500,000, do you see that?
10 A Yes.
11 Q Do you have an understanding as to what EBIT is?
12 A Yes.
13 Q What is that?
14 A Earnings before interest, taxes and depreciation.
15 Q So you're communicating with Mr. Ekovich in 2015 with
16 respect to golf course valuations, right?
17 A Yes.
18 MR. SOLOMON: I offer this in evidence as PX 3143.
19 THE COURT: Granted. It is in evidence.
20 (Whereupon, the Document was marked in evidence as
21 People's Exhibit 3143.)
22 MR. KISE: One thing. So did they -- was this
23 produced to us? What day? Was that one of the ones over
24 the weekend?
25 MR. SOLOMON: No, this is actually being used to

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1 either refresh the witness' recollection --
2 MR. KISE: I'm just trying to figure out.
3 MR. SOLOMON: What's the question?
4 MR. KISE: I'm trying to figure out when we got
5 this document.
6 MR. SOLOMON: Just now.
7 MR. KISE: 3143, you're not introducing it into
8 evidence?
9 MR. SOLOMON: I am introducing it into evidence.
10 You were given it just now because we pulled this. It was
11 not on our list before, but we pulled this to refresh the
12 witness' recollection. He had several other conversations
13 with Mr. Ekovich.
14 MR. KISE: Okay, but that wasn't on your list
15 before; yes, no? I just don't recognize is my question.
16 MR. SOLOMON: No, it was not.
17 MR. KISE: I'm not -- your Honor, I'm not fully
18 objecting. I want to make sure that when it comes time, if
19 it comes time, we are extended the same courtesy. This
20 wasn't on their list. I'm not necessarily objecting to it.
21 I just want to be sure that what's good for the goose is --
22 THE COURT: Yes.
23 MR. KISE: That's all I'm saying because I don't
24 recognize it.
25 THE COURT: Give me a second.

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1 (Whereupon, there was a pause in the proceedings.)
2 THE COURT: I'm, of course, trying to be fair. I
3 don't know how far we are going to extend this, but go
4 ahead.
5 MR. SOLOMON: I would also just note this is being
6 used for impeachment purposes. The witness testified he
7 didn't really remember Mr. Ekovich and may have only spoken
8 to him on that one occasion. So this is obviously being
9 used for impeachment.
10 THE COURT: I think that's totally acceptable.
11 MR. KISE: Again, I'm just pointing out that it is
12 a new exhibit. I hear what he is saying, but just making
13 that record. I'm not objecting to the introduction of it.
14 THE COURT: Duly noted and it is in evidence.
15 MR. SOLOMON: Thank you, your Honor. Can we,
16 please, show the witness what we've marked as PX 3144 for
17 identification.
18 Q Mr. Weisselberg, have you seen this document before
19 that's been marked PX 3144?
20 A It was certainly sent to me. I just don't remember it,
21 but I see it in front of me now, yes.
22 Q If you see on the e-mail chain, there is a discussion
23 with you and Mr. Ekovich.
24 A You don't mean the first one, do you, with that
25 language in there?

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1 Q We can pass upon that language.
2 A I just saw that. It caught my eye.
3 Q Understood, but if you look at the bottom of the first
4 page, Mr. Ekovich is telling you typical cap rates are 11 to 14.
5 I would say you are in the 8 to 10 range. Do you see that?
6 A Yes, I do see that.
7 Q Then he asks were you able to send the comps and
8 supporting e-mail to the reporter. Do you see that?
9 A I see that.
10 Q Do you understand that to be the reporter from Forbes?
11 A I would imagine so, yes.
12 Q And you told him, thank you. Yes, they were sent and
13 we received a slight bump. Appreciate your help. From you to
14 Mr. Ekovich, September 20, 4:18 p.m. --
15 A Can you just read back the last -- you know why? It
16 is on the back of the page.
17 Q No problem. On the very first page.
18 A I was flipping pages.
19 Q On the very first page, if you see a highlighted in
20 yellow on the screen. Thank you --
21 A That I see, yes.
22 Q So, in fact, you relied upon information from Mr.
23 Ekovich and you provided that to, who Forbes, right?
24 A Well, it was one of many -- we didn't use that as the
25 only source of material to value golf courses.

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1 Q But this is what you relied upon in trying to bump up
 2 the valuation on Forbes, right?
 3 A It was to explain what we did. I don't know the
 4 reasoning behind -- why we gave it to them.
 5 Q It says we received a slight bump.
 6 A They looked at it and they gave us a bump, okay.
 7 Q So initial communications with Mr. Ekovich, right?
 8 A Yes.
 9 Q This refreshes your recollection that you actually
 10 spoke to Mr. Ekovich on several occasions about valuation of
 11 golf courses --
 12 A When you say --
 13 Q -- of Trump assets?
 14 A When you say spoke, you are referring to e-mails?
 15 THE COURT: That's the ambiguity here.
 16 MR. SOLOMON: Sure.
 17 Q If I expand my question, sir, to ask you did you have
 18 several communications with Mr. Ekovich concerning the
 19 valuations for Trump golf courses.
 20 A Yes, and I believe there were other experts that we
 21 spoke with as well, so we may have used a combination of people.
 22 Q So just so we are clear, you had several communications
 23 with Mr. Ekovich, though, right?
 24 A Correct.
 25 MR. SOLOMON: We offer PX 3144 in evidence.

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1 THE COURT: Granted. It is in evidence.
 2 (Whereupon, the Document was marked in evidence as
 3 People's Exhibit 3144.)
 4 Q Let's go back to the process for creating the
 5 Statements of Financial Condition in any given year, if we can.
 6 Just so we're clear, between 2011 and your departure
 7 from the Trump Organization, did you perform any valuations for
 8 any of the assets on the Statements of Financial Condition?
 9 A When you saw my personally.
 10 Q Yes?
 11 A I don't recall doing anything like that.
 12 Q Do you recall testifying at one of the investigatory
 13 sessions we had "I certainly a.m. not one to value a property.
 14 I have no idea what properties are worth?
 15 A I would rely on experts to do that.
 16 Q But do you recall that's something you had said at one
 17 of the motions?
 18 A I either do -- I don't recall it but certainly
 19 possible.
 20 Q You're not disputing it, correct?
 21 A I'm not disputing it.
 22 Q Is it still your position, sir, that you have no idea
 23 what properties are worth?
 24 A I have no idea -- no. I personally -- if I looked at
 25 a building, I couldn't tell you what it's worth. I would have

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1 to go to an expert to help me to do that.
 2 THE COURT: Move the microphone closer. You
 3 might --
 4 THE WITNESS: Yeah. Yeah.
 5 THE COURT: They are really quirky microphones.
 6 You could be right there and you have to talk right into it.
 7 THE WITNESS: Second time.
 8 Q Was it your testimony earlier today that between
 9 roughly 2011 and your departure, you were involved in reviewing
 10 the notes to the Statements of Financial Condition before they
 11 were finalized?
 12 A The notes -- the notes, yes, which describe our
 13 properties, discuss any liabilities that are associated with the
 14 properties, things of that nature. Those notes is what I'm
 15 referring to.
 16 Q Was that because you understood that Mr. Trump wanted
 17 the assets described in the best possible light?
 18 A Yeah. Well -- yeah, he has his own way of writing. I
 19 might use a word that is -- he may use a different word than I
 20 might use, but it is his statement, so I gave him the
 21 opportunity to correct a word here or there that he didn't like.
 22 By the way, a lot of these notes were written by the Mazars
 23 firm. I would come back and alter it a little bit and then the
 24 final draft came out and I would give it to Mr. Trump to review.
 25 He might say don't use the word "beautiful." Use the words

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1 "magnificent" or something like that because it was not just a
 2 Statement of Financial Condition, but it was also a way of
 3 telling anybody who read it how our properties are, not typical
 4 properties, premier properties, and he wanted to be in that vein
 5 because you put a lot of effort and money over the years into
 6 making these properties exactly that.
 7 Q Do I understand correctly then for each year from 2011
 8 and your departure, before the Statement of Financial Condition
 9 was finalized, you would give it to Mr. Trump?
 10 A Yes.
 11 Q And did you understand that he would re- --
 12 A No. No. Well, well, once he became president --
 13 Q Certainly. I'll rephrase my question.
 14 Between 2011 and when Mr. Trump became president, did
 15 you give him a Statement of Financial Condition prior to the
 16 time it was finalized?
 17 A Yes, I did.
 18 Q Did he have an opportunity to review it?
 19 A Yes.
 20 Q To your knowledge, did he review it?
 21 A Again, once I gave it to him and I left his office,
 22 what he did with it, I wouldn't know.
 23 Q Did you ever receive comments on a Statement of
 24 Financial Condition from Mr. Trump before he became president?
 25 A Periodically.

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1 Q Once Mr. Trump became president, to whom, if anyone,
 2 did you give the Statement of Financial Condition for review
 3 before it was finalized?
 4 A I don't remember. I was -- I don't remember whether I
 5 gave it to Eric Trump and/or Donald Trump. I just don't recall.
 6 I may have. I just don't remember.
 7 Q When you say Donald Trump, you mean Donald Trump, Jr.?
 8 A Yes.
 9 (Continued on the next page.)
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1 Q When you say "Don Trump," are you referring to Don
 2 Trump, Jr.?
 3 A Yes.
 4 Q Between 2011 and when Mr. Trump became president, would
 5 he convey to you, in form or substance, that he had no
 6 additional comments to the SOFC?
 7 A Are you talking about the years blend in one after the
 8 other? I don't remember if he said those words to me exactly as
 9 you're putting them.
 10 Q That's why I asked in form or substance.
 11 You had an understanding at some point in time between
 12 2011 when he became president that he was okay with the SOFCs;
 13 right?
 14 A Yes.
 15 Q Okay. Prior to gaining that understanding that he was
 16 okay with the SOFC, did you ever send it to Mazars between 2011
 17 and when Mr. Trump became president as a final version before
 18 Mr. Trump signed off on it?
 19 A Not that I can remember, no.
 20 Q Let's talk about Seven Springs.
 21 Are you familiar with the property known as Seven
 22 Springs located in the towns of Bedford, New Castle and North
 23 Castle, New York?
 24 A As one of our assets, I was there once many, many, many
 25 years ago to tour the place, but that's probably the extent and

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1 we have -- yes, that's pretty much the extent.
 2 Q So you are familiar with it?
 3 A I am familiar with it -- I realize that. I'm sorry.
 4 Q I didn't want to cut you off, sir.
 5 A No. No, I'm sorry.
 6 THE COURT: I guess "familiar" could be interpreted
 7 different ways. I think Mr. Weisselberg was partly saying
 8 to be familiar with it you have to be there, but I think
 9 Mr. Solomon's meaning was just did you know if it exists.
 10 THE WITNESS: I understand that now.
 11 THE COURT: So you know it exists and you know you
 12 were there a long time ago?
 13 THE WITNESS: Yes.
 14 THE COURT: Just give me one second.
 15 (Whereupon, there is a pause in the proceedings.)
 16 THE COURT: Thanks. Go ahead.
 17 CONTINUED DIRECT EXAMINATION
 18 BY MR. SOLOMON:
 19 Q Seven Springs is one of properties that appears as an
 20 asset on the Statements of Financial Condition; correct?
 21 A Correct.
 22 MR. SOLOMON: Can we pull up the 2014 SOFC, PX 730?
 23 Q Do you recognize this document, sir?
 24 A Yes.
 25 Q What do you recognize it to be?

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1 A Statement of Financial Condition of Donald Trump dated
 2 June 30, 2014.
 3 MR. SOLOMON: Could we please turn to page 20 of 26
 4 on the exhibit?
 5 Q Do you see across the bottom, "mansion at Seven
 6 Springs." Do you see that?
 7 A Yes.
 8 Q "The property is zoned for nine luxurious homes. It
 9 has been valued at \$291 million based on an assessment made by
 10 Mr. Trump in conjunction with his associates of the projected
 11 net cash flow which he would derive as those units are
 12 constructed and sold and the estimated fair value of the
 13 existing mansion and other buildings." Do you see that?
 14 A Yes.
 15 Q Now, in doing this calculation to get to \$291 million
 16 was any discount to the cash flow applied to account for the
 17 time it would take to obtain all necessary approvals, build the
 18 homes and then sell the homes?
 19 A I don't know. I don't know.
 20 Q Do you know if a -- have you ever heard the term
 21 "present value of money?"
 22 A I've heard that. I've heard that term.
 23 Q Are you familiar with it?
 24 A To a degree.
 25 Q You understand that \$10 ten years from now is not the

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1 same as \$10 today; right?

2 A Yes, and I believe these financial statements were what

3 we felt the property was worth on that date we did the financial

4 statements.

5 Q So but as you sit here today, you don't know if any

6 discount of present value was applied to the \$291 million

7 projected net cash flow, do you?

8 A No, I don't.

9 Q Now, beyond just Seven Springs do you know if for any

10 of the valuations on any Statement of Financial Condition

11 between 2011 and your departure there was an application to

12 determine the present value of a future income stream?

13 A I don't know whether that was done or not. I didn't

14 work on the calculations, but I believe that the values were

15 based on what we felt we could settle for on that date, on the

16 date of the financial statement. That was valued -- for

17 example, if you take a building, a commercial building, you have

18 leases in place and we took the current values of those leases

19 that day and did our -- and went from there. That became our

20 NOI with the cap rate. In ten years later those leases that

21 were \$20,000 square foot, could be \$90 a square foot. So we

22 didn't work with that \$90. We worked with \$20 as of today to

23 come up with our NOI.

24 Q Is that what you understand this cap to present value

25 mean?

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1 A Yes, we were using the values as of that date.

2 Q That's a snapshot, sir, of the valuation, isn't it?

3 A I don't know how you describe --

4 Q You didn't assume that ten years of rent you had it on

5 the day of the valuation, did it -- did you?

6 A No. The way the valuation -- sorry.

7 Q Yes-or-no question.

8 A Finish the question.

9 Q You didn't assume you had all that money on day one;

10 right?

11 A We weren't --

12 Q Yes or no? For the lease, the lease you just

13 described, did you assume that you had the ten years of rent

14 payments on June 30th of any given year?

15 A And that's what -- why we consider it. We didn't have

16 it.

17 Q You didn't have it, so you didn't consider it?

18 A Correct.

19 Q So let's talk about projects under development. That's

20 a category in the financial statements; right?

21 A Correct.

22 Q Mentioned at Seven Springs, that's a project under

23 development for a period of time; right?

24 A Correct.

25 Q In fact, at one point in time ten, 20 years ago, the

A. Weisselberg - Petitioner - direct (Solomon) Page 905

1 Trump Organization was thinking about putting a golf course

2 there; right? Do you recall that?

3 A There was discussion about that, yes.

4 Q But you couldn't get the proper zoning for that; right?

5 A Correct.

6 Q So you had to give that up?

7 A I believe so.

8 Q Okay. So then it became a concept of building mansions

9 on the property; right?

10 A Correct.

11 Q So on the day of this financial statement as of

12 June 30, 2014?

13 A Okay.

14 Q Okay. The value of the development rights for this

15 property was not discounted to present value, was it?

16 A The -- can I answer it other than yes or no?

17 Q Can you answer it yes or no?

18 THE COURT: Seems like a yes-or-no question.

19 A Well, the question is when the zoning is arrived at or

20 was obtained or when the zones were built assuming you weren't

21 just selling land. This could be your land sales, nine -- it

22 has -- it's zoned for nines homes. Doesn't mean we're going to

23 build the homes. We could sell the land that day for those

24 numbers. They could go out and get their zoning.

25 Q Did you think you could sell the land that day for

A. Weisselberg - Petitioner - direct (Solomon) Page 906

1 \$291 million?

2 A I didn't have a backup to those numbers. I don't know

3 the answer to that question.

4 Q Is that how you read that, though?

5 A I read that the property is zoned for nine luxurious

6 homes. It has been valued on this date. When --

7 Q Based on?

8 A -- in conjunction with his associates based on

9 projected cash flow.

10 Q Projected net cash flow?

11 A Correct.

12 Q That's not a dollar you have on June 30, 2014; right,

13 projected? Is that right?

14 A Yes. Projection could have been in a week later. It's

15 a possibility he could have --

16 Q Nine luxurious homes build, get zoning for them, build

17 them and sell them a day later. Yes or no, sir? Is that what

18 your testimony is?

19 A I'm trying to read the question -- I mean, I'm trying

20 to read the paragraph.

21 Q Go ahead.

22 A The property is zoned for nine luxurious homes. It

23 doesn't mean the homes are being sold for 291 million. I don't

24 see that.

25 Q I'm not saying the homes are being sold for 291, sir.

A. Weisselberg - Petitioner - direct (Solomon) Page 907

1 What I'm asking you is it's the projected net cash flow he would
 2 derive as those units are constructed and sold and the estimated
 3 fair value of the existing mansions. As they are constructed
 4 and sold, future tense, future; right?
 5 A Correct.
 6 Q They're not doing that the next day; right?
 7 A Okay.
 8 Q You agree with me?
 9 A Yes, I do.
 10 Q Okay. You're familiar with Seven Springs. You told me
 11 that before. You've been up there?
 12 A Yes.
 13 Q Barren land, right, except for the existing buildings?
 14 A Except it was a mansion on the property, one mansion.
 15 Q Right, so there had to be some period of time to get
 16 the proper zoning, some of it for nine homes was there. It had
 17 to be sometime to break the land; right? Had to be sometime to
 18 build the homes; right?
 19 A Correct.
 20 Q Sometime to market and sell them; right?
 21 A Could have done it in a year. I don't know the time
 22 period.
 23 Q But this doesn't account for anytime period, does it?
 24 A Nor do I know whether Mr. Trump would go out and try to
 25 market the property while the zoning was going on, sign

A. Weisselberg - Petitioner - direct (Solomon) Page 908

1 contracts while the zoning was going on subject to getting that
 2 zoning. A lot of things could have been going on. He could
 3 have been building the models. I don't know what he has in his
 4 mind with that property. I wasn't really involved in the
 5 development of the property, but I --
 6 Q Are you sure about the time?
 7 A That I was involved in the --
 8 Q That you were not involved in the development of the
 9 property?
 10 A I didn't -- I'm not a developer. I wouldn't know where
 11 to start.
 12 Q But the development of that property -- you were not
 13 involved in the development of that property. Is that your
 14 testimony?
 15 A No, I don't understand your question what you're saying
 16 to me. The development, meaning working with people to get
 17 information to help them get zoning, that numbers, things of
 18 that nature.
 19 Q Or working with people to determine how the property
 20 would be developed if at all?
 21 A I don't recall -- I mean, I recall people working on it
 22 specifically. They may have called me for certain information,
 23 but I don't recall developing or where to begin developing a
 24 property.
 25 Q Are you certain of that as you are the rest of your

A. Weisselberg - Petitioner - direct (Solomon) Page 909

1 testimony?
 2 A Sorry?
 3 Q Are you certain of that last answer as you are the rest
 4 of your testimony?
 5 A As it pertains to this property, yes, sir.
 6 MR. SOLOMON: Can we mark PX 3114 for
 7 identification?
 8 THE COURT: Please don't talk over each other and
 9 I'm not sure that that point was ever really made because
 10 you went on all sorts of tangents.
 11 I think, Mr. Weisselberg, what Mr. Solomon was
 12 trying to get you to do, you can do it or not, I think what
 13 he was trying to get you to do was to acknowledge that since
 14 the number up there was based on future events for planning,
 15 the building, for selling, that the net eventual proceeds
 16 needed to be discounted to take into account that that would
 17 not occur right away. Am I describing that correctly?
 18 THE WITNESS: You are. I don't know on the GAAP
 19 what the requirements are to value something that may have
 20 future value. I'm not a GAAP expert. I think if the Mazars
 21 firm who's part and parcel of producing this statement
 22 realizes that GAAP does not permit that they would have said
 23 something to us evidently knowing this is a future
 24 development. They allowed the number on the statement the
 25 way it is.

A. Weisselberg - Petitioner - direct (Solomon) Page 910

1 THE COURT: Just before we move on to this next
 2 document, Mr. Solomon, I've advised for you, for all the
 3 lawyers, for everybody in the room, this is a particular pet
 4 peeve of mine and it will make life simpler of everyone.
 5 Don't ask questions in the negative. For example, the
 6 questions are often "you didn't do that, did you?" And then
 7 well, there is a no answer, meaning "no, I didn't do it" or
 8 "no, I" -- just ask if you did it, okay? Don't start with
 9 "this doesn't mean." Just ask in the positive, "did you do
 10 it." I pass that off for what it's worth.
 11 Q Sir, do you recognize PX 3114 for identification?
 12 A Okay.
 13 Q Do you recognize it?
 14 A I acknowledge this is an e-mail from me.
 15 Q Do you recall seeing it before today?
 16 A I'm sure if I typed that the answer is yes.
 17 Q The subject on the first e-mail is "easement analysis."
 18 Do you see that?
 19 A Yes.
 20 Q And it's from Sheri Dillon to you, Eric Trump and
 21 Donald Bender?
 22 A Yes.
 23 Q And you turn to the next page and -- I'm sorry -- the
 24 date on this is September 23, 2014; right?
 25 A Yes.

A. Weisselberg - Petitioner - direct (Solomon) Page 911

1 Q You turn to the next page title is "Potential
2 Charitable Contribution Analysis." Do you see that?
3 A Yes.
4 Q See Seven Springs is there?
5 A Yes.
6 Q And the valuation for the Seven Springs column is
7 estimated in excess of 30 million. Do you see that?
8 A Yes.
9 Q Did you have an understanding that the potential
10 valuation for the easement donation for the Seven Springs
11 property was in excess of \$30 million in or about September of
12 2014?
13 A I don't know much about the conservation easement. I
14 really wasn't involved in that transaction. I don't believe
15 they were referring to the entire property. I think it was a
16 portion of the property that they were not going to develop, but
17 then that's something I am not -- I am further from reality
18 with.
19 Q In fact, did you understand that that amount was
20 reflective of the value of a donation of the development rights
21 for Seven Springs?
22 A I don't -- again, I don't know what it's for. I wasn't
23 really involved in the -- Ms. Sheri Dillon worked with Eric
24 Trump on this conservation easement.
25 Q But you're copied on the e-mail?

A. Weisselberg - Petitioner - direct (Solomon) Page 912

1 A I am copied. I may have been on a kickoff ball and
2 after that that was the end of it, so I don't know exactly what
3 took place regarding that conservation easement.
4 Q I wasn't asking if you knew what took place. I was
5 just asking if you were aware or understood that that amount of
6 the excess of 30 million was related to a donation or potential
7 donation of the developments?
8 A To a portion of the property. It wasn't the entire
9 property. I don't know if your question is being phrased the
10 way I understand it. I think there was a portion of the
11 property they weren't going to develop and they were going to
12 donate it as a charitable contribution and that's I think what
13 this is about, not about the entire property with nine mansions
14 and all that stuff. But, again, I'm talking about without
15 having been part of most of these meetings that took place.
16 Q At this point in time they didn't have those nine
17 mansions that we were talking about earlier on the property;
18 right?
19 A No.
20 THE COURT: I didn't really explain it that well.
21 If somebody says you didn't do it, if you say no that could
22 mean no, I didn't do it; it could mean yes, you're right I
23 didn't do it. So ask it in the positive.
24 Q Did the development rights that you're just referring
25 to include nine existing mansions on the property?

A. Weisselberg - Petitioner - direct (Solomon) Page 913

1 A I don't believe so, but I don't know for sure.
2 Q Okay. Did the potential easement donation include the
3 existing mansion and related buildings on the property?
4 A I don't know.
5 Q You left that to Sheri Dillon and Eric Trump?
6 A That's correct.
7 Q Let's turn back, if we can, keeping that to one side
8 for the moment to PX 718. That's the rep letter for the 2014
9 SOFC.
10 A Okay.
11 Q Do you have that document in front of you, sir?
12 A I do.
13 Q That's November 7, 2014?
14 A I do.
15 Q And that's a little over a month, a month and a week or
16 two weeks after that September 23rd we just saw; right?
17 A Yes.
18 Q Documents on the left?
19 A Yes.
20 Q So some point prior to this management rep letter you
21 became aware of a potential charitable contribution relating to
22 Seven Springs; right?
23 A The one where Bender was copied on that e-mail
24 regarding this?
25 Q Yes, the one that's on the left side of the screen.

A. Weisselberg - Petitioner - direct (Solomon) Page 914

1 A Yes, but again, the e-mail that you showed me initially
2 included Donald Bender as part of that meeting.
3 Q Yes.
4 A Yes, we're talking about the same thing.
5 Q Yes. So prior to November 7, 2014 you're aware of that
6 potential easement donation?
7 A Potentially.
8 Q And you're aware there was a valuation of that easement
9 donation to be estimated to be in excess of 30 million; correct?
10 A Correct.
11 Q Did you do anything at all between September 23, 2014
12 and November 7, 2014 when you signed that letter to determine
13 what portion of the property would be covered by the potential
14 easement donation that was estimated to be in excess of
15 \$30 million?
16 A I did nothing. I don't know if Jeff McConney did
17 anything.
18 THE COURT: If he asks if you did something just --
19 THE WITNESS: I did not.
20 Q Did you direct anyone to do anything between that time,
21 September 23, 2014 and November 7th?
22 A Regarding a potential --
23 Q Regarding a potential easement?
24 A When it hasn't happened yet?
25 Q Yes, sir.

A. Weisselberg - Petitioner - direct (Solomon) Page 915

1 A I did not.

2 Q And did you direct them to do anything with regards to

3 a potential valuation of that easement estimated to be in excess

4 of \$30 million?

5 A I did not.

6 Q So you did nothing and didn't direct anyone to compare

7 that valuation on the chart on 9/23/2014 and any valuation that

8 might have appeared on the SOFC, did you do anything or direct

9 him to do anything?

10 A No.

11 THE COURT: That's much better than didn't you do

12 this.

13 MR. SOLOMON: I am guided by the Court's direction.

14 Q Can we look at the Jeff Supporting Data, PX 7198,

15 specifically lines 668 through 673?

16 MR. SOLOMON: And, Your Honor, while we're waiting

17 for that, I move to admit PX 317.

18 MR. ROBERT: Objection, Your Honor. I have several

19 grounds for the objection. The first is that it's from

20 2014, so we have a statute of limitations defense.

21 Secondly, I know during the course of the special

22 proceeding, which we weren't involved with, the Court made

23 certain rulings as to attorney/client privileged documents,

24 but I will note that not all the parties were defendants in

25 this case were parties to the special proceeding, so we

A. Weisselberg - Petitioner - direct (Solomon) Page 916

1 would still object to the admissibility of this document

2 under attorney/client privilege inasmuch as the document is

3 marked subject to attorney/client privilege.

4 Third, this was a document that was just produced

5 to us by the defendants -- by the plaintiffs, rather, for

6 their use today over the weekend and the order requires one

7 business day. I know Mr. Solomon said it was being used for

8 impeachment. As I heard the testimony, it's not

9 inconsistent. The question was was Mr. Weisselberg involved

10 in the development and he was more focused on the financial

11 side than the development side. So for those three bases we

12 would object to those being introduced into evidence.

13 THE COURT: Should we discuss them one at a time?

14 The statute of limitations objection is a standing

15 objection?

16 MR. ROBERT: Yes, sir.

17 THE COURT: And denied.

18 In terms of the attorney/client privilege, I think

19 once it's out there in the world, you don't get to object on

20 attorney/client privilege anymore. I understand that you

21 would have if you had been part of the investigation.

22 In any event we looked at it and it's not his

23 business, it's not attorney/client privilege. You can't

24 privilege something just by claiming it's attorney/client

25 privilege.

A. Weisselberg - Petitioner - direct (Solomon) Page 917

1 And the third objection that you would have to

2 discuss --

3 MR. ROBERT: The third objection is just of a

4 matter to quote Mr. Kise, if we produce something the night

5 before we're not going to stand on ceremony that it wasn't

6 24 hours. And I appreciate the Court's ruling on the

7 others. I just wanted to preserve the record.

8 THE COURT: And Mr. Solomon?

9 MR. SOLOMON: Do I need to respond? It sounded as

10 if he was just putting it on there to preserve his position

11 if and when they intend to introduce --

12 THE COURT: Well, we're just talking about the

13 third.

14 MR. SOLOMON: The third, very simply, Your Honor,

15 we're using it to impeach the witness so that if he was not

16 involved in the development or easement of the -- with

17 respect to the Seven Springs property.

18 THE COURT: And the document shows that he was?

19 MR. SOLOMON: We believe it does, Your Honor.

20 MR. ROBERT: Again, Your Honor, the question was

21 about the development and it wasn't about the easement.

22 Mr. Solomon's earlier question when he started to use the

23 document and then they -- it was going to be used solely for

24 impeachment purposes they wouldn't be using it saying they

25 intend to use it today because under our stipulation and

A. Weisselberg - Petitioner - direct (Solomon) Page 918

1 order with you the documents for impeachment don't have to

2 be exchanged.

3 So, again, the fact that they gave it to us

4 yesterday, I'm just making the point that we do the same

5 thing. And as far as the rest of it, we understand the

6 Court's ruling. We're just preserving the objection.

7 THE COURT: It's in evidence over two objections

8 and one half objection.

9 MR. SOLOMON: Thank you, Your Honor.

10 Q Sir, if you take a look at this, line four, 668. 668

11 through 680. Do you see that?

12 A 668?

13 Q 668, yes. Do you see where the gray line is across?

14 A Yes.

15 Q Okay. "Bedford seven mansions approved?"

16 A In Bedford, yes.

17 Q If you go up to 666, apologies for that number, but

18 that's where it is on the spreadsheet. "North Castle, land to

19 be used as part of main mansion."

20 Was that the land you were talking about that the

21 existing buildings were on?

22 A I don't know the towns they're in, but there was a

23 mansion already on the property. I do know that.

24 Q And if you go up one more to 665, "New Castle land to

25 be donated?" Do you see that?

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A. Weisselberg - Petitioner - direct (Solomon) Page 919

1 A I see that.

2 Q Okay. Now, the Bedford talks about seven mansions

3 approved; right?

4 A Yes.

5 Q Do you recall the SOFC talked about nine?

6 A Yes. I see that there was numbers. I don't know if

7 they're included in the main mansion as being nine, but I see

8 seven here. So you're saying we undervalued the -- we should

9 have added two more to this?

10 Q I'm asking.

11 A I don't -- again, I didn't do this. I did not do this.

12 This was Jeff McConney's spreadsheet, so I don't know what --

13 why you count seven, I don't know.

14 Q I was trying to understand if you could explain the

15 apparent discrepancy between the seven and the nine. It sounds

16 as if the answer to that is no?

17 A I don't know. Maybe it shouldn't have been nine. He

18 should have raised it. I don't know.

19 Q Should have raised it -- sir, do you recall that there

20 was actually an appraisal done in connection with the donation

21 of a conservation of Seven Springs?

22 A I believe I was involved in that exhausting the fee

23 that was going to be charged by Cushman & Wakefield may have

24 done an appraisal for Sheri Dillon that she was going to use for

25 the conservation easement. Yes, I remember that.

A. Weisselberg - Petitioner - direct (Solomon) Page 921

1 Q You signed the management rep letters; right?

2 A Yes, yes.

3 Q And you don't recall if you knew there was an appraisal

4 showing a difference of somewhere in the area of \$230 million in

5 the valuation of an asset?

6 A Correct. I did not see that appraisal. I don't recall

7 seeing that appraisal, no.

8 Q And it wouldn't matter to you because that's less than

9 five percent of the net worth of 6 billion; correct?

10 A That wouldn't come into play. I don't recall seeing

11 the appraisal.

12 Q The question is a little different.

13 Even if you hadn't seen the appraisal it wouldn't

14 matter to you because \$230 million difference is less than five

15 percent of a net worth of \$6 billion?

16 A Well, I didn't look at the net worth that year.

17 Q So it was 6 billion -- if you saw a difference of

18 \$230 million you wouldn't tell Mazars, would you?

19 It's a yes-or-no question, sir. Would you tell Mazars

20 if you saw the appraisal for an asset that you had previously

21 identified at 291 million come in \$230 million less?

22 A I don't know how to answer the question. The reason

23 why I don't because --

24 THE COURT: You don't know how to answer the

25 question yes or no? Would you have told them if he was

A. Weisselberg - Petitioner - direct (Solomon) Page 920

1 Q Okay. Do you recall the appraised -- withdrawn.

2 Do you recall that Cushman & Wakefield performed that

3 appraisal?

4 A I believe so.

5 Q Cushman & Wakefield is a respected firm?

6 A Correct.

7 Q Do you recall the evaluation they came up with for the

8 entirety of the Seven Springs property, the portion in Bedford,

9 the portion in New Castle, the portion in North Castle?

10 A No, I don't know.

11 Q Would it surprise you to learn that it was in the area

12 of 56 million for everything?

13 A Yes. Again, I have no way to react to that.

14 Q There is no way to react? It's 291 million on this?

15 A Correct.

16 Q And I've -- there is an appraisal for the entirety of

17 the property, including the mansions of 56, 56 and a half

18 million. You have no way to react?

19 A I don't know what the appraisal with everyone

20 including. Were they including mansions, were they including

21 this land. I don't know. I may have seen the appraisal, so for

22 me to comment on that would be unfair.

23 Q You're the CFO -- you were the CFO, excuse me, at this

24 time?

25 A Correct.

Page 922

1 seeing --

2 THE WITNESS: No. The answer is no.

3 Whereupon, the transcript continues on the

4 following page....

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A. WEISSELBERG - DIRECT (MR. SOLOMON) Page 923

1 Q Once you became a trustee, were you responsible for
 2 providing certifications to lending institutions as to the
 3 Statement of Financial Condition of the Trump Organization?
 4 A I believe so, yes.
 5 Q Or the trust, I should say.
 6 A Yes.
 7 MR. SOLOMON: Could we mark as PX 1386, this is a
 8 family of exhibits.
 9 Q Sir, I will direct your attention specifically to page
 10 39 of this exhibit.
 11 A Okay.
 12 Q Are you there, sir?
 13 A I have it.
 14 Q Cover e-mail from Haroula Zapantis, do you see that?
 15 A Yes.
 16 Q Is that person a senior accountant at the Trump
 17 Organization in or about 2017 or was that person?
 18 A Yes.
 19 Q It says, "Please see attached report required per our
 20 loan documents for the above-referenced loan." Do you see that?
 21 A Yes.
 22 Q And the above reference loan is 40 Wall Street, loan
 23 number 28000723. Do you see that?
 24 A Yes.
 25 Q Turn to the next page. Donald J. Trump summary of net

A. WEISSELBERG - DIRECT (MR. SOLOMON) Page 924

1 worth as of June 30, 2017, do you see that?
 2 A I do.
 3 Q Go to the bottom. I, Allen Weisselberg, certify that
 4 the above information is true, correct and complete and fairly
 5 presents the financial condition of Donald J. Trump and it is
 6 signed by you as trustee; is that right?
 7 A Correct.
 8 Q That's your signature?
 9 A Yes.
 10 Q The numbers here are derived from the Statements of
 11 Financial Condition, right?
 12 A I believe so, yes.
 13 Q Well, you certify that it is true --
 14 A Yes. The answer is yes.
 15 Q Why did you issue a certification?
 16 A I'm sorry. I don't understand the question.
 17 Q Sure. You certified that this information was correct?
 18 A Okay.
 19 Q And it was then sent on to Wells Fargo, right?
 20 A Okay.
 21 Q Is that right? Look at the cover page of the e-mail.
 22 A What page is that?
 23 Q One page before, 39 of 230.
 24 A I'm sorry.
 25 Q Take a moment.

A. WEISSELBERG - DIRECT (MR. SOLOMON) Page 925

1 A 39 is the Haroula e-mail.
 2 Q Is the cover, "Please see the attached report required
 3 for per our loan documents"?
 4 A Right.
 5 Q Did you send it or did you cause someone to send it to
 6 Wells Fargo to comply with obligations and loan documents.
 7 A I would say so, yes.
 8 Q Did you understand that there would be a default under
 9 these loan documents if you failed to provide this
 10 certification?
 11 A I don't recall the covenants of the loan off the top of
 12 my head, whether they were cure rights or things of that nature
 13 that we could cure if there was an issue. I don't know the
 14 answer to the question.
 15 Q Did you understand it would be a breach of a covenant
 16 under the loan documents if you didn't send this certification?
 17 A I would imagine so, yes.
 18 Q Now, you certified that the information is true,
 19 correct and complete and fairly presents the financial condition
 20 of Donald J. Trump?
 21 A Correct.
 22 Q You told me this information came from the Statement of
 23 Financial Condition, right?
 24 A Correct.
 25 Q You also told us earlier today that the notes to a

A. WEISSELBERG - DIRECT (MR. SOLOMON) Page 926

1 Statement of Financial Condition are an integral part of that
 2 statement, right?
 3 A Correct.
 4 Q You didn't send the notes, did you?
 5 A I don't know what was required in the loan document,
 6 whether they said we had to send the actual statement. We could
 7 have just done that easily. I don't know what the covenant said
 8 in the loan document.
 9 Q Let me see if I can do this in the affirmative way.
 10 Yes or no, did you send the notes to the financial
 11 statement?
 12 A No.
 13 Q Please turn to page 41. I believe that's the same
 14 certification; is that right?
 15 A Yes.
 16 Q And page 42 is a new document from the same person on
 17 the same -- on November 7, 2017, right?
 18 A Yes.
 19 Q On page 43 is another certification by you?
 20 A Yes.
 21 Q Correct?
 22 A Yes.
 23 Q That's being sent to the lender, correct?
 24 Well, withdrawn.
 25 That's being sent to Wells Fargo; is that right?

A. WEISSELBERG - DIRECT (MR. SOLOMON) Page 927

1 A Is Wells Fargo the servicer of -- I want to give you
 2 an answer that I think will help you. The servicer, Wells
 3 Fargo, I don't know what loan they're servicing and every
 4 servicer requires different things to be sent to them. The loan
 5 documents say that as well. If a loan document said just send
 6 us a summary, then we complied with that covenant in the
 7 mortgage. If it says send us the Statement of Financial
 8 Condition, they would have gotten that.
 9 Evidently, this loan indicated that they wanted a
 10 summary of a net worth, not the Statement of Financial
 11 Condition. Without seeing the document, I'm doing this purely
 12 from logic and memory, so if you had the loan document here and
 13 you could point me to what the covenant indicated, I would be
 14 able to answer the question better for you.
 15 Q I think we can do it even faster without having you go
 16 through all the loan documents. You were sending this to Wells
 17 Fargo to comply with what you believed to be the obligations
 18 under the loan agreements, right?
 19 A Correct.
 20 Q If you look at pages 44 and 45, similarly same date,
 21 being sent to Wells Fargo again, correct?
 22 A Same document over and over again. Same e-mail over
 23 and over again, all dated November 17th.
 24 Q Actually, it is not. If you look at the subject, the
 25 loan numbers are different. On the first one, the loan number

A. WEISSELBERG - DIRECT (MR. SOLOMON) Page 928

1 is 723. On the second one, it is 920. And on the third one,
 2 it's 213. Do you see that now, sir?
 3 A I do, and that's very helpful because each one of those
 4 loans, each one of those loans are, I believe, Ladder Capital
 5 and they required a summary of Mr. Trump's net worth. So,
 6 therefore, based upon what I believed to be the covenant, we
 7 provided the summary and not the Statement of Financial
 8 Condition with the notes.
 9 Q And did you believe you were required to provide this
 10 information to comply with the obligations under the loan
 11 agreements?
 12 A That's correct.
 13 Q Let's turn to the next one at pages -- at page 86.
 14 Excuse me.
 15 A 86, did you say?
 16 Q 86 of 230, yes. The page before, document withheld for
 17 privilege, but we have a summary of net worth as of June 30,
 18 2018. Do you see that?
 19 A I do.
 20 Q Were you certifying as a trustee that the above
 21 information is true, correct and complete and fairly presents
 22 the financial condition of Donald J. Trump?
 23 A Yes.
 24 Q Turn to page 92, please.
 25 A You said 92?

A. WEISSELBERG - DIRECT (MR. SOLOMON) Page 929

1 Q 92, yes, please. We now have October 25, 2018.
 2 A I'm sorry. I'm not there yet.
 3 Q Sure.
 4 A I'm looking at the hard copy.
 5 Q Yes. Do you have it?
 6 A Yes, I'm flipping through it now.
 7 Q This is again referencing loan 28000723, but this is
 8 for October 2018. Do you see that?
 9 A Yes.
 10 Q Did you provide the -- withdrawn.
 11 Did you certify that the above information on page 93
 12 is true, correct and complete and fairly presents the financial
 13 condition of Donald J. Trump as of June 30, 2018?
 14 A This is 40 Wall Street. Yes.
 15 Q Did you understand that this certification was a
 16 requirement under the loan documents?
 17 A Yes.
 18 Q And that a failure to provide this certification would
 19 be a breach of the Trump Organization's obligations under that
 20 loan?
 21 A Yes.
 22 THE COURT: Seven-minute warning. You only have
 23 seven this time.
 24 Q Please turn to page 95 and 96. You'll see again it is
 25 a cover e-mail, but this time, it's for loan 0920 and you

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1 certify again same thing, correct?
 2 A Correct.
 3 Q And did you understand that you were providing this to
 4 Wells Fargo to comply with Trump Organization's obligations
 5 under the reference loan agreement?
 6 A Correct.
 7 Q Did you understand that if you failed to provide it,
 8 the Trump Organization would be in breach of its obligations
 9 under the loan agreement?
 10 A Correct.
 11 Q Next document, page 97 to 98. Again, we have a cover
 12 e-mail, the last four digits of the reference loan is 0123. Do
 13 you see that?
 14 A I do.
 15 Q Same certification, sir?
 16 A Yes.
 17 Q And did you understand that you were providing it in
 18 compliance with the Trump Organization's obligations under the
 19 reference loan?
 20 A Correct.
 21 Q And did you understand that if you failed to provide it
 22 or Trump Organization failed to provide this, that it would be a
 23 breach of its obligations under the loan?
 24 A Correct.
 25 Q Please turn to page 131. Just to confirm, on all of

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1 those certifications, you signed as the trustee, right?

2 A I'm not going to go back now, but I believe so.

3 Q If it says "trustee" under your name, you were signing

4 as trustee?

5 A I didn't want to go back and check them all. Yes.

6 Q Understood. Page 131.

7 A Okay.

8 Q We are now in November of 2019.

9 A Okay.

10 Q First, there is a cover e-mail. You see that?

11 A From Patrick Birney.

12 Q To someone at midlandls.com. Do you see that?

13 A Yes.

14 Q Is that Midland Loan Servicing, if you know?

15 A I don't know.

16 Q Mr. Birney states, "Please see the attached report

17 required per our loan documents for the above-referenced loan."

18 Do you see that?

19 A Yes.

20 Q And up top under subject, there is an encrypt loan

21 number. Do you see that?

22 A Yes.

23 Q If you turn to the next page 132, you're certifying as

24 trustee that the above information is true, correct and complete

25 and fairly presents the financial condition of limited

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1 as of June 30, 2019?

2 A Yes.

3 Q Did you understand that providing that certification

4 was a requirement of the loan documents?

5 A Yes.

6 Q And that if you failed to do so, the Trump Organization

7 would be in breach of one of the covenants under the loan

8 agreements?

9 A A covenant.

10 Q Well, one or more, one or more?

11 A Okay. I don't know how many covenants covered this,

12 but okay.

13 Q At least one?

14 A Yes.

15 Q Let's turn to page 148. We have from Patrick Birney

16 this time to Wells Fargo. Do you see that?

17 A I do.

18 Q And he's attaching a limited guarantor under loans and

19 there are four loan numbers, summary of net worth which appears

20 on page 149. Do you see that?

21 A Yeah. I just don't know what loan it is. There is

22 just a loan number. I don't know what loan it is or

23 what -- but -- what the covenant -- yes. Go ahead.

24 Q You certified the foregoing above information is true,

25 correct and complete and fairly presents the financial condition

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1 guarantor, correct?

2 A Yes.

3 Q Were you providing this certification in connection

4 with the Trump Organization's obligations under the loan

5 documents.

6 A Yes.

7 Q Did you understand if you failed to provide this, the

8 Trump Organization would be in breach of one or more of its

9 obligations under the loan documents.

10 A A covenant.

11 Q Or a covenant of the loan document?

12 A Yes.

13 Q The next page is another certification by you?

14 A Yes.

15 Q Actually or the same loan summaries, two copies were

16 sent. Do you see that?

17 A Yeah. I don't know why.

18 Q Can you, please, turn to page 142.

19 A Okay.

20 Q The middle of the page, Mr. Birney indicates to Tiffany

21 McCallop again at Midland LS that he is overnighting the report

22 to you for delivery tomorrow. Do you see that?

23 A Yes.

24 Q If you turn to page 146, is that your certification of

25 the limited guarantor's summary of net worth for loan 030308089

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1 of limited guarantor, right?

2 A Yes.

3 Q And you understood that was a requirement under the

4 loan agreements?

5 A Correct.

6 Q You understood it would be a breach of a covenant if

7 you did not provide this certification; is that right?

8 A Yes.

9 Q Turn to page 150, again, the cover e-mail. Do you see

10 that?

11 A Yes.

12 Q And 151, another certification by you as trustee?

13 A Correct.

14 Q That the above information is true, correct and

15 complete and fairly presents the financial condition of limited

16 guarantor. You see that?

17 A I do.

18 Q Did you understand that providing this certification

19 was required under the loan agreements?

20 A Yes.

21 Q Did you also understand that it would be a breach of a

22 covenant if you failed to provide a certification?

23 A Yes.

24 Q Please turn to page 152. It is from Patrick Birney to

25 Wells Fargo. Do you see that?

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1 A Yes.

2 Q And you'll see attached on the next several pages is a

3 certification -- all certifications by you that the foregoing

4 information contained on those pages describing a summary of net

5 worth of a limited guarantor under the reference loans as of

6 June 30, 2019 is true, correct and complete and fairly presents

7 the financial condition of limited guarantor; is that correct?

8 A Yes.

9 Q Did you understand that providing this certification

10 was required under the reference loan agreements?

11 A Yes.

12 Q And did you understand that a failure to provide a

13 certification would be a breach of a covenant under the

14 reference loan agreement?

15 A Yes.

16 THE COURT: Want to break or you --

17 MR. SOLOMON: I will be guided by the Court's

18 admonition that 3:20 was the right time.

19 THE COURT: As usual, I will take a 10-minute break

20 over the next 15 minutes.

21 (Witness exits the stand.)

22 (Whereupon, a recess was taken.)

23 (Witness resumes the stand.)

24 THE OFFICER: All rise. Part 37 is back in

25 session. Please be seated and come to order.

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1 THE COURT: Very timely. Thanks. Please continue.

2 Q Mr. Weisselberg, let's talk about Trump Central Park

3 South for a moment if we can.

4 Did there come a time that the Trump Organization

5 sought a loan from Ladder Capital secured by either the

6 residential or commercial units at Central Park South?

7 A I believe so.

8 Q Was this in or around 2017?

9 A I don't recall the year.

10 Q Do you recall that the principal amount of the loan was

11 approximately \$25 million?

12 A Sounds about right.

13 Q Was this a short-term loan of one year or less?

14 A I believe so, yes.

15 Q Do you recall the loan could actually be paid back in

16 two months without penalty?

17 A I don't recall the terms at all.

18 Q Do you recall it could be paid back earlier without

19 penalty?

20 A I don't recall.

21 Q Was the loan entered into -- was the loan entered into

22 because the Trump Organization needed the proceeds from the loan

23 to fund a settlement?

24 A I don't recall -- you know, like every year's -- it's

25 six years ago. I don't remember exactly why.

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1 Q See if I can refresh your recollection. This was a

2 loan with Ladder Capital, right?

3 A Yes.

4 Q In fact, the person on the other side of the loan for a

5 period of time was Jack Weisselberg, your son?

6 A I don't know who Ladder dealt with then, if it was my

7 son, maybe somebody else there. I don't know.

8 Q Did you have communications with Jack Weisselberg about

9 this loan?

10 A It's certainly possible.

11 Q Does it refresh your recollection if I were to tell you

12 that the Trump Organization was waiting on certain sales of

13 units, condominium units to close in order to obtain the funds

14 it needed?

15 A Sounds right.

16 Q Was the reason the Trump Organization needed the loan

17 was because it did not want to use its own cash on hand at that

18 time?

19 A I don't recall the reason why, but I don't recall the

20 reason why.

21 Q Was -- to your knowledge, was there a concern that the

22 Trump Organization, that if it used its own cash on hand, it

23 would breach its liquidity covenants under existing loans with

24 other lenders?

25 A Again, without having the numbers in front of me, I

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1 don't recall.

2 Q Without the numbers, you don't recall one way or the

3 other if the Trump Organization sought this short-term

4 \$25 million loan in order to avoid breaching its liquidity

5 covenants under loan agreements?

6 A I don't recall.

7 Q Doesn't sound familiar to you at all?

8 A It sounds somewhat familiar, but I don't recall.

9 Q See if I can refresh your -- well, let's see if I can

10 refresh your recollection.

11 A Okay.

12 Q Are you familiar with any situation in which you either

13 had a concern or an issue with breaching the liquidity covenants

14 under any loan agreement entered into by the Trump Organization?

15 A Are we going back ever?

16 Q 2011 to present.

17 A Did I ever have a concern about breaching the liquidity

18 requirements under a loan? I honestly -- possibly. Possibly.

19 I just don't recall exactly specifically if I did or not, but

20 it's possible. I don't recall.

21 Q If you don't recall specifically what about generally,

22 do you have a general recollection that you had to take a

23 short-term loan from Ladder in order to pay a settlement?

24 A I recall the time that we had the apartments that we

25 sold, they were contracted to be closed. I don't know what year

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1 it was. When you say 2017, that's certainly possible. I don't
 2 recall the year. Was there a concern about liquidity?
 3 Possibly.
 4 Q So your testimony is it is possible that there was a
 5 liquidity concern over a \$25 million payment; is that right?
 6 A Or we didn't -- or we chose not to use our own cash
 7 for another --
 8 Q That's not my question, sir. You spoke about liquidity
 9 and you said it was possible, so I want to make sure your
 10 testimony is crystal clear.
 11 Is it possible that there was a concern about breaching
 12 a liquidity requirement in existing loan agreements that caused
 13 the Trump Organization to obtain a short-term loan from Ladder
 14 Capital?
 15 A It's possible.
 16 Q Are you familiar with a partnership or partnerships
 17 that the Trump Organization has with Vornado?
 18 A Yes.
 19 Q These partnerships own the buildings at 1290th Avenue
 20 of the Americas in New York; is that right?
 21 A Yes.
 22 Q As well as 555 California Street in California, right?
 23 A Correct.
 24 Q Do those partnership entities maintain bank accounts to
 25 your knowledge?

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1 A I'm sure they do, yes.
 2 Q Between 2011 and your departure from the Trump
 3 Organization, to your understanding, could the Trump
 4 Organization access any of the cash in the partnership accounts
 5 without Vornado's consent?
 6 A Not without, no.
 7 Q To your knowledge, did the cash identified on Mr.
 8 Trump's Statements of Financial Condition between 2011 and your
 9 departure include the cash or his portion of the cash held in
 10 the Vornado partnership accounts?
 11 A I believe it did along with their portion of accounts
 12 payable as well.
 13 Q Is accounting for in that way in a financial statement
 14 a proper way to account for it under GAAP?
 15 A Again, I'm not familiar with GAAP, so I would leave it
 16 up to Mazars.
 17 Q As we saw earlier, you represented to Mazars that the
 18 Statements of Financial Condition complied with GAAP except as
 19 noted, right?
 20 A Based upon Mazars' --
 21 Q Yes or no, sir. You made that representation to Mazars
 22 that the Statements of Financial Condition complied with GAAP
 23 except as noted; is that correct?
 24 A Yes.
 25 Q Do you know Doug Parson?

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1 A I never met him, no. I know the name. I never met
 2 him.
 3 Q Who is he? You communicated with him; is that correct?
 4 A I don't know if I did directly or Jeff and Patrick did.
 5 He may have sent me an e-mail periodically. It's possible. I
 6 just don't remember.
 7 Q Was he at Cushman & Wakefield at some point in time, to
 8 your knowledge?
 9 A I believe he was there and then I think he moved on to
 10 Newmark.
 11 Q Did you ever have any discussions with him whether over
 12 the phone, in person, e-mail, any other form of communication
 13 concerning a valuation issue for any Trump Organization asset?
 14 A If I had a conversation, I don't recall it. It's over
 15 the many years. It's certainly possible we said hello to each
 16 other, but I don't recall speaking with him. That was pretty
 17 much in Jeff and Patrick's hands to deal with him.
 18 THE COURT: But the question wasn't conversation.
 19 It was communication, which would be conversation, face to
 20 face, telephone, e-mail, text, et cetera.
 21 THE WITNESS: Yes, your Honor. As I mentioned,
 22 there may have been an e-mail at some point to me. That's
 23 possible, yes.
 24 MR. SOLOMON: Could we, please, mark PX 3110.
 25 Q Let's take that down and come back to it in a moment.

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1 When Mr. Larson was at Cushman, did the Trump
 2 Organization, not just you, but the Trump Organization, to your
 3 knowledge, use his services?
 4 A I don't recall. I think banks -- banks who were
 5 providing funding -- to answer your question, I don't remember.
 6 (Continued on the next page.)
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1 Q I imagine that you left Cushman at some point in time?
 2 A I believe so.
 3 Q Do you have any idea when that was?
 4 A No.
 5 Q You eventually went Newmark?
 6 A Yes.
 7 Q To your knowledge did anyone at the Trump Organization
 8 use Mr. Larson's services when he was at Newmark?
 9 A Not that I'm aware of.
 10 Q Let's talk a little bit about how the Trump
 11 Organization obtains insurance coverage.
 12 During your time as CFO, let's say from 2011 until your
 13 departure, what was the process, if any, for the Trump
 14 Organization to either renew its existing insurance or obtain
 15 new insurance coverage?
 16 A So Ron Leiberman, whose name I mentioned earlier, he
 17 was in charge of our insurance and he dealt with AON. We'd have
 18 meetings periodically. It was a group of I think three or four
 19 of us who would listen to AON about what was coming up in the
 20 way we rules, what the market was like, where our premiums might
 21 be going, coverages, availability of coverages and then at some
 22 point it will come back with a program whether it was for
 23 liability insurance or for property insurance and -- or aviation
 24 and then we would make some decision as to which policy we would
 25 take.

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1 of Pamela Newton. Do you see that?
 2 A Yes.
 3 Q And you are one of the recipients; right?
 4 A Yes.
 5 Q February 14, 2013?
 6 A Yes.
 7 Q And you say, "Gentlemen, AON is committed to delivering
 8 to the Trump Organization the best service and the best
 9 results;" right?
 10 A Yes.
 11 Q And right under there writes, quote, "a team of four?"
 12 A That's where it came from.
 13 Q I was going to ask you does that refresh your
 14 recollection?
 15 A Yes, I never heard it until -- yes, team of four, okay.
 16 Q Was Pamela Newman the Trump Organization's
 17 representative at AON?
 18 A I think she was the point person.
 19 Q So it's fair to say that the four of you, the team of
 20 four, were involved in dealing with AON?
 21 A I didn't deal with them other than to attend the
 22 meeting. Ron Leiberman dealt with them more on a day-to-day
 23 basis, but when there was a meeting we wanted to discuss our
 24 insurance program, then all four of us would come to those
 25 meetings. I would say for the most part Ron Leiberman was the

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1 Q What about sureties?
 2 A Sorry?
 3 Q What about sureties?
 4 A We had some sureties, not very much, I don't believe.
 5 Relatively small that I can remember. If we used to work on the
 6 golf course and they ask for a surety bond for a few bucks, we'd
 7 put one up. Nothing major.
 8 Q You mentioned there was a group of people. Have you
 9 heard the expression, "a team of four?"
 10 A I did hear it. I don't know where it came from.
 11 Q Did it come from someone at AON?
 12 A Maybe, yes. Yes, possibly.
 13 Q Do you know who the four people are that were part of
 14 that group?
 15 A I was on it, Ron Leiberman, I believe Michael Cohen was
 16 on it, and Matthew Culinary (ph).
 17 Q You mentioned you would meet with AON; is that correct?
 18 A AON with 13.
 19 Q And AON would act as the broker for the Trump
 20 Organization; is that correct?
 21 A Correct.
 22 Q And they would solicit bids from potential insurers;
 23 correct?
 24 A Correct.
 25 Q Sir, this is an e-mail Martha Blackman sent on behalf

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1 one -- was the interface of the company with AON.
 2 Q You were involved in coverage buying decisions?
 3 A We -- all the four of us were.
 4 Q Were you involved in any other aspect of insurance
 5 coverage for the Trump Organization?
 6 A I am not sure -- it's a broad question. I'm not sure
 7 what that means.
 8 Q Well, you will say there are different roles identified
 9 here and after your name it says "coverage buying decisions."
 10 Do you see that?
 11 A I see it now. I was focused over here.
 12 Q That's all right.
 13 And you indicated that other people were involved in
 14 that?
 15 A Correct.
 16 Q I'm just curious if you were involved -- since there
 17 may have seems to be overlap -- if you were involved in any of
 18 the other areas identified in this exhibit?
 19 A No. I wasn't involved in the claims or casualty of
 20 risk. That wasn't something that I did, no.
 21 MR. SOLOMON: Can we move PX 3119 into evidence,
 22 please?
 23 THE COURT: Granted. It's in evidence.
 24 Q Now, did the existing insurers and sureties for the
 25 Trump Organization want to see annual financial statements?

A. Weisselberg - Petitioner - direct (Solomon) Page 947

1 A The insurance companies, meaning the ones that bought
 2 the property insurance and liability insurance?
 3 Q Yes.
 4 A I don't recall them asking for it, no.
 5 Q Do you recall if the sureties asked for an opportunity
 6 to review the financial statements?
 7 A The surety, yes.
 8 Q In fact, as a condition of either retaining a new
 9 surety coverage, the sureties insisted upon it; is that right?
 10 A That I don't know, but we had meetings every year and I
 11 don't know who that was -- yes, I don't know whether or not that
 12 was a requirement. Ron Leiberman might know that it was a
 13 requirement, but when they asked me to attend the meeting, I
 14 would just go to the meeting with the Statement and review it
 15 with them.
 16 Q Okay. You didn't give them a copy -- excuse me -- you
 17 didn't give the surety company a copy of the Statement of
 18 Financial --
 19 A No, we allowed them into the office to spend as much
 20 time to review it, yes.
 21 Q And they were allowed to make notes; right?
 22 A Yes.
 23 Q Did you have any understanding as to why they wanted to
 24 come in each year and review the current -- or then current
 25 Statement of Financial Condition?

A. Weisselberg - Petitioner - direct (Solomon) Page 948

1 A I really don't know why.
 2 Q Did you have an understanding that they would decline
 3 to renew your policy if you did not give them the opportunity --
 4 let me rephrase that.
 5 Did they require the Trump Organization to give them an
 6 opportunity to review the Statement of Financial Condition as a
 7 condition of renewing the policy?
 8 A If that were the case they would have communicated that
 9 to AON who would have communicate that to Ron Leiberman who
 10 would have asked me to go to a meeting with the Statement of
 11 Financial Condition.
 12 Q When the sureties or representatives from the sureties
 13 came to your offices to review the Statements of Financial
 14 Condition were you present?
 15 A Yes.
 16 Q Did anyone from any of sureties ever ask, either you
 17 directly or in your presence, whether there were appraisals from
 18 any of the assets identified on the Statements of Financial
 19 Condition?
 20 A Not that I can remember.
 21 Q Did you ever come to learn that any of the sureties
 22 asked about the existence of appraisals from any of the assets
 23 on the Statement of Financial Condition?
 24 A I'm not sure I understand that. Learned from?
 25 Q First question was in your presence?

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1 A Oh.
 2 Q The second was did you ever learn from anyone else that
 3 they had made that request?
 4 A I do not recall that, no.
 5 Q Did you ever advise any of the brokers, insurers or
 6 sureties that you had appraisals performed by a third party for
 7 any of the assets on the Statements of Financial Condition?
 8 A I don't recall them doing that, no.
 9 Q You don't recall. Is it possible you did?
 10 A No, he didn't.
 11 Q Did you ever advise any of the brokers, insurers or
 12 sureties that you had valuations performed by a third party from
 13 any of the assets on the Statements of Financial Condition?
 14 A Not that I can remember, no.
 15 Q Let's take a look at PX 1552. Actually, before we --
 16 no.
 17 MR. SOLOMON: I guess 3119 came into evidence
 18 already; right? It did?
 19 Q Okay. Let's turn to PX 1552, please.
 20 Sir, do you recall meeting with someone from Zurich
 21 Insurance in or about November of 2018?
 22 A We met with them manually, so I'm not sure the date,
 23 but we met with them manually.
 24 Q Do you recognize the name Claudia Markarian?
 25 A I don't know who she is because the people changed

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1 every couple years, so if she was there on behalf of Zurich, I
 2 would say she was a representative, yes.
 3 Q Do you also have in front of you, please, PX 773, which
 4 is the June 30, 2018 Statement of Financial Condition.
 5 Now, sir, if you look at Ms. Markarian's notes and you
 6 go down to the "cash on hand," which is under the 11/28/2018,
 7 the third dash. Do you see that?
 8 A Yes.
 9 Q Okay. And if we turn to the Statement of Financial
 10 Condition assets page, please. You'll see Ms. Markarian notes
 11 cash on hand was 76.2 million. That matches exactly; right?
 12 A Correct.
 13 Q And she notes escrow funds were 22.7 million?
 14 A Correct.
 15 Q Matches?
 16 A Correct.
 17 Q Total assets, 6.6 billion. Do you see that in the next
 18 dash on Ms. Markarian's notes?
 19 A I'm looking. I'm sorry.
 20 Q Sorry. If you look up on the screen, sir? It's
 21 highlighted?
 22 A Yes, yes.
 23 Q And if you look on the Statement of Financial
 24 Condition, 6.538, round it to 6.6 billion. So she is right
 25 again?

A. Weisselberg - Petitioner - direct (Solomon) Page 951

1 A Yes.

2 Q The largest property is Trump Tower at 732. Do you see

3 that?

4 A Yes.

5 Q And on the Statement of Financial Condition Trump Tower

6 first entry 732. So her notes are all consistent with the

7 Statements of Financial Condition; right?

8 A She is copying numbers from here, so she should be

9 accurate.

10 Q She is right about everything; right?

11 A About that.

12 Q About that, okay.

13 Now, she also states in the fourth dash, second

14 sentence: "The fair value of the properties is determined by

15 professional firms (such as Cushman & Wakefield) using cap rates

16 and net operating income as factors." Do you see that?

17 A Not correct.

18 Q It's not correct?

19 A Not correct. As a matter of fact, if you look at a

20 prior underwriter's report that is absolutely not correct.

21 Q So she is right about everything else except that?

22 A Well, it's easy to copy numbers, but where she got that

23 from, I don't know.

24 MR. SOLOMON: Let's mark as PX 1561 for

25 identification, please.

A. Weisselberg - Petitioner - direct (Solomon) Page 952

1 Q Now, this is another meeting note report from

2 Ms. Markarian; correct?

3 A I happened to glance down to the same area you

4 mentioned before --

5 Q Okay.

6 A -- with the appraisals.

7 Q And she has cash on hand matches?

8 A Yes, good copy job. She is copying numbers from there.

9 Q She got it all right for the numbers; right?

10 A She copied the numbers correctly.

11 Q Okay. The fifth dash, second sentence?

12 A Yes.

13 Q "The fair value of the properties is appraised annually

14 by a professional firm. This year it was done by Newmark Group

15 and has previously done" -- "been done by Cushman & Wakefield."

16 The reason for the change is the individual at Cushman

17 & Wakefield with whom the organization had a longstanding

18 relationship with moved to work at Newmark?

19 A Correct.

20 Q Hence, Trump Organization continued to work with the

21 same person for their property valuations. Do you see that?

22 A That is work with the same person to gather the data,

23 as I indicated earlier this morning, from Doug Larson to give us

24 some summary of properties that was sold to get cap rates and be

25 able to do comps. That's what we got from Doug Larson and he

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1 never did appraisals for us. We don't have any appraisals from

2 him.

3 Q Did you tell Ms. Markarian that you were using someone

4 at Cushman?

5 A No. I -- it may have been Jeff. It may have been Jeff

6 who is sitting in the same meeting or Patrick Birney that they

7 were reaching out to Cushman, speak to Doug Larson to get this

8 report every year. So we can take that report and be able to

9 take it and to be able to value up partial properties.

10 Q And Ms. Markarian was correct that the Trump

11 Organization's person had moved from Cushman to Newmark; right?

12 A Whoever dealt with her at the time, whether it was Jeff

13 or Patrick Birney, probably told her that, sure.

14 Q You don't recall ever telling her that?

15 A I don't recall telling her that, no.

16 Q Were you present when someone told her that?

17 A I don't remember if it was Jeff or Patrick. When I --

18 my purpose in those meetings if you read her notes carefully it

19 indicated that I spoke to her on the company on a broad basis;

20 where the company was going, what it was doing, our debt that we

21 had with her company, but when it came to discussing asset

22 valuations, that I left to Jeff and to Patrick since they work

23 on those. I never discussed that with her, no.

24 Q Were you present for all the conversations Jeff and

25 Patrick had with Ms. Markarian?

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1 A It was all purpose of the same meeting.

2 Q So were you there when they described to her how the

3 assets were valued?

4 A Yes, I was at the meeting and they told her that they

5 called Doug Larson and Larson provided a summary of comps for

6 downtown Manhattan or midtown Manhattan and he would take those

7 -- Jeff would take those comps or Patrick would, valuations and

8 cap rates and so on and then he would do his computation, but to

9 say that we --

10 THE COURT: Finish, please.

11 A To say that we got appraisals from them, that was -- I

12 don't recall that conversation at all.

13 THE COURT: Can you read back the last question?

14 And listen carefully.

15 (Whereupon, the requested portion of the

16 proceedings was read back by the court reporter.)

17 THE COURT: That's a simple yes or no --

18 THE WITNESS: Yes, I was there.

19 Q Were you there when they told her that their person had

20 left Cushman and gone to Newmark?

21 A I don't know if he told her that then or later. I may

22 have gone out for a minute, so it's possible I was sitting there

23 at the time.

24 Q So is it possible when you went out for a minute, they

25 told them -- they told Ms. Markarian they had valuations?

A. Weisselberg - Petitioner - direct (Solomon) Page 955

1 A They didn't have valuation.
 2 Q Wasn't my question.
 3 Before you said you were in the meeting; now you said
 4 you may have stepped out for a minute?
 5 A No. The question you asked me was I there when they
 6 told her that Mr. Larson moved from Cushman to Newmark. I
 7 probably was sitting there when they said that, but is it
 8 possible they ran for a second to do something, it is.
 9 But as far as valuation are concerned we have never
 10 gotten appraisals on our properties. We didn't have a reason
 11 to. If we were going for financing a bank would require that
 12 they would do it. We have no reason to go out and just
 13 arbitrarily spend hundreds of thousands of dollars, hundreds of
 14 thousands of dollars to appraise a property. For what purpose?
 15 She is not a real estate person. She is in insurance
 16 business. She doesn't know a good appraisal property from
 17 something else, but we had no real reason to go out and get an
 18 appraisal. It was no purpose for it.
 19 Q So now you're testifying about what you believe
 20 Ms. Markarian knows and doesn't know?
 21 A No. I'm saying she worked for an insurance company and
 22 I think don't know if she has the knowledge of real estate, but
 23 from what she's written here it just seems as though she does
 24 not. I'm not telling you she doesn't. I just want to read it.
 25 Q You said you didn't get appraisals; right?

A. Weisselberg - Petitioner - direct (Solomon) Page 956

1 A We did not get appraisals.
 2 Q Did you have an appraisal for 40 Wall Street? In the
 3 Trump Organization's possession was there an appraisal for 40
 4 Wall Street?
 5 A There was --
 6 Q It's a yes-or-no question, sir.
 7 MR. KISE: In what year are we talking about now?
 8 What year of this meeting are we talking about, in 2011?
 9 THE COURT: The question is at anytime.
 10 MR. KISE: At anytime.
 11 MR. SOLOMON: The witness has testified we didn't
 12 get appraisals.
 13 THE WITNESS: We didn't get -- we didn't hire
 14 anybody to get appraisals.
 15 Q But did you have appraisals in your possession?
 16 A It's possible, but we never ordered an appraisal.
 17 Q Let's talk about appraisals you had in your possession,
 18 whether or not you ordered them or came into their possession
 19 through some other means. Did the Trump Organization have
 20 appraisals in its possession?
 21 A If we had appraisals it doesn't necessarily mean we
 22 used them for any purpose. Well, if you want a yes-or-no
 23 answer, that's what you're looking for, the answer is I don't
 24 remember if we had appraisals. I don't recall at this point if
 25 we had appraisals in our office.

A. Weisselberg - Petitioner - direct (Solomon) Page 957

1 Q At any point in time did you have an appraisal for 40
 2 Wall Street?
 3 A It's possible. I don't recall.
 4 Q Did you have an appraisal for Seven Springs?
 5 A That was done for the conservation easement.
 6 Q So the answer is yes?
 7 A Yes.
 8 Q At some point in time do you recall obtaining a copy of
 9 an appraisal that was done for a lender on what was referred to
 10 as the Miami property?
 11 A I don't know what property that is.
 12 Q Did you sign a lease to allow a lender to provide a
 13 copy of an appraisal to you for a property in Florida?
 14 A I may have. I don't recall.
 15 Just so you understand, if I may? Appraisals basically
 16 is an art. It's not a science. An appraisal doesn't
 17 necessarily mean what the person preparing that appraisal is
 18 always perfect. History has proven that all the time because
 19 you can have a recession and three years before that no one
 20 could have thought of a recession and all of a sudden values
 21 that were projected to being X now became Y because nobody could
 22 predict the future and know what you know at the time, but
 23 again, it's an art. It's not a science.
 24 THE COURT: Okay. There is no question.
 25 MR. SOLOMON: Your Honor, move to strike as

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1 nonresponsive as there was not even a question pending.
 2 THE COURT: Granted. That whole speech is
 3 stricken. There wasn't any question.
 4 Q I'll just make sure that my question wasn't too narrow.
 5 When I'm asking about appraisals the Trump Organization
 6 has, I'm including appraisals that may have been done by a bank
 7 but then subsequently came into the Trump Organization's
 8 possession. Did you understand my question to include those as
 9 well?
 10 A No, I didn't before.
 11 Q Okay. Then let's go back.
 12 THE COURT: I didn't either for the record.
 13 MR. KISE: I didn't either. That's why I'm making
 14 my objection about time frame because it's very confusing.
 15 We're talking about a 2019 meeting. Does he mean at anytime
 16 in the 30 years?
 17 THE COURT: I don't think we're talking about the
 18 2019 meeting anymore.
 19 Q Let's limit it to 2011, the time when you left the
 20 Trump Organization.
 21 Did the Trump Organization have in its possession
 22 appraisals, whether or not ordered by the Trump Organization, a
 23 lender or some other third party?
 24 A It's a possibility we had some, yes.
 25 Q And did you or anyone in your presence advise

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1 Ms. Markarian that you had those appraisals?
 2 A Not that I can remember. When she was there we talked
 3 about a specific year. If it was a yes-or-no answer, it doesn't
 4 fit into the category. I'm sorry.
 5 I don't mean to be disrespectful to the Court, but if
 6 he's talking about 2019 did I have an appraisal in 2018 or 2019,
 7 I don't think we did. If we're going back to an earlier year,
 8 maybe we're discussing 2019 right now. Are you referring to a
 9 different time period?
 10 Q I'm asking from 2011 to your departure.
 11 A Did we ever have an appraisal? We may have an
 12 appraisal a year after it was issued, possibly. Banks don't
 13 have to give it to you; it's their property. They -- we pay for
 14 it, but it belongs to them.
 15 Whereupon, the transcript continues on the
 16 following page....
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A. WEISSELBERG - DIRECT (MR. SOLOMON) Page 960

1 Q Let's talk about Mar-A-Lago for a moment. Are you
 2 aware of any deed restrictions relating to the Mar-A-Lago
 3 property?
 4 A I'm not familiar with the deed regarding Mar-A-Lago.
 5 It happened many, many years ago. I don't -- I don't recall
 6 reading the deed. I may have had it in my file -- in my
 7 office. I never even looked at it. It's more a legal document
 8 that the lawyers in our office might have, but I never
 9 del- -- I never really delved into it, no.
 10 Q Do you know if Mr. McConney was aware of any deed
 11 restrictions relating to Mar-A-Lago?
 12 A I don't know if he did or did not. I don't know.
 13 Q Do you know if Mr. McConney considered any deed
 14 restrictions with respect to Mar-A-Lago when determining the
 15 value of the property for the Statements of Financial Condition?
 16 A I don't know.
 17 Q But you testified earlier you relied upon Mr. McConney?
 18 A I did.
 19 Q For the Statements of Financial Condition, correct?
 20 A Correct.
 21 Q I'm going to go back to the Statements of Financial
 22 Condition for a moment. Once you became a trustee and Mr. Trump
 23 became president, who, if anyone, had final signoff authority
 24 for the SOFC's?
 25 A Good question.

A. WEISSELBERG - DIRECT (MR. SOLOMON) Page 961

1 Q Thank you.
 2 A You're more than welcome. I don't recall how -- I
 3 think once the statement was complied, whether we went to Eric
 4 Trump and just showed it to him, I just don't remember what
 5 happened. It was a lot going on because the company changed how
 6 we do business because of Donald not being there. It was easier
 7 for me to walk into his office. I don't recall whether anyone
 8 had a final signoff on the documents. I don't recall.
 9 Q At some point before you sent it to Mazars, you had to
 10 have a comfort level that it was complete and accurate, right?
 11 A That it was -- yes.
 12 Q And who made the final call that it was complete and
 13 accurate?
 14 A I don't remember. I don't remember when we -- whether
 15 Jeff went down to Eric and spoke to him or not. I just don't
 16 remember.
 17 Q Donald Trump, Jr. was also a trustee, correct?
 18 A Correct.
 19 Q For the statement of financial condition after Mr.
 20 Trump became president, those were statements that were done by
 21 the trustees; is that correct?
 22 A Statements done by the trustees?
 23 Q It says the trustees have -- to the effect of the
 24 valuations have been done by the trustees in consultation. Do
 25 you recall that?

A. WEISSELBERG - DIRECT (MR. SOLOMON) Page 962

1 A No.
 2 Q Let's open that up, PX 773. Do you recognize this to
 3 be the Donald J. Trump Statement of Financial Condition for year
 4 ending June 30, 2018?
 5 A Yes.
 6 Q Turn to the second page.
 7 A Okay.
 8 Q Very first line, the trustees of the Donald J. Trump
 9 Revocable Trust dated April 7, 2014 as amended on behalf of
 10 Donald J. Trump are responsible for the accompanying Statement
 11 of Financial Condition as of June 30, 2018 and the related notes
 12 to the financial statement in accordance with accounting
 13 principles generally accepted in the United States of America,
 14 do you see that?
 15 A Yes.
 16 Q If you can turn to under real and operating properties,
 17 Trump Park Avenue. Do you see that?
 18 A Sorry? I'm looking at the hard copy.
 19 Q Sure. Page seven, page 9 of 24 of the exhibit.
 20 A Yes.
 21 Q You will see the estimated -- just for Trump Park
 22 Avenue as an example, the estimated current value of 175,700,000
 23 is based upon an evaluation made by the trustees in conjunction
 24 with their associates and outside professionals of the amount
 25 that will be earned as a result of the sale of the remaining

A. WEISSELBERG - DIRECT (MR. SOLOMON) Page 963

1 condominium units as well as applying a capitalization rate to
 2 the stabilized net operating income to be derived from the
 3 commercial space.
 4 A Yes.
 5 Q Does that refresh your recollection that the trustees
 6 in conjunction with their associates, outside professionals,
 7 others made a determination as to the evaluation that appears on
 8 the Statement of Financial Condition?
 9 A Those words took the place of Donald J. Trump.
 10 Q So did the trustees do anything or did they just use
 11 the prior numbers?
 12 A Prior numbers?
 13 Q In other words, it says the trustees made an
 14 evaluation, right?
 15 A The statement was prepared the same way every year if
 16 that's your question. But now, instead of Donald J. Trump and
 17 his associates and outside professionals, it now says trustees
 18 instead.
 19 Q What, if anything, did you as a trustee do to determine
 20 the estimated current value of 175,700,000 as reflected in the
 21 document that we're looking at?
 22 A Same thing I did before. The CFO Jeffrey McConney and
 23 Patrick Birney arrived at values and I reviewed them.
 24 Q Other than reviewing someone else's work, did you do
 25 any independent work?

A. WEISSELBERG - DIRECT (MR. SOLOMON) Page 964

1 A No. I'm not a valuation person. I relied upon the
 2 people that I relied upon in the prior 25 years.
 3 Q I believe you told me earlier Donald Trump, Jr. was
 4 also trustee at this point in time?
 5 A Yes.
 6 Q What, if anything, did he do, to your knowledge, to
 7 determine the estimated current value?
 8 A I don't believe he did anything. It was -- it was
 9 done by the same people that did it for 25 years.
 10 Q And those are people you relied upon?
 11 THE COURT: Ten-minute warning.
 12 A Yes.
 13 Q Did Donald J. Trump have any familiarity with these
 14 people, to your knowledge?
 15 A People meaning --
 16 Q Meaning the ones you relied upon.
 17 A Jeffrey McConney and Patrick Birney?
 18 Q Yes.
 19 A Yes.
 20 Q Do you know if he relied upon the same people you
 21 relied upon?
 22 A I believe he did, yes.
 23 Q Are those the associates that are referred to in this
 24 description in the notes?
 25 A Along with others that may have worked with Jeff and

A. WEISSELBERG - DIRECT (MR. SOLOMON) Page 965

1 Patrick. There were people that got other information as I
 2 mentioned earlier this morning. Different parts of the
 3 statements were done by different people, so not just Jeff and
 4 Patrick, but it could have been some other people that submit
 5 information that Jeff and Patrick needed in order to finish the
 6 statement such as cash balances and things of that nature.
 7 Q Did you discuss the Statement of Financial Condition
 8 before it was finalized with Donald Trump, Jr. for the years
 9 when you were both trustees?
 10 A I don't remember. I don't remember.
 11 Q Do you know if Mr. McConney or anyone in his direction
 12 ever explained to Donald Trump, Jr. during the years he was a
 13 trustee how the values were calculated on the Statement of
 14 Financial Condition?
 15 A That is something you would have to ask him if he did
 16 it. I don't know.
 17 Q Was it -- was that explanation ever given or
 18 description ever given in your presence?
 19 A Not in my presence, no.
 20 Q Did you tell Donald Trump, Jr. during the time you were
 21 both trustees how the values were calculated?
 22 A Not that I can remember.
 23 Q Do you know if Mr. McConney ever provided a copy of his
 24 supporting data spreadsheet to Donald Trump, Jr. when Mr. Trump
 25 was a trustee?

A. WEISSELBERG - DIRECT (MR. SOLOMON) Page 966

1 A If he did, I wouldn't know about it. I wasn't there to
 2 see it.
 3 Q Sir, we put back up and I asked you to look at the
 4 third page of the exhibit. That's the asset page. We were
 5 talking generally about the Vornado cash earlier. Do you recall
 6 that?
 7 A I do.
 8 Q This was amounts that were held in the partnership
 9 accounts for the partnerships between the Trump Organization and
 10 Vornado, right?
 11 A Correct.
 12 Q That's what we were talking about.
 13 Just so we're clear, does that \$76,200,000 number
 14 include any of the cash that's held in the Vornado accounts?
 15 A Again, if you can show me the spreadsheet that Mr.
 16 McConney put together, that might answer the question. It would
 17 help me.
 18 Q As you sit here today, do you know --
 19 A I think it does, but I would like to be reassured by
 20 looking at the spreadsheet if you don't mind.
 21 Q We can go back to that.
 22 For the club facilities and related real estate, do you
 23 see that entry?
 24 A Yes.
 25 Q 2.3499. To your knowledge, does that include future

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A. WEISSELBERG - DIRECT (MR. SOLOMON) Page 967

1 development of any of those properties?
 2 A Yes.
 3 Q Is the value of that future development for any of
 4 those properties discounted to present value?
 5 A No. I believe according to GAAP, we are allowed to use
 6 future value to value the asset this way. We relied upon the
 7 Mazars firm. They saw the spreadsheets. They saw the future
 8 value and they did not say anything about the number at all.
 9 Otherwise, it would have changed.
 10 Q So now you're telling me you do know something about
 11 GAAP?
 12 A I know about GAAP as we discussed this morning, about
 13 what the personal statement versus a corporate statement.
 14 That's my limited knowledge of GAAP.
 15 Q Well, you just told me that GAAP allows you to record
 16 that without having to reduce it to present value. You just
 17 told me.
 18 A What I told you was that Donald Bender and Mazars's
 19 firm who are GAAP experts, who are a CPA firm, they know the
 20 rules of GAAP and they allowed future values to be put on this
 21 statement because they saw the spreadsheet from Mr. McConney and
 22 it showed future value. So based on that, I understand that you
 23 could use future value in order to be able to value assets on a
 24 personal financial statement.
 25 Q And it is your testimony that they saw future values on

A. WEISSELBERG - DIRECT (MR. SOLOMON) Page 969

1 not comply with GAAP because they were the GAAP experts.
 2 Q And they were -- withdrawn.
 3 It was represented to them that those statements
 4 complied with GAAP by you, sir; is that right? Yes or no?
 5 A Represent in a letter that they prepared for me to
 6 sign.
 7 Q The management representation letter from the Trump
 8 Organization to Mazars, right?
 9 A That was prepared by Mazars.
 10 Q And you signed it?
 11 A That's correct.
 12 Q And you gave it to Mazars?
 13 A Correct.
 14 Q And you knew that they wouldn't have issued the SOFC's
 15 without them, right?
 16 A I knew that they -- the answer is yes.
 17 Q Thank you.
 18 A Right.
 19 MR. SOLOMON: Your Honor, it is 4:29.
 20 THE COURT: You're really pushing it, aren't you,
 21 Mr. Solomon?
 22 I think unless there is something else, we will
 23 come back tomorrow at ten o'clock.
 24 MR. SOLOMON: Your Honor, could we have an
 25 instruction to the witness to not discuss his testimony with

A. WEISSELBERG - DIRECT (MR. SOLOMON) Page 968

1 the spreadsheet; is that right?
 2 A I -- again, without having the spreadsheet in front of
 3 me, that's all Bender would have had in front of him.
 4 Q Well, you just said they saw the spreadsheet.
 5 A Yeah. Yeah, because Jeff gave them every spreadsheet.
 6 Whatever they wanted, Jeff will give it to them.
 7 Q Is it your testimony that those spreadsheets indicated
 8 that those were future income streams?
 9 A I believe -- I'm trying to recall without seeing the
 10 spreadsheet in the words that are on there. I believe so.
 11 Q But you, sir, on behalf of the Trump Organization up
 12 until when Mr. Trump became president and then as a trustee
 13 certified or represented to Mazars that the statements complied
 14 with GAAP you did that, right? Yes or no?
 15 A Yes.
 16 Q Mazars didn't certify to you that they were complying
 17 with GAAP, did they; yes or no?
 18 A Yes.
 19 Q Yes, they did?
 20 A Rephrase your question.
 21 THE COURT: Perfect example.
 22 MR. SOLOMON: Yes.
 23 Q Did Mazars certify to the Trump Organization that the
 24 Trump Organization's financials complied with GAAP?
 25 A Mazars would not have released a statement if it did

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1 counsel during the evening break?
 2 THE COURT: Okay. He can't discuss it with anyone.
 3 Mr. Weisselberg, don't discuss this case, your
 4 testimony or anything about it with anyone.
 5 THE WITNESS: I won't.
 6 (Witness excused.)
 7 (Whereupon, the trial was adjourned to October 11,
 8 2023 at 10:00 a.m.)
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	854:23;962:12	addressed (2)	788:25;791:24;	ambiguity (1)
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\$10 (2)	811:17,19;878:25;	adjourned (1)	900:25;901:12;904:25;	Amended (3)
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\$2 (1)	account (4)	adjusted (2)	agree (7)	amendment (7)
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903:22	accountant (2)	831:22	agreement (11)	847:15;857:9
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825:18	966:9,14	adopt (1)	airplane (1)	amount (8)
\$6 (4)	accurate (10)	856:5	809:15	802:10;814:22;
812:1;825:18;826:9;	806:14;821:2;824:4;	adverse (1)	Alan (1)	842:5;887:22;911:19;
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\$76,200,000 (1)	872:10;951:9;961:10,	advice (1)	A-l-a-n (1)	amounts (2)
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able (13)	across (3)	advisor (2)	783:7.5;785:15;	899:5
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In The Matter Of:
NYS AG v.
Donald Trump, et al.

Nicholas Haigh
October 11, 2023

Janelle C. London, RMR, CRR & Nicole Robinson, SCR

Original File Trump101123.txt

Min-U-Script® with Word Index

1 SUPREME COURT OF THE STATE OF NEW YORK
 2 COUNTY OF NEW YORK : CIVIL TERM : PART 37
 3 ----- X
 4 PEOPLE OF THE STATE OF NEW YORK, BY
 5 LETITIA JAMES, ATTORNEY GENERAL OF
 6 THE STATE OF NEW YORK,
 7
 8 Plaintiff,
 9
 10 Index No.
 11 -against- 452564/2022
 12 DONALD J. TRUMP; DONALD TRUMP, JR.; ERIC TRUMP;
 13 IVANKA TRUMP; ALLEN WEISSELBERG; JEFFREY MCCONNEY;
 14 THE DONALD J. TRUMP REVOCABLE TRUST; THE TRUMP
 15 ORGANIZATION, INC.; TRUMP ORGANIZATION, LLC;
 16 DJT HOLDINGS, LLC; DJT HOLDINGS MANAGING MEMBER;
 17 TRUMP ENDEAVOR 12, LLC; 401 NORTH WABASH VENTURE,
 18 LLC; TRUMP OLD POST OFFICE, LLC; 40 WALL STREET,
 19 LLC.; AND SEVEN SPRINGS, LLC,
 20
 21 Defendants. X
 22 60 Centre Street
 23 New York, New York 10013
 24 October 11, 2023
 25
 B E F O R E:
 HONORABLE ARTHUR F. ENGORON,
 Justice, Supreme Court
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 (Appearances continued on the next page.)

1 THE COURT OFFICER: All rise. Part 37 is now in
 2 session. The Honorable Judge Arthur Engoron presiding.
 3 Make sure all cell phones are silent. Laptops and
 4 cell phones will be permitted, but only to members of the
 5 press. There is absolutely no recording or photography of
 6 any kind allowed in the courtroom. Now be seated and come
 7 to order.
 8 THE COURT: Tommy, do you want some hot tea after
 9 that?
 10 Thanks for being here. Of course I don't read the
 11 papers and go online and look to read about this case, but
 12 there is some issue that keeps coming up: there is no jury.
 13 It's not just because we need a box for the screen there.
 14 As the lawyers know and the lay people may not, there is law
 15 and then there is equity.
 16 In law, generally legal cases are about money
 17 damages; equitable cases are about injunctive relief,
 18 telling someone you can and can't do something. And here's
 19 how it's determined whether there is a jury or not. When --
 20 either side, any party can file a Note of Issue saying that
 21 disclosure is finished and the case is basically ready for
 22 trial, the person who files that Note of Issue checks off a
 23 box, says they want a jury trial or they don't want a jury
 24 trial. That's assumed to be the case, but the other side
 25 has I think it's 15 days or so to object and say no, we

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 25
 Also Present:
 David Zensky, Esquire

 NICOLE C. ROBINSON, CSR
 JANELLE C. LONDON, RMR, CRR
 Senior Court Reporters

1 don't want a jury or no, we want a jury and then it's up to
 2 the judge to decide is this a legal case with a jury or an
 3 equitable case with no jury.
 4 I believe what happened here is the Attorney
 5 General clearly checked off nonjury and there was no motion
 6 to -- for a jury, but my research and Allison's research
 7 told us that all the relief requested here was equitable.
 8 So it would not have helped to make a motion. Nobody forgot
 9 to check off a box. We're having a nonjury trial because
 10 this is a nonjury case, sometimes called a bench trial.
 11 That's why I'm sitting up here.
 12 Would anybody like to correct me or comment on
 13 that?
 14 MS. HABBA: I would like to say thank you, Your
 15 Honor.
 16 Press, did you hear that? I didn't forget to check
 17 the box.
 18 MR. WALLACE: Your Honor, I would just add that
 19 actually in New York practice unlike, say, federal practice,
 20 the Court is to determine what the weight of the claims are
 21 and so that it will not have a divided jury and trial claims
 22 the way you might in federal practice and that if the relief
 23 is primarily either equitable or legal is what determines
 24 whether there will be a jury or not. We do not in state
 25 practice have the opportunity to divide trials as you might

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1 in federal practice.
 2 MS. HABBA: Thank you. And we did discuss it on
 3 March 3rd and we discussed this exact topic, but thank you,
 4 Your Honor. I appreciate it.
 5 THE COURT: Sure. We're all learning.
 6 MS. HABBA: Yes.
 7 THE COURT: Okay. I understand that there is an
 8 attorney that would like to address the Court and everyone
 9 else about the next witness?
 10 MR. ZENSKY: David Zensky for the record.
 11 I'll be brief. Good morning, Justice Engoron.
 12 David Zensky of Akin Gump Straus Hauer & Feld, and we are
 13 counsel for Deutsche Bank.
 14 As the Court knows, today's witness is being called
 15 to testify about events that occurred while employed at
 16 Deutsche Bank in the credit risk management area. I
 17 appeared in court today for the limited and almost certainly
 18 unnecessary purpose of protecting against the disclosure of
 19 Deutsche Bank's -- information protected by Deutsche Bank's
 20 attorney/client or work product privileges and/or to prevent
 21 the disclosure of information that is confidential,
 22 supervisory information which the bank is obligated to keep
 23 secret under federal and state regulations.
 24 I've consulted with counsel for all parties and no
 25 one has an objection to being heard on an issue should it

N. Haigh - Petitioner - direct (Wallace) Page 977

1 approaches the witness stand.)
 2 THE COURT OFFICER: Please raise your right hand.
 3 Do you solemnly swear or affirm that any testimony you give
 4 will be the truth, the whole truth and nothing but the
 5 truth?
 6 THE WITNESS: Yes, I do.
 7 THE COURT OFFICER: Please have a seat.
 8 State your name and either business or home address
 9 on the record.
 10 THE WITNESS: My full name is James Nicholas Haigh.
 11 My home address is 712 Seney Avenue, Mamaroneck, New York,
 12 and I am currently retired.
 13 THE COURT: And I'll ask the witness to speak
 14 loudly, slowly, clearly. And these microphones are very
 15 particular; you have to be really close to them.
 16 THE WITNESS: I apologize.
 17 THE COURT: Please proceed, Mr. Wallace.
 18 DIRECT EXAMINATION
 19 BY MR. WALLACE:
 20 Q Good morning, Mr. Haigh. I believe we met at your
 21 deposition, but my name is Kevin Wallace. I'm an attorney with
 22 the New York Attorney General's Office.
 23 Just at the start, can you describe your educational
 24 background for the Court?
 25 A Yes. So I grew up in Brittain high school. I went to

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1 arise, but no one believes that such an issue will arise, so
 2 I'd simply ask the Court for permission to be recognized of
 3 need be.
 4 THE COURT: Okay. How should we do this
 5 logistically? Do you want to sit towards the front and
 6 raise your hand if there is an issue?
 7 MR. ZENSKY: Whatever suits the Court. I'm happy
 8 to sit where I was. Again, it's unlikely to occur, but
 9 whatever the Court believes is appropriate.
 10 THE COURT: Well, you can be on the 30-yard line
 11 and the 50-yard line. Why don't you sit in the front bench,
 12 if that's okay?
 13 MR. ZENSKY: Okay, that's fine. I do likely like
 14 the 50-yard line, though.
 15 THE COURT: That's what I say.
 16 MR. ZENSKY: Thank you, Your Honor. I appreciate
 17 it.
 18 THE COURT: Plaintiff, are you ready to call your
 19 next witness?
 20 MR. WALLACE: Certainly. The next witness People
 21 call is Nicholas Haigh.
 22 THE COURT: I control a lot but not the music
 23 coming from the plaza out there.
 24 THE COURT OFFICER: Witness entering.
 25 (Whereupon, the witness enters the courtroom and

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1 university or college at the University of Manchester between
 2 1975 and 1978. Then I trained as a chartered surveyor and
 3 qualified as a chartered surveyor I think in about 1981.
 4 Q And what does it mean to be a chartered surveyor?
 5 A It's a professional qualification in the UK and some of
 6 the other commonwealth countries around real estate.
 7 Q Okay. And what kind of tasks with someone who is a
 8 chartered surveyor undertake in relation to real estate?
 9 A So I was a general practice chartered surveyor. So we
 10 did all sorts of things from landlord and tenant negotiation,
 11 acquisition of real estate, purchase, looking at appraisals,
 12 doing appraisals or valuations that they tend to be called over
 13 there.
 14 I worked for a government, local government for awhile
 15 and -- actually, no. It's for the national government but in a
 16 local area. And for one of the utility companies and then I
 17 worked for an investment fund running a pension fund, acquiring
 18 real estate assets for their pension fund. And then I moved to
 19 a U.S. bank and gave advice to some of their clients in real
 20 estate in Europe -- in the UK.
 21 Q I believe you just stated that you're currently
 22 retired; is that correct?
 23 A That's correct.
 24 Q What was your prior job before you retired?
 25 A The previous four years I have worked for Bank of

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1 America as a -- what they called a credit officer, but I was
 2 making loans to private clients and their private clients'
 3 business.
 4 Q And what sort of work would you do as a credit officer
 5 at Bank of America?
 6 A -- Bank of America.
 7 It involved talking with clients about the bank's
 8 various credit products; it involved looking at clients'
 9 financial positions to assess whether they qualified and were
 10 suitable for those credit products; it involved negotiating with
 11 the bank's internal risk approval people and underwriters around
 12 how to underwrite a client document and their financial
 13 position, negotiate loan terms, if necessary, and so that was
 14 mostly what it was.
 15 Q I believe you said working -- sorry. Underwrite loans
 16 and helping work through them documenting their financial
 17 position. Could you just describe what that entails?
 18 A Bank of America had an underwriting process where it
 19 would analyze the financial condition of its potential and
 20 actual borrowers and it involved looking at the client's
 21 financial information capturing that in a very standardized way
 22 and analyzing that information to then use all that information
 23 in order to derive a risk rated score for its client's
 24 probability default.
 25 Q And that would help govern the terms of the loan they

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1 Q And was mid 2018 the time you left Deutsche Bank?
 2 A End of 2018 I was -- I left Deutsche bank.
 3 Q And why did you leave Deutsche Bank in the end of 2018?
 4 A My -- my employment was terminated.
 5 Q Do you know why it was terminated?
 6 A I believe it was for cutting -- cost cutting reasons.
 7 Q Were you told anything about the reason in particular,
 8 though?
 9 A No other than just generally the cost cutting
 10 environment that the bank was in.
 11 Q At the time of your departure from Deutsche Bank how
 12 long had you been working with the company?
 13 A So I had been working for Deutsche Bank or for Banker's
 14 Trust which Deutsche Bank bought. I joined banker's Trust I
 15 think in 1990 and I had taken one year off but apart from that
 16 one year off the whole rest of the time I've been working for
 17 either Banker's Trust until 1999 and then Deutsche Bank until
 18 2018.
 19 Q So going back to your role at credit risk management.
 20 If I could just focus on the period from 2011 through mid 2018,
 21 what were your responsibilities as the head of credit risk
 22 management?
 23 A So I was the head of credit risk management covering
 24 the private wealth management business under whatever name it
 25 was going by at the time and I ran a relatively small team of

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1 might be eligible for and able to obtain?
 2 A Yes, so that would -- indeed it would perfect all of
 3 those matters.
 4 Q So before you began at Bank of America what was the
 5 position you held prior to that?
 6 A So immediately prior to that I was employed on a
 7 part-time basis by a consulting firm who provided services to
 8 Deutsche Bank and I was working for that firm part time for
 9 about four months or three and a half months within Deutsche
 10 Bank's private wealth management business line -- not business
 11 line but with supporting their group.
 12 Q Just so I'm understanding that the consulting firm you
 13 were doing work for you in the process of providing consulting
 14 services to the Deutsche Bank private wealth management group;
 15 am I understanding that correctly?
 16 A Correct.
 17 Q And so before that consulting position what position
 18 did you hold?
 19 A So prior to that I had been the risk officer for the
 20 head of risk for Deutsche Bank's risk group covering their
 21 private wealth management business.
 22 Q And what was your title in that position?
 23 A I was a managing director of the bank.
 24 Q And how long did you hold that role?
 25 A I held that role from mid 2008 until the end of 2018.

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1 people. Our job was to do the policy work and the credit
 2 approval work around any credit exposures that the credit wealth
 3 management group was taking.
 4 Q You mentioned the private wealth management business.
 5 What is that business? Could you describe it for us?
 6 A It's the division of Deutsche Bank that was serving
 7 high net worth individuals and providing various products to
 8 them, including credit products.
 9 Q And so you mentioned it was your job to examine the
 10 credit exposure. Could you just describe for us the sort of --
 11 what are you doing when you're looking at that exposure?
 12 A So in very broad terms we're assessing the risk profile
 13 of a client in order to come up with an accurate risk rating,
 14 risk assessment of that client and also we are looking at the
 15 entire proposal for that -- the entire credit proposal to make
 16 sure it fits within the desired risk profile of the bank.
 17 Q And so are you approving the credit decisions?
 18 A Yes. We have the final -- the final approval on all
 19 credit decisions for those clients.
 20 Q So I'd just like to go through a few of those. How
 21 would you go about assessing the risk profile of the client?
 22 A We based our assessment of the risk profile of the
 23 client on their financial position, so we would look at the
 24 financial data that we had on the client typically from some
 25 sort of statement of financial condition, supplement it with

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1 things such as validated and verified statements of -- from
 2 banks, from brokerage accounts. So we'd capture information
 3 about their financial position in a spreadsheet format and that
 4 information would then be used in our risk rating methodology to
 5 assess certain characteristics of that borrower -- financial
 6 characteristics mostly, but some other characteristics as well
 7 -- to assess those characteristics and that -- that was a
 8 mathematical model that generated a risk score that mapped to a
 9 probability default for that borrower.
 10 Q And the -- that probability default that would generate
 11 what kind of loan the customer would be able to obtain from the
 12 bank?
 13 A Not specifically the type of loan that a client could
 14 obtain, but it would inform whether we were willing to do a loan
 15 at all and it would have an impact on the size of loan we were
 16 willing to do for that client and also the terms of the loan
 17 that we were willing to do for that client.
 18 Q Okay. I believe you also mentioned that you prepared a
 19 proposal for credit. Is that similar to the type of terms that
 20 might be available to the customer?
 21 A So the bank would have a credit memorandum and that
 22 memorandum would endeavor to capture all the relevant
 23 information that you need to make a decision about that credit.
 24 So it would cover things from short summary of who the client
 25 is, why they want the money, what the terms are of the

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1 transaction and then it would also summarize their financial
 2 condition and attach to that credit memorandum would be our
 3 assessment of the risk rating of the client.
 4 Q And so that memorandum would spell out the terms of
 5 proposed transactions?
 6 A Yes, yes.
 7 Q And what are some of the factors in how a transaction
 8 would be structured that would affect the credit assessment that
 9 you and your team were making?
 10 A I'm pausing because it's kind of a broad question.
 11 There are -- I mean, many factors could affect it. So the first
 12 sort of given would be that the client was a client of the
 13 private wealth management business under their profile fitted
 14 what the bank wanted to do.
 15 And secondly, would be the question of does the credit
 16 they want fit what the bank is comfortable in doing. So is it,
 17 for example, a real estate loan we're comfortable with.
 18 And then maybe other client-specific factors driven by
 19 their financial condition or reputational matters or other
 20 matters that might gather the specific terms of the transaction.
 21 Q You mentioned that one example of a loan that might be
 22 a real estate loan. Would those loans include, for example,
 23 collateral, those things might be apart of the assessment
 24 obtained?
 25 A Yes, many of our loans have collateral.

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1 Q And how would that affect the credit analysis that your
 2 team is performing at a high level?
 3 A So we would -- part of the analysis would include an
 4 analysis of the collateral. So what's it worth today? And do
 5 we like it in the sense of is it good collateral that will
 6 sustain its value in the future.
 7 Q And what would constitute good collateral that would
 8 sustain its value in the future?
 9 A I mean, there were a number of different types of
 10 collateral a bank frequently took; commercial real estate,
 11 residential real estate, fine art, marketable securities,
 12 airplanes.
 13 Q And how would you assess the -- what's good collateral
 14 versus some other kind of collateral?
 15 A Well, in general terms -- in general terms, the point
 16 of collateral is to have a legal entitlement over an asset that
 17 if the loan defaults the bank can obtain title to that asset and
 18 effectively sell it one way or another. So that really drives
 19 what's good collateral and that is is there a market for that
 20 asset? Can it be sold? Are there any legal impediments? Can
 21 we deal with those and what's likely to happen to the value of
 22 the asset between the day when we make the loan and at some
 23 point in the future when we might need to take that asset and
 24 sell it.
 25 Q And so how easy it is to take that asset and sell it is

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1 what would make one piece of collateral superior to another one
 2 is that the --
 3 A That's part of --
 4 MR. ROBERT: Objection. Leading.
 5 THE COURT: Sustained. Stricken.
 6 Q So how would the factors you were discussing affect
 7 your view as to whether or not collateral is good?
 8 A So first of all, I think I mentioned whether we could
 9 sell the collateral so that do -- you know, is there a deep
 10 market for that type of collateral? Do many people buy it or is
 11 it a specialist type of collateral, which only a few people
 12 would buy and it might have a much thinner market.
 13 Secondly is a question of the volatility of the value
 14 of that collateral. Some types of collateral go up and down in
 15 value more than others and that would be a -- of importance to
 16 us.
 17 Q So going back to your time in your credit risk at
 18 Deutsche Bank could you walk us through what the process was for
 19 how a client would obtain a loan through the private wealth
 20 management group?
 21 A Sure. So the client would have a marketing officer
 22 called a relationship manager within the private wealth
 23 management business. They would interface with the client.
 24 Within the private wealth management business there was also a
 25 group of product specialists that we called lending officers and

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1 their focus was on loans. So when a client wanted a loan, a
 2 relationship manager would interface would speak with the
 3 lending officer about what kind of loan the bank normally does
 4 and when they realize it was business to be done that there was
 5 a loan a bank would do, the lending officer was comfortable, it
 6 would fit into their portfolio of assets, they would document
 7 the proposed terms of the loan in a credit memorandum and that
 8 would come to my team for final approval. There may have been a
 9 bit of an iterative process prior to that where the lending
 10 officer spoke with members of my team about specific aspects of
 11 the transaction so that they would want to know that we at risk
 12 management were comfortable with those specific issues. But the
 13 memo would be prepared, it would come to my team for approval
 14 and then if we'd signed off on it, the loan would then move to
 15 be documented and finally being booked by the bank.
 16 Whereupon, the transcript continues on the next
 17 page....
 18
 19
 20
 21
 22
 23
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 25

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1 Q You mentioned that lending officers would make the
 2 decision as to whether the loan fitted with their portfolio
 3 aspects. What is entailed in that analysis? What are they
 4 looking at when they're making a loan?
 5 A Well, a lending -- I mean, the lending group is part
 6 of a business line that they're there to make money. They have
 7 a whole a number of products that they typically -- typically
 8 that's sold, if you like; loans, let's say for example,
 9 commercial real estate loans or residential real estate loans.
 10 So they had a number of products that they would typically sell
 11 and they wanted to make sure that they were taking the right
 12 risk profile for that business because they would carry any
 13 losses and they wanted to make sure that they were appropriately
 14 profitable because their business line was charged for the
 15 capital that they were using.
 16 Q And a loss would be that if a loan doesn't pay, the
 17 loss would be on their books?
 18 A Yes.
 19 MR. ROBERT: Objection.
 20 THE COURT: Sustained.
 21 Q So whose books would the loss go on?
 22 A So the profit and the loss account belonged to the
 23 business line. In this case, private wealth management.
 24 Q So in the process, you were describing your group, the
 25 credit risk group, would be the last one to sign off on the

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1 proposal; is that correct?
 2 A Yes.
 3 Q Did credit risk management need to sign off on the
 4 final loan terms before a loan could be originated?
 5 MR. ROBERT: Objection.
 6 THE COURT: Sustained.
 7 Q Did you have --
 8 THE COURT: Let me just mention this whole
 9 objection/sustained. You can't ask leading questions,
 10 "leading," questions that suggest an answer. There is an
 11 exception for introductory material, but now we are getting
 12 into the weeds. You can basically ask him how does it all
 13 work or how does this particular thing work or that
 14 particular thing. You can't put words in his moth and then
 15 say is that the way it works.
 16 Q So what did your group need to do before a loan could
 17 be originated?
 18 A So my group needed to sign off on the credit memorandum
 19 that I mentioned earlier. So we needed to be comfortable with
 20 the terms that were contained in the credit memorandum, so we
 21 were willing to sign off and approve it. And without our
 22 approval, the loan operations area would not book any loan and
 23 typically the credit memorandum would be sent to our legal
 24 counsel, external legal counsel who were documenting any loan.
 25 Q And who within the credit risk group would do that,

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1 provide authorization?
 2 A There are a number of credit officers in my group and
 3 each one had different levels of credit authority delegated to
 4 it by the bank's chief risk officer. It was a process of
 5 delegating credit authority. There were limits on that credit
 6 authority that reflected the size of the loan and the risk
 7 rating of the counterparty.
 8 Q And so did you have credit authority?
 9 A I did.
 10 Q And what was the level of your credit authority?
 11 A Well, it varied depending on how risky the client was,
 12 so for the least risky client, I seem to remember it was 500
 13 million euro, but that fell rapidly when you -- when we got
 14 down to clients who were non-investment grade and I think the
 15 low investment grade was more like 15 million euro. I don't
 16 remember precisely.
 17 Q Mr. Haigh we're going to hand you a document that has
 18 been marked as Plaintiff's Exhibit 293.
 19 Mr. Haigh, would you just take a moment to familiarize
 20 yourself with this exhibit.
 21 A Okay.
 22 Q Do you recognize this document?
 23 A Yes.
 24 Q What is it?
 25 A This is a credit memorandum for the transaction

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1 covering golf course resort hotel in Miami.
 2 Q And if we just look at the top corner here under
 3 beneficial owner, it says Donald J. Trump. Do you recognize him
 4 as the -- what is his role in that transaction?
 5 A So he is the beneficial owner of the legal vehicle that
 6 owned golf course, so resort. And he was also a guarantor, a
 7 personal guarantor on the transaction.
 8 MR. WALLACE: If we could just turn quickly to page
 9 five.
 10 Q Do you recognize your signature on the far right-hand
 11 page here?
 12 A Yes, that's my signature.
 13 Q What is indicated by your signature there?
 14 A My approval of the transaction terms contained in the
 15 memorandum.
 16 MR. WALLACE: Your Honor, we'd ask that this
 17 document be entered into evidence.
 18 MR. ROBERT: Objection, statute of limitations.
 19 THE COURT: Overruled. I will consider it a
 20 standing objection. Overruled. Granted. It is in
 21 evidence.
 22 (Whereupon, the Document was marked in evidence as
 23 People's Exhibit 293.)
 24 Q Is there any significance to your signature being on
 25 the far right?

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1 A I think the convention of Deutsche Bank was to arrange
 2 the business on the left, credit officers on the right, and then
 3 I think in the States, we went from left to right in terms of
 4 seniority, but that wasn't written down anywhere that it had to
 5 be done that way.
 6 Q So you were the most senior credit officer signing this
 7 document?
 8 A That's correct.
 9 Q And does that mean you are the credit officer approving
 10 this document?
 11 A Well, Sean Harrigan is the other risk management
 12 officer and we together were able to approve the document.
 13 Q If we go back to the first page, I just would like to
 14 walk through some of the top. Can we see it says PWM regional
 15 and there is a checkmark there. What's indicated by that
 16 notation?
 17 A I think it means that it needed to be approved the PWM
 18 regional level wherein the United States.
 19 Q And that was -- is that the region you were working
 20 in?
 21 A Yes, I was in the United States. Yes.
 22 Q Down below, there is a checkbox next to new request.
 23 What's indicated by that?
 24 A A new credit request. We didn't already have a credit
 25 for this -- for this borrower.

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1 Q And is that based on the borrower or the loan that's
 2 being paid?
 3 A You know, I'm not sure I remember exactly the rules.
 4 If we already had a credit for this borrower, we would have
 5 checked the increase box and if it was just an annual review of
 6 our existing credit with no other changes we would have checked
 7 the review box. So this reflects that, in fact, this was a new
 8 credit. It would be a new asset for the bank.
 9 Q The box next to that under borrower, it says, "TBD [SPV
 10 acceptable to the lender end bracket]." What does that
 11 indicate?
 12 A So it stood for "to be decided." Then in parenthesis,
 13 special purpose vehicle acceptable to the lender.
 14 Q Is there a reason there is not a specific borrower
 15 designated yet?
 16 A I think the reason would be that either we did not know
 17 the specific legal name of the legal vehicle that it would be or
 18 maybe that vehicle still needed to be set up and yet didn't
 19 exist.
 20 Q But you were able to approve the loan without a
 21 specific vehicle having been designated yet?
 22 A Yes, we did.
 23 Q If we go back to the box that has Donald Trump as the
 24 beneficial owner at the top, there is a line or two below, it
 25 says, "REL manager. It states, "Vrabric/Scalzi." What is

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1 indicated by this line?
 2 A It stands for relationship manager and the chief
 3 relationship manager for this relationship was Rosemary Vrabric
 4 and her partner is Dominick Scalzi.
 5 Q And I think you described it at a general level, but
 6 what role did they play in this transaction?
 7 A They were responsible for handling communications with
 8 the client, providing services to the client of all the services
 9 that the bank offered.
 10 Q If we go two lines below, which states AC manager, the
 11 name Sullivan after it, what's indicated on this line?
 12 A I think it stands for account manager. Tom Sullivan
 13 was the lending -- the senior lending officer from the business
 14 line on this relationship.
 15 Q And you described it at a high level. What role did
 16 Mr. Sullivan play in this transaction?
 17 A So his group was responsible -- it was their credit
 18 portfolio. He was responsible for making sure that they made
 19 loans on terms that they were comfortable with.
 20 Q And you had mentioned, I think, that it went on -- the
 21 profit and loss went on someone's balance sheet.
 22 Is Mr. Sullivan then the person that had the profit and
 23 loss on his balance sheet?
 24 A He wasn't the head of that group, but he was part of
 25 that group.

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1 MR. ROBERT: Objection. Objection to leading, your
 2 Honor.
 3 THE COURT: Can you rephrase the question, so it is
 4 not leading.
 5 MR. WALLACE: Sure, your Honor.
 6 Q Was there anything significant -- I'll just withdraw
 7 the question.
 8 The next line states "supporting" and lists the name
 9 Stafford. What role -- what is that identifying? Or actually,
 10 can I just clarify on the document? Is it supporting lenders
 11 and there are two names? Is that how this should be read?
 12 A That's right.
 13 Q So the line states "supporting lenders." It says
 14 Stafford/Schroeder. What's indicated by that line?
 15 A Those two officers worked for Tom Sullivan and they
 16 were part of the lending group. They were lending officers
 17 within the bank.
 18 MR. WALLACE: If we could scroll down on this
 19 document a little bit.
 20 Q The box here states collateral. The first paragraph
 21 reads, "A first mortgage lien and a first priority security
 22 interest in the Doral Golf Resort and Spa located in Miami,
 23 Florida, (the resort), including the borrower's fee, simple
 24 estate, all personal property, leases, rents, revenue, operating
 25 accounts, reserves and all other related assets."

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1 What's being indicated in this section here?
 2 A So it's right at the start of this credit memo. It is
 3 giving us an idea of the collateral that will be provided for
 4 the loan.
 5 Q If we look at the next paragraph in the middle, there
 6 is a sentence that begins, "Based on the \$150 million cost, our
 7 initial LTV will be 83.3 percent. However, borrowing under the
 8 facility will be equal to the lesser of; i, 125 million; and ii,
 9 up to 85 percent of the appraised value subject to the
 10 satisfactory review of DB's Valuation Services Group. I'll stop
 11 right there. Just ask you to identify what's meant by a few
 12 words. What's LTV?
 13 A LTV means loan to value.
 14 Q So I think loan is the value of what?
 15 A The \$150 million. So 83.3 percent, our loan would be a
 16 loan up to \$125 million would be 83.3 percent of \$150 million.
 17 Q And where it says "the facility," what is that
 18 referring to?
 19 A The credit facility.
 20 Q And so ii states that it is subject to the appraised
 21 value -- actually, let me rephrase that. Up to 85 percent of
 22 the appraised value subject to the satisfactory review of DB's
 23 Valuation Group Services. Why is there a requirement to obtain
 24 an appraised value?
 25 A This is a loan collateralized with commercial real

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1 estate, so there is a requirement from the bank to get an
 2 appraisal -- an independent appraisal on behalf of the bank of
 3 the value of the collateral real estate.
 4 Q So because the real estate is the collateral for this
 5 loan, the bank has an obligation to get an appraisal? Am I
 6 stating that correctly?
 7 MR. ROBERT: Objection.
 8 THE COURT: We are getting to the point of the
 9 witness says something and the attorney is asking is that
 10 what you were meaning.
 11 MR. ROBERT: He's trying to clarify it, so Mr.
 12 Wallace is testifying. This witness is certainly capable of
 13 answering questions.
 14 THE COURT: Mr. Wallace, is there another way
 15 around this?
 16 MR. WALLACE: I think it was an appropriate
 17 clarifying question. I did not suggest what the answer
 18 would be to the witness.
 19 THE COURT: Well, you suggested what you think he
 20 was really trying to say, right or something that like a
 21 simplified version of that.
 22 Q So why is the appraisal necessary? Could you, please,
 23 restate that?
 24 A All loans secured on real estate require an independent
 25 appraisal commissioned by the bank.

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1 Q And are appraisals required on loans that are not
 2 secured by real estate?
 3 A For loans that are not secured by real estate,
 4 appraisals are not required by regulation in all cases; but
 5 sometimes by bank policy, they are required.
 6 Q Go to the bottom of this section, it states, that "the
 7 facility will also be supported by a full and unconditional
 8 guarantee provided by DJT of little one, principal and interest
 9 due under the facility; and two, operating shortfalls of the
 10 resort. It being understood that borrower shall be permitted to
 11 utilize all revenues from the resort to operate the resort to
 12 reduce the amount of such shortfall."
 13 First, who is DJT has referenced there?
 14 A Donald Trump.
 15 Q Can you explain for me what Mr. Trump is guaranteeing
 16 here?
 17 A He's guaranteeing that he will repay our loan, all the
 18 monies due under the loan under Roman one; and under Roman two,
 19 he's also guaranteeing that if the resort is not -- is losing
 20 money, he will pay the cost of that shortfall.
 21 Q If you look at the sentence just below, it states, "for
 22 collateral monitoring purposes, the facility is being
 23 underwritten as other secured." What does that mean?
 24 A It's a categorization of a type of collateral that we
 25 have.

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1 Q And what does it mean that it is other secured?

2 A So it means that it is secured in that we have

3 collateral and the other box is because -- or the other

4 descriptor is because the type of collateral didn't fit cleanly

5 into the typical types of collateral that the bank took.

6 Q Mr. Haigh, when you say the bank, are you talking about

7 your group or Deutsche Bank writ large?

8 A I'm talking about the private wealth management

9 business.

10 Q Why isn't the Doral Golf Resort & Spa collateral that

11 the bank typically took?

12 A Although the collateral was commercial real estate in

13 the largest sense of those words, the specific use of the

14 collateral as a golf resort and spa is a specialist use that was

15 not a typical type of collateral that the wealth management

16 group took for its loans.

17 Q And did that fact have any impact on how you analyzed

18 this potential credit?

19 A Yes, it's relevant to how -- to the analysis of the

20 credit.

21 Q And how would it be relevant?

22 A It's relevant because it affects the ability of the

23 bank in extremis to sell the collateral. A golf course, golf

24 resorts are relatively uncommon compared to other types of

25 commercial real estate and the number of buyers for those

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1 repayment.

2 Q Did the fact that it was the tertiary source of

3 repayment have an effect on your credit analysis?

4 A No.

5 Q Is the fact that a tertiary source of repayment, does

6 that mean it is less important than the other source of

7 repayment that's listed?

8 A No, it is not less important.

9 Q If we look down at the next box, it states,

10 "recommendation" and it reads, "The facility is being

11 recommended for approval based on financial strength of the

12 guarantor. The financial profile of the guarantor includes on

13 an adjusted basis, 135 million in unencumbered liquidity,

14 2.4 billion in net worth and approximately 48 million in

15 adjusted recurring net cash flow."

16 Is there any significance to this being a first basis

17 for approval in this segment?

18 A I think that indicates that it is significant -- those

19 are significant facts in the analysis of the risk.

20 Q The next item listed, it states, "Nature of the

21 guarantee. The nature of the guarantee which includes both

22 principal and interest along with operating expenses of the

23 resort."

24 What was it about the nature of the guarantee that made

25 it a basis for recommending the loan?

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1 resorts is more limited, and so it would most likely be harder

2 for the bank to sell should it have to foreclose on the

3 collateral.

4 Q You mentioned earlier, you said something about the

5 bank acting in extremis. What did you mean by that?

6 A I meant by -- in extremis, I meant should the bank face

7 a default where it had to try and foreclose or in some other way

8 take ownership of collateral.

9 MR. WALLACE: We can take down this segment, but if

10 we could flip to the third page.

11 Q There is a box up top that states, "repayment sources,

12 key risks and mitigants." It lists a primary source of

13 repayment, a secondary source of repayment and a tertiary source

14 of repayment.

15 I would like to direct your attention to this section,

16 tertiary source of repayment. It says, "full and unconditional

17 guarantee of DJT which eliminates any shortfall associated with

18 operating and liquidating collateral."

19 What does it mean that the guarantee was a tertiary

20 source of repayment?

21 A So when a bank is making a loan or Deutsche Bank is

22 going to make a loan, it wanted to identify the likely ways it

23 was going to get repaid and the third one, the tertiary one in

24 this case, was a way of the bank getting repaid that they are

25 not relying on the collateral itself as the source of that

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1 A The guarantee ensured that we had a legal obligation

2 from an individual with the financial wherewithal to repay us if

3 necessary.

4 Q So the financial strength and the guarantee are

5 connected?

6 A Correct.

7 Q If you could turn to page five of this document and go

8 to the section entitled, "financial analysis." It's below your

9 signature. At a high level, can you tell me what is reflected

10 in this segment of the report?

11 A So this section of the report is a summary of the

12 client's financial profile. It is broken down on this table by

13 the kind of assets, the kind of liabilities that they have, and

14 it's got some key ratios from our risk management around cash

15 flow, leverage, liquidity.

16 (Continued on the next page.)

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1 Q So where are those key ratios reflected on here just so
 2 I'm looking in the right place?
 3 A Towards the bottom of the table, the bottom four rows
 4 and the heading immediately above it.
 5 Q So it's the -- on this section, "key ratios on secured
 6 lending guidelines?"
 7 A That's correct.
 8 Q And why are those key ratios for the bank?
 9 A Those are key ratios because they are ratios that we
 10 commonly use to measure and compare one client financial
 11 profiling against another and our documents and the lending
 12 guidelines would refer to those key ratios and then assessment
 13 of whether or not a client met or -- met somewhat all of those
 14 key ratios.
 15 Q Go back to the top of this section. It states:
 16 "Guarantor's function summary. Although facility is
 17 being extended to an SPV for the purposes of financing the
 18 purchase of the resort, the credit exposure is being recommended
 19 primarily based on the financial profile of the guarantor."
 20 Why is the financial profile of the guarantor the
 21 primary basis for recommending this loan?
 22 A The wealth management business at Deutsche Bank would
 23 not make loans secured just on collateral without a strong
 24 financial guarantee or personal guarantee from a financially
 25 strong person. Given that this was unusual collateral as a golf

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1 A Not in detail.
 2 Q We'll look at the next sentence. It states:
 3 "Based on results of this due diligence, we have made
 4 certain assumptions that have resulted in adjustments to
 5 reported values."
 6 What is the nature of the adjustments that they are
 7 making to the reported values?
 8 A So the DB adjusted numbers on the right hand column of
 9 that table and they are marking down asset values, not
 10 liabilities but asset values in various different asset
 11 categories.
 12 Q And do you have an understanding what the basis was for
 13 marking down those asset values?
 14 A So the reason for marking down the asset values is that
 15 the bank wants to be comfortable that in a -- in a stressed
 16 scenario with a client the individual is under financial
 17 pressure, asset values have fallen, the bank wants to know that
 18 it can still have a strong guarantor as its potential source of
 19 employment. Specifically how they did it in each specific case,
 20 I think I'd have to read further into the credit memo to
 21 determine.
 22 Q If we look at the last sentence in this first
 23 paragraph, it states:
 24 "Details on such adjustments are included in the
 25 analysis that follows. Additional details are included in the

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1 resort and spa, we would not really want to have to foreclose on
 2 that collateral and so we would most likely first look to the
 3 guarantor to remedy any default -- payment default on the loan.
 4 THE COURT: Ten-minute warning.
 5 MR. WALLACE: Thank you, Your Honor.
 6 Q If we look at the next part of that paragraph it
 7 states: "As part of this underwriting we have met with several
 8 members of the family office to conduct due diligence on the
 9 client reported financial information as prepared by
 10 WeiserMazars, an independent public accounting firm."
 11 I'll pause there just for a moment to say what is the
 12 family office that's being referred to here?
 13 A I don't know specifically. I think it's referring to
 14 people that work for Mr. Trump in handling his personal --
 15 personal matters.
 16 Q Do you know who -- it says that "we have met with the
 17 office and conducted underwriting." Who is the "we" that have
 18 been doing the due diligence?
 19 A So this memo was prepared by lending officers. I
 20 imagine in this case it would have been Tom Sullivan and Kirk
 21 Stafford and Emily Schroeder who are the lending officers on
 22 this transaction. I'm not sure whether all of them met with the
 23 family office or whether it was just some of those people.
 24 Q And are you familiar with what due diligence they did
 25 that's being described in this memo?

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1 guarantor's financial statements which is attached at exhibits"
 2 -- I think that's Roman Numeral II.
 3 Do you recall in connection with this credit analysis
 4 if you in fact reviewed the guarantor's financial statements?
 5 A Yes, I did.
 6 Q Mr. Haigh, you've been handed a document that has been
 7 designated Plaintiff's Exhibit 330. I will just note that at
 8 the bottom it has a Deutsche Bank production number, DB-NYAG
 9 011946. Do you recognize this document?
 10 A Yes.
 11 Q And what is it?
 12 A It's the personal financial statement for Donald Trump.
 13 MR. WALLACE: Your Honor, I would ask that this be
 14 entered into evidence.
 15 MR. ROBERT: Statute of limitations objection.
 16 THE COURT: Overruled. Granted. It's in evidence.
 17 (Whereupon, the item previously referred to is
 18 received and marked Plaintiff's Exhibit Number 330 in
 19 evidence.)
 20 Q Mr. Haigh, is this the document you would have reviewed
 21 in connection with the credit report we were just looking at?
 22 A Yes.
 23 Q Do you recall what you were looking for when you
 24 reviewed this report?
 25 A In very general terms I was trying to understand which

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1 assets and which liabilities the obligor had so I could get a
 2 feeling for the kind of financial profile that I thought the
 3 client had.
 4 Q And do you remember what your conclusion was upon
 5 review of the document?
 6 A So in general terms my conclusion was the client owned
 7 a lot of real estate, which was not surprising; a lot of golf
 8 courses, which I didn't know how to value; that his debt was
 9 low; that his liquidity was good.
 10 Q You mentioned that you didn't know how to value golf
 11 courses. Did you undertake any steps because of that?
 12 A Not with regard to the golf courses that were on his
 13 balance sheet; obviously with regard to the collateral asset the
 14 bank did.
 15 Q And the collateral asset was the golf course?
 16 A Correct.
 17 Q If I could direct you to page nine of this document. I
 18 just want to draw your attention to the first paragraph under
 19 "Basis of Presentation." It states:
 20 "The accompanying Statement of Financial Condition
 21 consists of the assets and liabilities of Donald J. Trump.
 22 Assets are stated that their estimated current values and
 23 liabilities that their estimated current amounts using various
 24 valuation methods."
 25 Do you have an understanding of what is meant by the

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1 term "estimated current values?"
 2 A My understanding of that term would be that it is
 3 estimated in the sense of they don't necessarily have appraisals
 4 or market evidence for the value of all of those assets, but
 5 it's estimating what they're worth as of the date of the
 6 financial statement, June 30, 2011.
 7 Q Just to look at the next paragraph below. It states:
 8 "Such valuation methods include but are not limited to
 9 the use of appraisals, capitalization of anticipated earnings,
 10 recent sales and offers, and estimates of current values as
 11 determined by Mr. Trump in conjunction with his associates and
 12 in some instances, outside professionals."
 13 I just want to direct your attention to the list where
 14 it states "use of appraisals, capitalization of anticipated
 15 earnings, recent sales and offers and estimates of current
 16 values as determined by Mr. Trump."
 17 Are you familiar with those valuation techniques for
 18 the assets that are listed on Mr. Trump's Statement of Financial
 19 Condition?
 20 A So getting appraisals by independent appraisals is a
 21 common valuation appraisal method. Capitalizing anticipated
 22 earnings is offered on a lot of the methods that goes into
 23 developing an appraisal. It has also comparisons with recent
 24 sales and potentially offers for assets.
 25 The piece about the estimates of current values as

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1 determined by Mr. Trump, to some extent I'm familiar with in the
 2 sense that whenever a statement is made that is not prepared by
 3 auditors it contains estimates of value, they're informed by the
 4 management typically and so that's not uncommon to see something
 5 of that sort in a cover letter.
 6 THE COURT: All right. Let's take a 15-minute
 7 break in ten minutes -- no, it's the opposite. We're taking
 8 a ten-minute break in 15 minutes. See you all at a quarter
 9 of.
 10 (Whereupon, there is a recess in the proceedings.)
 11 THE COURT OFFICER: All rise. Part 37 is back in
 12 session. Be seated and come to order.
 13 THE COURT: Notice it always feels like it's only
 14 ten minutes, but it really was 15 minutes.
 15 THE COURT OFFICER: Witness entering.
 16 (Whereupon, the witness enters the courtroom and
 17 approaches the witness stand.)
 18 THE COURT: Let's continue.
 19 CONTINUED DIRECT EXAMINATION
 20 BY MR. WALLACE:
 21 Q Mr. Haigh, when we broke we were talking about your
 22 review of Donald J. Trump's Statement of Financial Condition. I
 23 just want to know when you reviewed that statement did you make
 24 any assumptions as to the accuracy of the representations it
 25 contained?

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1 A I assumed that the representations of value of the
 2 assets and liabilities were broadly accurate.
 3 MR. WALLACE: If we could go back to Plaintiff's
 4 Exhibit 293. If we could go back to page six again.
 5 Q If we zoom at the top, this is the continuation of the
 6 financial analysis. I just want to highlight for you this
 7 segment, which says: "Real estate net equity."
 8 "The following table summarizes the guarantor's total
 9 real estate portfolio as of 6/31/11, which reflects the
 10 guarantor's four fully owned trophy properties, the portfolio of
 11 ten wholly-owned club facilities, other major property
 12 interests, and properties currently under development."
 13 I'll just pause there. I assume 6/31 is a
 14 typographical error. June didn't have 31 days in 2011?
 15 A I think if my memory serves me correctly --
 16 THE COURT: I'll take judicial notice that June has
 17 30 days, not 31.
 18 Q Do you have an understanding of -- well, first of all,
 19 what is meant by the term "trophy properties?"
 20 A That was a phrase that was used within private wealth
 21 management lending group and credit risk management to identify
 22 four significantly sized assets that we believed we could get a
 23 better understanding by ourselves of their potential market
 24 value.
 25 Q So the term "trophy properties" is specific to this

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1 analysis of Mr. Trump?

2 A Specific to Mr. Trump in this analysis only, that's

3 correct.

4 Q And do you know why these four properties were broken

5 out?

6 A They were broken out because they were large and

7 represented significant asset positions and as I said earlier

8 because we felt that we could get an idea of the market value of

9 those assets unlike the club facilities and -- unlike the club

10 facilities which we thought it would be hard to get it -- our

11 own picking of their worth and unlike the other property

12 interests which were I think probably much smaller and therefore

13 would require a lot more internal resources to try and analyze.

14 Q If we step away from this sheet for a moment and go

15 down to the segment that states "Trump Towers" -- and, again, I

16 guess just note for the record there is just one Trump Tower up

17 here. There is not multiple; is that correct?

18 This section states: "The 68-story building contains

19 residential and condominiums that are owned by residents along

20 with 178,000 square feet in commercial space and 114,000 square

21 feet of retail space. The property has an NOI of 17.1 million

22 and the guarantor used a cap rate of 3.50 percent to derive

23 reported value."

24 First of all, what is -- what are the initials NOI?

25 A They stand for net operating income.

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1 Q And do you know where Deutsche Bank obtained this

2 information of a net operating income and a cap rate of

3 3.5 percent?

4 A So I can't personally be specific, but I assumed at the

5 time -- I would assume now that it came from information

6 provided by the client's family office.

7 Q If we go down to the property 40 Wall Street. That

8 states that it is a 72-floor tower, consists of 1.3 million in

9 premier office space. The property has an NOI of 26.2 million

10 with the guarantor using a five percent cap rate to derive the

11 reported value."

12 Do you know where Deutsche Bank obtained the

13 information about 40 Wall's NOI and the cap rate used to derive

14 the reported value?

15 A Again, I would assume it came from Deutsche Bank

16 speaking with the client's family office.

17 MR. KISE: Objection, Your Honor. That answer and

18 the previous answer, that's an assumption. That's not an

19 answer. That's -- there is no foundation for him to support

20 that. He doesn't know. The answer to the question would be

21 no, he doesn't know.

22 THE COURT: Well, let's ask him to explain what did

23 you know, what did you not know?

24 THE WITNESS: I did not see the documents or the --

25 I was not at the meeting where this information was

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1 communicated to the bank and I did not personally see any

2 documents that communicated that information.

3 THE COURT: This is a, in my view, a subtle area.

4 To what extent does an answer have to be definite? I don't

5 think it has to be a hundred percent. In other words, it

6 can't just be mere speculation, so.

7 MR. WALLACE: I can try to build this out a little

8 bit.

9 THE COURT: Sure.

10 Q Mr. Haigh, did you have a general understanding of how

11 the bank obtained information that would be precluded in these

12 reports?

13 A Yes. The bank would normally get some sort of

14 certificate of financial -- some sort of financial statement,

15 personal financial statement and it would typically have

16 questions about that and there would then be a discussion with

17 the client to explain what was on those financial statements.

18 In this case around a net operating income on a building, the

19 bank would have no way of knowing what that information was by

20 itself unless it came from the client.

21 Q I want to focus if we go back to Trump Tower for a

22 moment. The next sentence states that "for purposes of

23 adjusting DBVSG used a 4.5 percent cap rate."

24 First of all, what is DBVSG?

25 A Deutsche Bank Valuation Services Group.

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1 Q And so why is -- do you have an understanding of why

2 Deutsche Bank Valuation Services Group is adjusting the cap

3 rate?

4 A So the wealth management business engaged Deutsche

5 Bank's Valuation Services Group which is a group of appraisers.

6 They engaged them not to renew specific appraisals because the

7 bank hadn't commissioned any appraisals on these assets.

8 Instead, the bank -- the wealth management business consulted

9 with the group about market conditions. The valuation services

10 group has access to various databases and market information

11 based on which their thinking was that a 4.5 percent

12 capitalization rate would be more appropriate than a 3.5

13 capitalization rate.

14 Q I just want to go back to something you mentioned in

15 your answer. You said that they did not -- you said "the bank

16 had not commissioned appraisals on these assets."

17 When you say "these assets," are you referring to the

18 four trophy properties?

19 A That's correct.

20 Q Why didn't the bank commission appraisals on those four

21 assets?

22 A The bank normally always as far as I can think of only

23 commissions appraisals on assets that needs taking as

24 collateral. These assets were not collateral.

25 Q If we go back to the chart on the four trophy

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1 properties. We see that there is a column marked "DB Valuation"
 2 and says "Trump Tower 380.2." Is that an indication of an
 3 actual valuation of the property by the DB Valuation Services
 4 Group?
 5 A No, not an actual appraisal of the property, no.
 6 Q What is reflected in that column?
 7 A I think that number reflects -- it captures the number
 8 that was stated -- that we just discussed, which is the
 9 valuation services group's opinion of what that property might
 10 be worth without having done all the due diligence that they
 11 would do around a true appraisal.
 12 Q I think we can take this section down and I'd just like
 13 to look -- oh, actually back up. Apologies.
 14 Just a little further down on page six there is a
 15 segment entitled above "facilities" and it describes a series of
 16 ten private clubs owned by Mr. Trump. It then states there is a
 17 discussion of membership requirements and membership
 18 liabilities.
 19 I just want to focus your attention on the last
 20 sentence. It states: "For purposes of our analysis, the
 21 1.3 billion in reported value had been reduced by 50 percent for
 22 deriving an adjusted value."
 23 Do you have an understanding of why this technique was
 24 used to adjust the value of the club properties?
 25 MR. KISE: Objection. What technique?

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1 assets."
 2 Did this -- the nature of this collateral, did that
 3 have any effect on the decision to approve this loan?
 4 A Yes. Collateral is a significant part of the bank's
 5 protection and so it was significant in approving this loan.
 6 Q The next segment states "Guarantee."
 7 "The guarantor will provide a full and unconditional
 8 guarantee of (i) principal and interest due under the facility
 9 and (ii), operating shortfalls of the resort. It being
 10 understood that the borrower shall be permitted to utilize all
 11 revenues from the resort to operate the resort to reduce the
 12 amount of such a shortfall."
 13 Does the nature of the guarantee affect your analysis
 14 in approving the loan?
 15 A Yes. The guarantee provides -- it's also significant,
 16 very significant to the bank in terms of whether it would
 17 approve or not, so the guarantee in the financial profile of the
 18 client who gives that guarantee.
 19 Q And if we go down to a section a little bit further
 20 down it states "interest rate."
 21 It states: "Renovation period: LIBOR plus
 22 2.25 percent or the prime rate."
 23 "Post renovation period: LIBOR plus two percent or the
 24 prime rate minus .25 percent."
 25 Just ask you if you can explain your understanding of

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1 THE COURT: Sustained. I don't see the technique
 2 there. I see the conclusion.
 3 Q Do you know why for purposes of the analysis in the
 4 credit report, the \$1.3 billion in reported value of the club
 5 facilities was reduced by 50 percent for deriving an adjusted
 6 value?
 7 A The value -- the reported value was adjusted in our
 8 financial analysis by 50 percent which was a -- I think
 9 standardized number for commercial real estate assets and the
 10 purpose of doing that was to just have a broad sense of what
 11 those assets might be worth. If we were in bad market
 12 conditions and we needed to seek repayment from the client and
 13 the client's assets had fallen in value, 50 percent represented
 14 a number which would be significant and yet we could still look
 15 at those assets and see whether there was any equity in those
 16 assets, meaning --
 17 MR. WALLACE: We can take this down.
 18 Q Can we take a look at page two, Exhibit 293? And if we
 19 look at the segment entitled "collateral." Just zoom on that
 20 it's up a little. And the section marked "guaranteed" -- can
 21 you zoom on that just a little?
 22 This section states: "A first mortgage and a first
 23 priority security interest in the resort, including the
 24 borrower's fee, simple estates, all personal property, leases,
 25 rents, revenue, operating accounts, reserves, and all other

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1 some of the words here. What is renovation period?
 2 A So there was a -- the first part of this loan, this
 3 piece of real estate was undergoing renovation or improvements
 4 and so its cash flow would have been lower at that time.
 5 Q Can you just explain to me what is meant by LIBOR plus
 6 2.25 percent?
 7 A So LIBOR stands for London Interbank Offering Rate and
 8 here it represents loosely the cost of the bank funding itself.
 9 So it was a cost the bank has to pay for having monies that it
 10 then lends out to all the clients. Loosely.
 11 And the 2.25 percent on top of that LIBOR index
 12 represents, loosely, income for the bank and together they
 13 represent the interest rate that the client pays for whatever
 14 interest period that the client chooses.
 15 The transcript continues on the following page....
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1 Q Look at the next line, the post renovation period. I
 2 think the explanation of that is implied by your description of
 3 what the renovation period was.
 4 What was the post renovation period?
 5 A So post renovation period is that period after the
 6 renovations have been completed or largely completed. At which
 7 point, the bank anticipates that the income from the real estate
 8 would be higher than previously.
 9 Q So why is there a difference between the renovation
 10 period rate and the post renovation period rate?
 11 A Bank's view was that there was a less risk in an asset
 12 that is post renovation and is more fully income producing.
 13 MR. WALLACE: If we can just back out of this for a
 14 moment and just look at the whole page.
 15 Q This section is headed "facility details." Is there an
 16 interaction between each of those terms and your decision on
 17 whether or not to approve this loan?
 18 MR. KISE: Objection, interaction.
 19 THE COURT: As to the wording interaction?
 20 MR. KISE: I'm not sure I even understand the
 21 question.
 22 MR. WALLACE: The question is whether the witness
 23 understands.
 24 THE COURT: Right. I was going to say.
 25 I am going to ask the witness do you understand the

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1 the first place because wealth management did not do business
 2 without personal guarantees. In addition, the strength under
 3 which that guarantee will be reflected in the pricing of the
 4 loan, the spread to the bank in other words. Also, in the terms
 5 of the loan including its size.
 6 Q When you said spread and pricing, that's the
 7 2.5 percent over -- we were talking about 2.25?
 8 A The spread is at 2.25 percent number.
 9 MR. WALLACE: If we could just turn to page 11 of
 10 this document.
 11 Q If we take a look at the box at the top of the page, it
 12 is entitled "covenants." Were these covenants relevant to your
 13 decision to approve the loan?
 14 A Yes.
 15 Q What is the significance of the covenants to your
 16 decision to approve the loan?
 17 A Loan covenants inside the loan documentation provide
 18 protection to the bank against deterioration in either the real
 19 estate itself or in the guarantor's financial position.
 20 Q If we look at the top under the heading "guarantor," it
 21 states -- there's two for guarantor. First one states,
 22 "business financial statement, guarantor to provide a financial
 23 statement annually dated within 90 days of 12/31." The next
 24 segment for guarantor states "personal financial statement."
 25 I just want to understand, is there a difference

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1 question enough to answer it or no?
 2 THE WITNESS: I believe so.
 3 THE COURT: Okay. Overruled.
 4 A So the contractual terms of the loan in the broadest
 5 sense that are captured on this page, they are part of the risk
 6 profile of that loan facility, and so they are part of -- those
 7 are the items that I am approving with my approval, so it is
 8 important to understand what those terms are.
 9 THE COURT: Did that answer the question?
 10 MR. WALLACE: I was going to try and rephrase it a
 11 little.
 12 MR. KISE: I'm not sure it did.
 13 THE COURT: You deem that withdrawn, stricken and
 14 try again?
 15 MR. WALLACE: Maybe I'll use it later. Can we keep
 16 it on the record? I'm happy -- we can withdraw it. I will
 17 rephrase the question. I would be happy for it to be
 18 withdrawn.
 19 THE COURT: Then the answer is stricken.
 20 Q Does the existence of the guarantee have any impact on
 21 the interest rate in these terms?
 22 A Yes, it does.
 23 Q And what is the nature of the impact of the guarantee
 24 on the interest rate terms?
 25 A So there is a given that there will be a guarantee in

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1 between a business financial statement and a personal financial
 2 statement listed here?
 3 A I think in this case, the business financial statement
 4 was an illusion to the financial statements of the legal entity
 5 that would be on the loan and the personal financial statement
 6 is Donald Trump's entire personal financial statement.
 7 Q Looking at the second bullet, then it states,
 8 "guarantor, personal financial statement. Guarantor to provide
 9 a financial statement annually dated within 90 days of 12/31."
 10 Why did the guarantor have to provide an annual
 11 financial statement?
 12 A The bank wants to be sure that the client's financial
 13 strength is being maintained and also the bank wants to be able
 14 to test its covenants periodically.
 15 Q So I'll just read into the record the next point below
 16 that. It says, "compliance certificate, guarantor to provide a
 17 compliance certificate annually dated within 90 days of 12/31
 18 and lender will have right to confirm required liquidity through
 19 review of account statements at the offices of the guarantor."
 20 Is that what you were referring to in being able to
 21 test?
 22 A Yes, that's how the bank would test its covenants.
 23 That's how it would get the information to test its covenants,
 24 but to be clear, the compliance statement is a statement by the
 25 client that they are in compliance with all of those financial

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1 covenants. The bank would use the financial information that
 2 they provided to test itself to try and ensure that the client
 3 is in compliance with those covenants.
 4 Q Okay. So the -- there's a requirement that the
 5 guarantor make a certification, but then there is a requirement
 6 to provide information that the bank can use to confirm the
 7 accuracy of the certification? Am I understanding that
 8 correctly?
 9 A That is correct.
 10 Q If we look down at the financial covenants, it
 11 states -- and this is during renovation period -- "required only
 12 until post renovation period begins. Liquidity, guarantor shall
 13 maintain unencumbered liquidity at all times (defined as
 14 unrestricted cash or marketable securities convertible to cash
 15 within five business days that is not pledged to support any
 16 obligation of at least 50 million with at least 20 million to be
 17 maintained with the lender.) This cash will not be pledged as
 18 collateral."
 19 Why did the guarantor have to maintain unencumbered
 20 liquidity of \$50 million during the renovation period?
 21 A The liquidity covenant would be the loan documents was
 22 intended to ensure that the client always had sufficient cash on
 23 hand to meet the obligations under this loan in terms of ongoing
 24 interest or potential pay-downs or partial pay-downs of the loan
 25 principal.

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1 Q If you look two lists down, it states, "net worth
 2 guarantor shall maintain a minimum net worth of 2.5 billion
 3 excluding any value related to the guarantor's brand value (as
 4 such minimum net worth is reflected in guarantor's Statement of
 5 Financial Condition prepared by guarantor in substantially the
 6 form prepared by guarantor as of the date of this term sheet, a
 7 copy of which will be delivered to lender.)"
 8 So why is the bank requiring the guarantor to maintain
 9 a minimum net worth of \$2.5 billion?
 10 A In order to ensure that the financial guarantor
 11 remained strong with enough wherewithal to repay our loan should
 12 we need to be repaid.
 13 Q That net worth is to be used to determine by guarantor
 14 Statement of Financial Condition; is that correct?
 15 MR. ROBERT: Objection.
 16 THE COURT: Sustained.
 17 Q How is that \$2.5 million net worth to be established?
 18 A The loan documents --
 19 MR. KISE: Objection, foundation.
 20 THE COURT: Excuse me?
 21 MR. KISE: Objection, foundation. I don't know
 22 that this witness knows.
 23 MR. WALLACE: At some point, he is reading the
 24 document. He said he prepared the document.
 25 MR. KISE: He did not say he prepared the document.

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1 Let's be clear.
 2 MR. WALLACE: He reviewed the document.
 3 MR. KISE: He reviewed the document is the
 4 testimony I heard. I don't think he prepared it, but the
 5 establishment of the 2.5 billion net worth requirement is
 6 not something this witness has testified he had any
 7 involvement in. If there's a foundation, he can lay the
 8 foundation, but he hasn't testified that this witness had
 9 anything to do with setting that number.
 10 THE COURT: Well, foundation is sort of tricky
 11 question in my view.
 12 Mr. Wallace, can you lay a foundation or try to?
 13 MR. WALLACE: I'm trying to get us out of here by
 14 December 22nd, your Honor, but I'll do my best.
 15 Q Were you familiar with the terms of the loan that are
 16 being laid out in this credit report?
 17 A Yes.
 18 Q Did you have to understand the terms that are being
 19 laid out in this credit report in order to undertake your
 20 responsibility to approve the loan?
 21 A Yes, I needed to understand those terms.
 22 Q Did you have any input in the decision to set a minimum
 23 net worth of \$2.5 billion?
 24 A Yes.
 25 Q Why did you determine to set -- what was your role in

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1 helping to determine the \$2.5 billion number?
 2 A As part of a credit risk management team, the ultimate
 3 signer, I need to be comfortable with the terms of the loan
 4 including the covenants to protect the bank. That \$2.5 billion
 5 minimum net worth was one of those covenants and it was set in
 6 order to make sure that the bank would be fully protected under
 7 adverse market conditions.
 8 Q Are there any factors that go into the analysis that
 9 you were conducting when you're trying to determine an
 10 appropriate minimum net worth for a loan?
 11 A Determining the appropriate minimum net worth is driven
 12 by, I think, a combination of factors. One of which is the size
 13 of the credit exposure the bank is undertaking, and the other of
 14 which is the client's starting point, their initial net worth
 15 because the bank would want to set a covenant at a level that
 16 allowed for the client's assets to fall in value somewhat, but
 17 would still be triggered should that their assets fall
 18 substantially such that their financial risk profile would be
 19 changing.
 20 Q Just to clarify, if we look under the next header,
 21 "post renovation period," it says, "in lieu of renovation period
 22 covenants." The liquidity requirement is not -- does not
 23 appear in that section; is that correct?
 24 A I don't -- I don't see on this page.
 25 MR. WALLACE: Scroll down, so we can see the whole

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1 section. Down a little bit. No. Sorry. Thank you.

2 Q So does the liquidity requirement remain in the post

3 renovation period?

4 A I don't -- from this memo, I don't believe that it

5 does.

6 Q But the net worth covenant of maintaining a minimum net

7 worth of 2.5 billion, that would remain in the post renovation

8 period?

9 A Correct.

10 Q If we can just scroll down to the next box which

11 states, "events of default and cure periods". It states just at

12 the top, "usual and customary for facilities of this size, type

13 and purpose, including but not limited to A, payment default.

14 B, breach of representation and warranties. C, violation of

15 covenants."

16 What would a payment default consist of?

17 A A payment default would be a failure to make some

18 payment due to the bank lender's loan documentation on time.

19 Q And what would a breach of representation or warranties

20 consist of?

21 A It would be literally a breach of the representations

22 of warranties that are made in the loan documents at the time

23 they are signed.

24 Q And what would a violation of covenants consist of?

25 A It would be a failure with regard to those financial

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1 Q And what is it?

2 A It's a credit memorandum for a new credit for the

3 product in Chicago.

4 Q And who is the borrower in this transaction?

5 A The legal entity is 401 North Wabash Venture, LLC.

6 Q Are you familiar with what entity is, that borrower is?

7 A It is a limited liability company that owned the asset.

8 Q And we will look at the top box again. It says,

9 "beneficial owner, Donald J. Trump."

10 Does that mean he is the beneficial owner of the

11 borrower?

12 A Correct.

13 Q Can you just turn for a moment to page six of this

14 document. Is that your signature?

15 A Yes, it is.

16 Q And what is indicated by your signature?

17 A My approval of this loan proposal or transaction.

18 MR. WALLACE: Your Honor, we would ask that

19 Plaintiff's Exhibit 291 be entered into evidence.

20 MR. ROBERT: Objection, statute of limitations.

21 THE COURT: Overruled. It is moved in evidence.

22 (Whereupon, the Document was marked in evidence as

23 People's Exhibit 291.)

24 Q If we go back to the first page, I believe you noted

25 that this is a new request in the box tick at the top. Can you

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1 covenants to maintain the ratios or numbers that are set out in

2 those covenants.

3 Q So does it only relate to the financial

4 covenants?

5 A No, it would relate to any covenant. So a loan has

6 many, many covenants not all financial and it would cover all

7 the covenants of a loan.

8 Q What would happen on a loan in the event of a default?

9 A If there is a default on a loan, a default on a loan

10 covenant, the -- so if there is a default on the loan covenant,

11 there's been a breach of the -- it is a contractual arrangement

12 between the bank and the borrower. The bank has various

13 remedies for that which it can pursue like waiving the breach,

14 which it might do for an inconsequential breach; negotiating

15 some variation of the terms of the loan, or potentially

16 accelerating the loan and ask for repayment.

17 MR. WALLACE: I think we can put that document

18 aside for now.

19 Q Mr. Haigh, you've been handed a document that has been

20 marked as Plaintiff's Exhibit 291. Could you just take a moment

21 to review this document.

22 (Witness reviewing document.)

23 A Okay.

24 Q Do you recognize this document?

25 A Yes.

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1 remind us again what is indicated by the fact that it is a new

2 request?

3 A It is a new loan asset for the bank.

4 Q And do you remember generally the terms of this loan or

5 the -- let me -- may I withdraw that question, your Honor?

6 THE COURT: Withdrawn.

7 Q Can you describe for us generally what is the nature of

8 the loan that's reflected in this credit report?

9 A It's a credit facility secured on commercial real

10 estate.

11 Q And at a high level, would the review or analysis that

12 you and your team conducted be the same for this credit facility

13 as the one we were just looking at?

14 A Yes, it would.

15 Q If we could turn to -- if you look at the bottom of

16 this box, it states, 'the facilities will also be further

17 supported by a full and unconditional guarantee provided by DJT

18 of little I, principal and interest due under the facility. And

19 two, operating shortfalls of the collateral property as defined

20 herein."

21 Does this guarantee operate in the same manner as the

22 guarantee that we saw on the earlier loan document, on the

23 earlier report that you were testifying about?

24 A Yes.

25 MR. WALLACE: If we can go to page five of this

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1 document.

2 Q If we go down to the section marked "recommendation," I

3 will first ask who is making the recommendation that's contained

4 in this box?

5 A The lending officers that prepared the memo.

6 Q And who is the recommendation to?

7 A Credit risk management, my team.

8 Q If we look at the top of this segment, it states, "the

9 facility is being recommended for approval based on quality of

10 the collateral and LTV. The property is in the form of a luxury

11 hotel and condominium building located in Chicago based on

12 recent as is values provided in appraisals as discussed herein

13 and performed for purposes of underlying needs of the

14 facilities. The residential component is valued at 113 million

15 which provides a maximum LTV of 55 percent and the commercial

16 component is valued at 126.3 million which provides a maximum

17 LTV of 36 percent. The combined maximum LTV based on the

18 maximum commitment amount of 107 million is 44.7 percent."

19 First question, why is quality of the collateral and

20 LTV the first item listed in this recommendation?

21 A The collateral is significant in taking decision on

22 whether to approve the loan.

23 Q You see again that there were as is values provided in

24 appraisals. Why were appraisals performed on that property?

25 A The property was real estate and so by policy and by

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1 regulation, the bank was required to obtain appraisals on real

2 estate.

3 Q If we look at the next bullet point, it states,

4 "financial strength of the guarantor, the financial profile of

5 the guarantor includes on an adjusted basis 146 million in

6 unencumbered liquidity, 2.4 billion in net worth, and

7 approximately 13 million in adjusted excess recurring net cash

8 flow."

9 Why was the financial strength of the guarantor one of

10 the grounds for recommending this loan?

11 A Because having a guarantee was a requirement for

12 private wealth manager to do business and having a strong

13 financial guarantor was a requirement for this transaction.

14 Q I guess does that have any implication for the third

15 bullet point we are seeing here, the nature of the guarantee?

16 Let me rephrase that question.

17 What was the relevance and nature of the guarantee to

18 the recommendation to approve this loan?

19 A It reflects -- the nature of the guarantee reflects the

20 fact that we had a full guarantee with no limitations on that

21 guarantee.

22 Q If we could turn to page seven of this document. There

23 is a segment again that's headed "financial analysis, guarantor.

24 You see at the top, it states, "guarantors-financial statements.

25 Although facilities are secured by the collateral, given its

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1 unique nature, the credit exposure is being recommended based on

2 the financial profile of the guarantor."

3 Do you have an understanding what is meant by the

4 unique nature of the collateral?

5 A So unique is probably a bit of a hyperbole because it

6 is unusual for the private wealth management business to have

7 hotels as collateral and it is unique for private wealth

8 management business to have a condo inventory as collateral,

9 unsold condo units.

10 Q If we look at the table, we see that there's financial

11 summary segment. One row -- sorry. One column states, "DJT

12 6/30/2011 client reported. Next column states "DJT, 6/30/2011

13 DB adjusted." Next column states, "DJT 6/30/12 client

14 reported." And the final column states, DJT 6/30/2012 DB

15 adjusted."

16 First question, why are the years 2011 and 2012 both

17 broken out in this chart?

18 A We had financial information of two years at least and

19 the aim was to show or to identify whether there's any trend in

20 changes between -- from one year to the other.

21 Q We see that both the 2011 and 2012 years, there are DJT

22 adjusted numbers. Did the adjustment process that's reflected

23 in this table operate in the same way as the adjustment process

24 we saw on the prior exhibit?

25 A Yes, it did.

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1 MR. WALLACE: If we could just scroll down

2 to -- actually, page -- can you show side by side page

3 eight of this exhibit and page six of PX 293. Just zoom in

4 on the table, please.

5 Q So if we look at the two tables, it would appear that

6 for 2011 and for 2012, the valuations and the analysis for three

7 of the Niketown, 40 Wall, and Trump Park Avenue remain the same.

8 Do you see that?

9 A Yes.

10 Q But for Trump Towers, there's a change. Do you see

11 that?

12 A Yes, I do see that.

13 Q And if we can just pull up exhibit -- we can drop it

14 now for 291, please, and just go down to the section on Trump

15 Tower. That's on page eight. So there's another line segment

16 that states -- underlying section that states, "the loan is

17 non-recourse." I'm going to focus on the sentence that's after

18 that.

19 "The loan is non-recourse and matures in 2022." It

20 says, "a recent appraisal performed in conjunction with the

21 refinance valued the property at 480 million resulting in a

22 roughly 21 percent of LTV. Although, we did not adjust for the

23 additional liquidity distributed to the guarantor, we are

24 adjusting the property value to reflect the recent appraisal and

25 new debt."

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1 Can I ask so why did Deutsche Bank incorporate this new
 2 appraisal into its analysis?
 3 A So it appears that Trump Tower had been refinanced
 4 recently not by Deutsche Bank and that in connection with that
 5 refinancing, the financing entity had commissioned an appraisal
 6 which had been made available to Deutsche Bank. So the bank
 7 felt that it had an independent view on the value of that asset.
 8 Q And the bank was comfortable in incorporating that
 9 independent value into its analysis of the property?
 10 A Correct.
 11 Q Mr. Haigh, you've been handed a document that's been
 12 marked Plaintiff's Exhibit 470. Can you take a moment to
 13 familiarize yourself with this document.
 14 A Okay.
 15 Q Do you recognize this document?
 16 A Yes.
 17 Q And what is it?
 18 A It's a memo prepared by my colleague Sean Harrigan,
 19 amended by me, addressed to my boss, Thomas Eggenschweiler.
 20 (Continued on the next page.)
 21
 22
 23
 24
 25

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1 Q And just to clarify for the record, the memos and
 2 attachment to an e-mail from Shaun Harrigan to you dated May 23,
 3 2012; is that correct?
 4 A Correct.
 5 MR. WALLACE: Your Honor, I would ask that this
 6 document be entered into evidence.
 7 MR. ROBERT: Objection. Statute of limitations.
 8 THE COURT: Overruled. It's in evidence.
 9 Q Mr. Haigh, does this memo relate to the same
 10 transaction that was being addressed in the credit report that
 11 you were reviewing?
 12 A Yes.
 13 Q And that's the -- a loan involving the Trump
 14 International Tower Chicago?
 15 A Yes.
 16 MR. WALLACE: If you could flip to page 3 of the
 17 document? If we could focus on what's in Item 2 under "PWM
 18 Facility of Summary Terms." It would be item two. I'm
 19 sorry, three. Item three, which is headed "PWM Facility
 20 Summary of Terms."
 21 Q And the first sentence -- let me withdraw that.
 22 What is PWM?
 23 A Private wealth management.
 24 Q And that's the part of the bank you worked for?
 25 A That's the business unit that I supported and approved

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1 their -- decided their credits.
 2 Q The first sentence in this segment states:
 3 "CIB terms for the condos" and continues -- before we
 4 go there, I would just ask what is CIB?
 5 A Stands for commercial and investment bank. They had a
 6 commercial real estate lending group that would make loans on
 7 commercial real estate.
 8 THE COURT: Ten-minute warning.
 9 Q And that is separate and apart from your private wealth
 10 management group?
 11 A That is a different business line and a different
 12 profit and loss line.
 13 Q Memo states:
 14 "CIB terms for the condos for the lesser of 75 MIO or
 15 55 percent LTV; two year (one year extension option required
 16 amortization and reserve account on a nonrecourse basis at L
 17 plus 800 BP CIB as indicated to PWM if they are comfortable with
 18 this LTV given (i) their long history with the property and (ii)
 19 the momentum in condo sales that has been demonstrated for the
 20 last two years."
 21 Just ask you to define some of the terms that are
 22 contained in there. What is L plus 800 BP?
 23 A Stands for LIBOR plus 800 basis points and there are
 24 100 basis points and one percent, so that means LIBOR plus eight
 25 percent.

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1 Q And why are you discussing the CIB terms?
 2 A Two business divisions at Deutsche Bank were making
 3 proposals on the same potential loan and as -- we wanted to be
 4 sure that they made sense with regard to each other so the bank
 5 didn't look foolish in front of the client with two completely
 6 different sets of term sheets that bore no relation to each
 7 other.
 8 Q And why is nonrecourse basis involved here?
 9 A The commercial and investment bank business covered
 10 real estate. It would not normally take full recourse to an
 11 individual. Their principal source of repayment would be the
 12 real estate itself and only the real estate, although there may
 13 be some small guarantees around certain behaviors and the
 14 pricing reflects that risk profile that they were taking on.
 15 Q And if we look at the next paragraph, it states:
 16 "PWM is proposing terms on a full recourse facility to
 17 provide up to the same level of proceeds as CIB with the same
 18 two-year term for pricing in the range of L plus four percent.
 19 The spread differential is based on a full guarantee of Donald
 20 Trump. See credits below."
 21 So you said that the bank didn't want to look foolish
 22 in front of the client and was comparing terms?
 23 A Correct.
 24 Q And so this is the comparison that you're making
 25 between the two divisions of the bank?

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1 A That's correct. The difference between a nonrecourse
 2 facility and a full recourse facility and their different
 3 pricing.
 4 Q And by pricing that would be the difference between
 5 LIBOR plus 800 and LIBOR plus four percent?
 6 A That's correct, the spread over LIBOR.
 7 Q And so the difference between LIBOR plus eight percent
 8 and LIBOR plus five percent is based on full guarantee of Donald
 9 J. Trump?
 10 A Yes.
 11 Q I'm going to correct the record. I apparently read it
 12 incorrectly.
 13 So the difference between LIBOR plus 800 basis points
 14 and LIBOR plus four percent is based on the full guarantee of
 15 Donald J. Trump. Is that what's reflected in this memo?
 16 A That math is correct and that is the understanding of
 17 why there is a difference in price.
 18 THE COURT: Several of us caught you on that one.
 19 MR. WALLACE: I'm glad I have all of you here to be
 20 --
 21 Your Honor, I'm going to move on to a new year and
 22 a new loan. I don't know if you want to take our break now.
 23 THE COURT: Up to you. You have five minutes.
 24 MR. WALLACE: Sure. Why don't we at least
 25 introduce the document.

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1 consists of over 200 acres of land, a mansion and other
 2 buildings. This property is zoned for nine luxury homes, also
 3 includes property in Beverly Hills, California. For purposes of
 4 deriving at adjust value, assumed a 75 percent haircut to
 5 reflect the uncertainty in valuing undeveloped land."
 6 First of all, what is a haircut?
 7 A In this context a haircut is a way by which the bank
 8 reduces the stated value of the asset in order to form some kind
 9 of assessment as to what the asset might be worth in an adverse
 10 market situation.
 11 Q And is that different from the adjustments that you
 12 were looking at before?
 13 A The adjustments for the four specific properties were
 14 based on our own valuation services group input on those four
 15 assets. The adjustments on the golf courses were based on the
 16 standardized approach and this is more of a standardized
 17 approach.
 18 Q Okay. And so why in that standardized approach is the
 19 haircut 75 percent?
 20 A I think because the assets -- properties under
 21 development or not yet developed potentially have a large range
 22 of outcomes of their value, so.
 23 Q Let me put that one aside.
 24 Mr. Haigh, you've been handed a document that's been
 25 marked Plaintiff's Exhibit 294. If you can take a moment to

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1 THE COURT: You know what, on second thought, let's
 2 all have a nice long lunch. See you at 2:15.
 3 THE COURT OFFICER: Everyone remain seated.
 4 (Whereupon, there is a luncheon recess in the
 5 proceedings.)
 6 A F T E R N O O N S E S S I O N
 7 THE COURT OFFICER: All rise. Part 37 is back in
 8 session. The Honorable Judge Arthur Engoron presiding.
 9 Please be seated and come to order.
 10 THE COURT: Let's get the witness back.
 11 THE COURT OFFICER: Witness entering.
 12 (The witness enters the courtroom and approaches
 13 the witness stand.)
 14 THE COURT: I'll remind the witness that he's still
 15 under oath as I remind all witnesses during lunch breaks.
 16 And let's proceed or continue.
 17 CONTINUED DIRECT EXAMINATION
 18 BY MR. WALLACE:
 19 Q Good afternoon, Mr. Haigh. I just wanted to cover
 20 something I missed concerning Exhibit 293, it's the 2011 credit
 21 report. If we could go to page six and look at the bottom.
 22 At the bottom here there is a segment that reads:
 23 "Properties under Development."
 24 It states: "Consists primarily of the property known
 25 as The Mansion at Seven Springs in Bedford, New York, which

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1 just familiarize yourself with the document.
 2 A Okay.
 3 Q Do you recognize this document?
 4 A Yes.
 5 Q What is this?
 6 A It's a credit report covering a new transaction and the
 7 renewal of the existing transactions and an increase on the
 8 third transaction all captured in one credit report for this
 9 group, this relationship.
 10 MR. WALLACE: I'm sorry to interrupt you. If we
 11 can just turn quickly to the page 11 of this document.
 12 Q I can show you on the screen, Mr. Haigh.
 13 Is that your signature on the far right of the screen?
 14 A Yes, it is.
 15 Q And what is indicated by your signature on this
 16 document?
 17 A My approval of the terms in the document.
 18 MR. WALLACE: Your Honor, we would ask that this
 19 exhibit be moved into evidence.
 20 MR. ROBERT: Objection. Statute of limitations.
 21 THE COURT: Overruled. Granted. It's in evidence.
 22 (Whereupon, the item previously referred to is
 23 received and marked Plaintiff's Exhibit Number 293 in
 24 evidence.)
 25 Q While we're here we have the signature of

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1 Mr. Eggenschweiler. Have I pronounced it correctly?
 2 Why is he signing this report?
 3 A The combined exposure to the group was above my
 4 authority level given the rating of the facilities.
 5 MR. WALLACE: Okay. If we can go back to the first
 6 page?
 7 Q There is a box towards the top entitled, "Reason for
 8 Presentation." Is this what you were referring to when you were
 9 describing the purpose of this credit report?
 10 A Yes.
 11 Q So the first Item A states: "Annual review of Trump
 12 Endeavor 12 LLC loan facility." Says "request to change annual
 13 review date to 4/30/15."
 14 What is encompassed in an annual review of the Trump
 15 Endeavor 12 LLC facility?
 16 A We do an annual review of every loan facility that we
 17 have to see whether anything has changed. We refresh the
 18 financial information, we look at the operating performance of
 19 the collateral and there is a request here to change the date I
 20 think for administrative reasons to make it more convenient
 21 along with the other facilities that existed for this group.
 22 Q And so I think you referred to the -- what's being
 23 reviewed as part of the annual review?
 24 A We're reviewing the credit exposure that we have, so
 25 has it performed in accordance with the terms of its

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1 Post Office LLC to be used for the development of the Old Post
 2 Office property in Washington, D.C."
 3 Is this approval process the same as the approval
 4 process we saw on the earlier two statements of the Financial
 5 Condition?
 6 A Yes, with the added caveat that we needed a higher
 7 level of approval authority within credit risk management to
 8 approve the transaction.
 9 Q If we could look down below a little bit of the page.
 10 There is a box entitled -- it's this box on the left that says
 11 "currency" at the top. There is a series of boxes "new limit
 12 usage previous limit." The column on the left says "Loan A
 13 Tranche A, new limit, 106 million."
 14 Below that, "Loan A, Tranche B, 19 million."
 15 "Loan B, 73 million."
 16 "Loan C, 170 million."
 17 "Loan C, swap threshold amount, 10.25."
 18 "Related exposure, blank."
 19 And then it says "total exposure, 378.25."
 20 What is indicated in this portion of the chart?
 21 A Those are the credit exposures that Deutsche Bank was
 22 taking on each of those facilities.
 23 Q And Loan C, does that conform to Item C that we were
 24 looking at, the new loan for the Trump Old Post Office building?
 25 A I believe so, yes.

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1 documentation.
 2 Q And what information are you using to make that review?
 3 A We're using updated financial information on the
 4 guarantor, we're using updated financial information provided by
 5 the borrower, the owner of the collateral as to performance of
 6 their business.
 7 Q The next Item B states: "Increase in annual review of
 8 401 North Wabash Ventura LLC loan facility request to increase
 9 Tranche B facility by 54 million to a maximum of 73 million with
 10 a new maturity date of ten years from closing of the extension"
 11 and also a request to change the annual review date.
 12 What are you looking at when you're looking at an
 13 increase and an annual review for the 401 North Wabash Venture
 14 loan facility?
 15 A So this is an increased loan exposure which requires us
 16 to re-underwrite all of the factors that went into the original
 17 credit, both the lateral and the guarantor, locate all of those
 18 factors to see that it supports a new role that's gone up to
 19 \$73 million.
 20 Q And does the analysis you would conduct for an
 21 extension the same as the analysis we discussed for the prior
 22 two credit reports that we looked at?
 23 A Yes.
 24 Q If we look at Item C it states: "Approval of a new
 25 \$170 million first mortgage facility to the borrower Trump Old

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1 Q So the total exposure is listed at 378. I'm going to
 2 assume that's million?
 3 A Correct.
 4 Q Is that the credit limit that required
 5 Mr. Eggenschweiler to also sign off on the credit report?
 6 A Yes, Eggenschweiler.
 7 Q And why does he need to sign off at that document
 8 level?
 9 A Because my credit authority was governed by the size of
 10 the overall relationship and also by the rating of the weakest
 11 facility in that overall relationship which in this case was a
 12 triple B rating which is in the section just above where you're
 13 looking at on the screen.
 14 Q So if we could scroll down a little bit.
 15 A Yes, there you go. Says "FPD, dBBB" at the top.
 16 Q I'm just going to point to it. Is this the segment you
 17 were talking about?
 18 A That is the correct segment, yes.
 19 Q So I'll just -- this is the segment under the heading
 20 "risk rating current." It states: "Loan A, Tranche A, CPD, IA,
 21 FPD." And then it says "dBBB." That's the rating we're talking
 22 about?
 23 A That's correct.
 24 Q Do you recall the purpose of this new facility?
 25 A Yes.

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1 Q And what was that purpose?

2 A It was to provide financing for a substantial

3 renovation of this Old Post Office building, which was going to

4 be converted into a hotel.

5 Q If we could turn to page nine of this document and pull

6 up the box that says "guaranty."

7 I'll just state this for the record. It states:

8 "Guarantee. Donald J. Trump, will provide a full and

9 unconditional guarantee of (i), principal and interest due under

10 the facility; (ii), swap brokerage costs; three, operating

11 shortfalls of the property until the end of the shortfall

12 coverage period; and four, a completion guarantee, guaranteeing

13 the lien-free completion of the project acceptable to the lender

14 as evidenced, by among other things, one or more temporary or

15 final certificates of occupancy or their equivalent, architect,

16 certificate and appropriate lien waivers, each responsibly

17 acceptable to the lender."

18 So similar to the loans we looked at before this loan

19 is also supported by a guarantee by Mr. Trump; is that correct?

20 A That is correct.

21 Q And did this guarantee operate similar to the

22 guarantees we were looking at earlier for Doral and for the

23 Chicago property?

24 A Yes, it does.

25 Q If we look at the box that was just below that it

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1 states: "Guarantor covenants. During the redevelopment period

2 the guarantor shall maintain unencumbered liquidity at all times

3 of at least \$50 million with at least 20 million to be

4 maintained with the lender."

5 Why did the guarantor have to maintain unencumbered

6 liquidity of \$50 million?

7 A The bank wanted to know -- to be covenanted to have

8 that protection that the client would always have a substantial

9 amount of cash on hand, that he could use to either meet the

10 obligations under the bank's loan or potentially pay down the

11 loan.

12 Q And how would that liquidity be demonstrated?

13 A Well, the 20 million that was to be held with the bank

14 would be clearly visible to the bank at all times because we

15 would have access to seeing that in the bank systems. The

16 balance will be demonstrated through proving brokerage accounts

17 or bank account statements that showed where that cash or those

18 securities were held.

19 Q Anything else that can be used to demonstrate the

20 liquidity?

21 A No, from recollection it was cash and securities that

22 are convertible to cash within five days.

23 Q If we look down below it states:

24 "At all times during the term of the facility,

25 guarantor shall maintain a minimum net worth of 2.5 billion

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1 excluding the value related to guarantor's brand value."

2 Why was the guarantor required to maintain a minimum

3 net worth of 2.5 billion?

4 A The bank wanted to be sure that in an adverse market

5 scenario the client would always have enough financial resources

6 to be able to pay off our loan.

7 Q And how would the \$2.5 billion net worth be

8 demonstrated?

9 A Through providing us with a personal financial

10 statement and a certification in the loan documentation along

11 the lines of the previous one we discussed.

12 Q And just to confirm, the guarantor here is

13 Donald J. Trump?

14 A Yes.

15 MR. WALLACE: If we could turn to page 14.

16 Q If you look at the top again. It states -- there is a

17 header at the top.

18 "It should be noted that the guarantor, DJT, is

19 required to provide financials within 120 days of 6/30 FYE.

20 Thus, the most recent financials available are as of 6/30/13.

21 We are not aware of any material changes to guarantor's

22 financial profile."

23 And just to confirm, DJT, who is that referring to?

24 A Donald Trump.

25 Q And what is indicated by 6/30 FYE?

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1 A So the financial yearend, FYE, is June 30th.

2 Q And go back to the first page. I'll represent to you

3 the date of this credit report is May 2, 2014. Would that

4 explain why this note was included?

5 A This memo is 11 months after the last financial yearend

6 for which we already had financial statements.

7 Q Do you know what steps, if any, the bank would take to

8 come to the conclusion that it was not aware of any material

9 changes to guarantor's financial profile?

10 A The bank would rely on representations from the client

11 that there were no material changes.

12 Q If we look down at the next section it states:

13 "Guarantor's financial summary."

14 "Although all three facilities are secured by

15 collateral given the unique nature of these credits, the credit

16 exposure is being recommended based upon the financial profile

17 of the guarantor."

18 I asked a similar question before, but what was the

19 unique nature of the credit apart from anything we've discussed?

20 A So all of these credits had collateral -- real estate

21 collateral. It was not a normal type of real estate collateral

22 for Deutsche Bank.

23 Q So the OPO property that is the collateral for this

24 loan is also not collateral that the private wealth group --

25 A Correct, correct. Private wealth management did not

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1 normally do loans that involved substantial reconstruction on
 2 its collateral.
 3 Q This section continues: "As part of this underwriting
 4 we have met with several members of the family's office to
 5 update our due diligence on client reported financial
 6 information as prepared by WeiserMazars, an independent public
 7 accounting firm with the due diligence process described here
 8 having been conducted in the same manner as the due diligence
 9 for the earlier reports that we reviewed."
 10 A Yes.
 11 Q States: "Next based on the results of this due
 12 diligence we have made certain assumptions that have resulted in
 13 adjustments to reported values. Details on such adjustments are
 14 included in the analysis that follows."
 15 What you see there is a table similar to what we've
 16 seen in the similar reports. Did the adjustment process operate
 17 in the same way for this credit report as it did on the earlier
 18 credit reports that we were looking at?
 19 A Yes.
 20 Q The last sentence states: "Additional details are
 21 included in the guarantor's financial statements, which are
 22 attached as Exhibit 5."
 23 Do you recall if you reviewed the financial statements
 24 in connection with this extension of credit?
 25 A I can't recall whether I reviewed them on this specific

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1 "covenants" and then lists a series of questions that are
 2 answered for facility A, facility B, and facility C.
 3 Do you recall what facility A was?
 4 A Yes, I recall that was the original Doral facility.
 5 Q And is facility B the Chicago loan?
 6 A I think so from memory, yes.
 7 Q And facility C?
 8 A Is the new Old Post Office facility.
 9 Q What is the purpose of this table?
 10 A It's to document the fact that the client was in
 11 compliance with their covenant obligations.
 12 Q And if we take a look at focus facility B in the
 13 middle, it says "are all covenants in compliance." Underneath
 14 that it states -- reporting there is a box checked "yes" and
 15 another box -- sorry -- another row, "financial" marked "yes."
 16 What is demonstrated in that portion of the chart?
 17 A It's -- that's stating that the client's financial
 18 reporting covenants have been complied with and the client is
 19 also in compliance with the actual financial covenants that are
 20 -- we're asking him to report on.
 21 Q And if there was not a covenant had not been complied
 22 with, would that have been subject to the process we've
 23 discussed earlier for an event of default?
 24 A So any covenant that had not been complied with would
 25 go through some process for us to determine whether we needed

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1 extension of credit. I will be surprised if I hadn't, but I
 2 can't physically remember or accurately remember picking the
 3 pieces of paper and looking at them.
 4 Q Okay. Again, we see that the financial summary table
 5 refers to DJT, 6/30/2011; DJT, 6/30/2012. Both say "client
 6 reported."
 7 Next column states: "DJT, 6/30/120 to be adjusted."
 8 Next column: "6/30/2013, client reported."
 9 Final column: "DJT, 6/30/2013 DB adjusted."
 10 Why is the bank looking as numbers for each of these
 11 years, 2011 through 2013?
 12 A It's trying to identify any trends in the change of
 13 values reported.
 14 Q And what was looking for trends and change of value
 15 have -- how would that have been used by the bank in its review
 16 of this credit?
 17 A It's a fairly standard banking process to look at
 18 history of financial performance over the previous few years and
 19 it's used to identify what's changing and then try and figure
 20 out why.
 21 Q And so that would influence your assessment of whether
 22 or not to approve this credit -- this credit extension?
 23 A Yes.
 24 Q If we can just flip back to page two of this document
 25 and focus on this table at the bottom the header for this is

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1 compliance for that covenant or whether we wanted to waive it or
 2 amend the documentation or potentially default the transaction.
 3 Q So by signing off on this credit report does this
 4 reflect the determination by you that each of the loan covenants
 5 had been met?
 6 A So this report is prepared by the lending group. I
 7 personally had not checked that those loan covenants had all
 8 been met. I was relying on their statement here that we were in
 9 compliance and I was then -- my approval was conditioned on that
 10 fact being correct and accurate.
 11 Q Understood.
 12 Mr. Haigh, you've been hand a document that's been
 13 marked Plaintiff's Exhibit 298. Just take a moment to look
 14 through this document.
 15 A Okay.
 16 Q Do you recognize this document?
 17 A Yes.
 18 Q What is it?
 19 A It's an annual review credit memoranda.
 20 Transcript continues on the following page....
 21
 22
 23
 24
 25

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1 Q If we look at the top, it says the date is July 20,
 2 2015; is that right?
 3 A Correct.
 4 MR. WALLACE: Your Honor, I would ask that this
 5 document be entered into evidence.
 6 MR. ROBERT: Objection. Statute of limitations.
 7 THE COURT: Overruled. It's in evidence.
 8 (Whereupon, the Document was marked in evidence as
 9 People's Exhibit 298.)
 10 Q If I could direct you to page seven of this document.
 11 We will pull it up on the screen.
 12 Before the language lessons, we were looking at this
 13 section of the 2015 credit report. Do you recognize the
 14 signature on the right-hand side of the screen?
 15 A Yes, that's my signature.
 16 Q And what is indicated by your signature?
 17 A Approval of this annual credit review.
 18 Q If you can take a look up I think at the top page one.
 19 At the top, it says, "purpose of presentation A, annual review
 20 of Trump Endeavor 12, L.L.C. loan review; annual review of 401
 21 North Wabash Venture, L.L.C. and C, annual review of Trump Old
 22 Post Office.
 23 Do I understand this credit report is covering annual
 24 review for all three loans?
 25 A Yes.

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1 Q Would the annual review process for this year 2015 and
 2 for these three properties operate the same as the annual review
 3 process we discussed previously?
 4 A Yes.
 5 Q If you can go down to page two. Again, there is a
 6 segment marked covenants and checkbox is showing whether or not
 7 they are in compliance. What role did this information play in
 8 annual review of the three loan facilities?
 9 A It documented the client's status with regard to those
 10 covenants.
 11 Q And do you know what the source of information would be
 12 for the information contained in this chart?
 13 A It would be the latest information provided by the
 14 client. It would be reviewed for compliance with the covenants.
 15 MR. WALLACE: Your Honor, I apparently have
 16 neglected to ask that Exhibit 298 be moved into evidence.
 17 THE COURT: Granted. They are in evidence.
 18 (Whereupon, the Document was marked in evidence as
 19 People's Exhibit 298.)
 20 Q If you can go down to page ten just briefly for a
 21 moment.
 22 MR. ROBERT: I will keep my standing objection on
 23 that.
 24 THE COURT: I was waiting for that.
 25 MR. ROBERT: I knew you were.

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1 Q If we look down at the bottom of page ten under the
 2 heading "liquidity," this section states, "the guarantor reports
 3 liquidity of 302 million as of 6/30/2014 consisting of funds in
 4 Mr. Trump's name personally and various entities that Mr. Trump
 5 controls. The client reported balances have remained on par
 6 from the prior year with minor fluctuations attributed to
 7 additional CRE acquisitions and the guarantor taking fewer
 8 distributions from his properties."
 9 From this information, do you have an understanding of
 10 what the source was for the information on Mr. Trump's
 11 liquidity?
 12 A Yes.
 13 Q And what was the source of this year for his liquidity
 14 information?
 15 A Source would be combination of what was on his personal
 16 financial certificate or statement which would have been
 17 validated or verified to some extent by looking at the actual
 18 brokerage accounts or bank accounts showing that actual
 19 liquidity in existence.
 20 Q Do you know if that verification actually happened in
 21 this year?
 22 A So I did not do that myself. It was done by lending
 23 officers, so -- but if they say that they -- I rely on my
 24 lending officers to do their job and to tell me the truth.
 25 Q But this doesn't -- this language doesn't refer to any

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1 additional due diligence performed by the lending officers who
 2 prepared the report?
 3 MR. ROBERT: Objection.
 4 THE COURT: Well, it is leading. Rephrase it. If
 5 it doesn't, not doesn't it.
 6 Q Does -- is there any reference to lending officers
 7 actually checking the level of funds in this report?
 8 A I don't see a specific reference to that. It was part
 9 of the private wealth management businesses standard operating
 10 process to validate liquidity.
 11 MR. WALLACE: If we could move on to page ten,
 12 please.
 13 Q Again, this section says guarantor's financial summary.
 14 Although all three facilities are secured by collateral, given
 15 the unique nature of these credits, the credit exposure is being
 16 recommended based on the financial profile of the guarantor.
 17 What does that mean in the context of annual review
 18 that the credit exposure is being recommended based on the
 19 financial profile of the guarantor?
 20 A It means that the guarantor continues to have a
 21 substantial financial strengths and that our loans are good
 22 quality loans based on that personal guaranty that we have from
 23 him.
 24 Q And so does that necessitate any action by the bank
 25 or --

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1 A No.

2 Q Again, if we look at the top row, it says, "financial

3 summary." You see reporting for 2011, 2012, 2013, 2014, both

4 client reported and adjusted.

5 Why is Deutsche Bank looking at Mr. Trump's financial

6 condition from 2011 through 2014 in this report?

7 A Looking to see if there is any trend that is

8 identifiable.

9 Q And this information about any trend that might be

10 identifiable is something that the bank is using in its analysis

11 of -- in the annual review process?

12 A Potentially if the bank identified a trend, if it was

13 either worrying or improving, that would be a call-out in the

14 write up.

15 Q Mr. Haigh, you've been handed a document that has been

16 marked Plaintiff's Exhibit 300. If you can just take a moment

17 to familiarize yourself with this document.

18 (Witness reviewing document.)

19 A Yes, I see it.

20 Q Do you recognize this document?

21 A Yes.

22 Q What is this document?

23 A It is another annual review this time for 2016.

24 MR. WALLACE: Your Honor, I would ask that

25 Exhibit 300 be moved into evidence.

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1 THE COURT: Granted. It is in evidence.

2 (Whereupon, the Document was marked in evidence as

3 People's Exhibit 300.)

4 Q We'll walk through some of this in just a moment. If

5 we could flip to page 9 of 27. At the bottom, your signature is

6 missing from this document.

7 Do you have a recollection of why you didn't sign this

8 document?

9 A No specific recollection. It is possible I was on

10 vacation at the time.

11 Q Okay. If you turn to page 13 and we look, there is an

12 e-mail from Gaston Allegre to -- is it Joern Joseph?

13 A Yes, Joern Joseph.

14 Q Who is Mr. Allegre?

15 A Gaston Allegre was a credit officer that worked for me

16 on my team.

17 Q Who is Mr. Joseph?

18 A He was the chief credit officer of the U.S. entities of

19 Deutsche Bank.

20 Q And you're copied on this e-mail, but underneath it

21 says, Mr. Allegre writes: "Dear Joern, following up on our

22 conversation Tuesday, please find attached the annual review for

23 Mr. Trump, the credit report has been approved by Thomas

24 Eggenschweiler by e-mail (see attached) and me. In Nick's

25 absence, would you please review and provide local A-1 authority

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1 approval".

2 Does this refresh your recollection as to why you

3 didn't sign this particular credit report?

4 A Well, it appears that I was absent, so I

5 guess -- again, I'm guessing vacation.

6 Q And obtaining approval from Mr. Joseph was another

7 means of approving the credit report?

8 A Yes.

9 Q Just to confirm, this document was approved by Deutsche

10 Bank in the credit report? Is that fair to say?

11 A I believe so. I believe there was an e-mail

12 confirmation from Joern Joseph and Thomas Eggenschweiler that

13 they supported the -- this document.

14 Q If we go to page two of this document, you see at the

15 bottom of this page, again, there is another table reporting the

16 nature of the loan covenants and compliance.

17 What was the basis for the information reflected in

18 this chart?

19 A The information would have started with the client,

20 would have come from the client and then would have been

21 analyzed by the support group within private wealth management.

22 Q If you could go down to page 15. If we look again, it

23 is a summary chart. I ask was the adjustment process, the

24 haircut process in this year the same as the process we've

25 described in the prior years?

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1 A Yes.

2 Q If we look here, we see that this covers the year 2011

3 through 2015. Again, why is Deutsche Bank looking at the

4 performance across all of those years?

5 A We're looking to see for trends in the change in value

6 of assets or liabilities.

7 Q And was the change in trends relevant to the -- to

8 your review of this credit report?

9 A Yes.

10 Q We can go back to page three. There is a heading

11 "guarantee type." This section states, "Guarantee level

12 analysis is based on a 32.7 LTV. The guarantor has requested to

13 retain a 10 percent guarantee level although terms of the

14 previously approved tranche A note allow for no personal

15 guarantee if the LTV is below 35 percent. As outlined below,

16 the guarantee level at or below 35 percent LTV was originally

17 contemplated to be zero percent at which time pricing was

18 scheduled to increase to L plus 2.00 percent retaining a

19 10 percent guarantee level clearly strengthens the credit."

20 Can you explain to us what is happening with the

21 guarantee? What's happened with the guarantor's request to

22 remain at ten percent guarantee level?

23 A This particular facility had a step-down feature under

24 which as the loan to value of our loan gotten lower and lower,

25 so in turn, the amount of our principal plus interest that was

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1 guaranteed stepped down. And the 35 percent loan to value, we
 2 were willing to allow there to be no personal guarantee
 3 whatsoever. But in fact, as a consequence of that, the pricing
 4 would have increased, the spread, the L plus 2.00 number.
 5 Instead, the client -- his people said to us we would prefer to
 6 keep it 10 percent and take advantage of the lower pricing that
 7 goes along with the 10 percent guarantee.
 8 Q Thank you.
 9 You've been handed a document that has been marked
 10 Plaintiff's Exhibit 3137. Can you take a moment to familiarize
 11 yourself with this?
 12 (Witness reviewing document.)
 13 A Okay.
 14 Q Do you recognize this document?
 15 A Yes.
 16 Q What is this document?
 17 A It is an annual review of all three credit facilities
 18 the bank had with Donald Trump.
 19 Q And is that indicated by the box marked "reasons for
 20 presentation?"
 21 A That together with the checked box at the top left
 22 which says "review."
 23 MR. WALLACE: Your Honor, I would ask that
 24 Plaintiff's Exhibit 3137 be entered into evidence.
 25 THE COURT: Granted. It is in evidence.

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1 Did you have an understanding of how Deutsche Bank
 2 would have obtained the information reflected in this section?
 3 A We would have obtained that information from the client
 4 and we would have validated any liquidity to some extent by
 5 looking at brokerage statements and/or bank account statements.
 6 Q Do you have any specific recollection of considering
 7 dealing with the issue of decrease in liquidity due to political
 8 campaign costs?
 9 A That information would have come from the client.
 10 Q But you don't remember any discussion of it internally?
 11 A I do not.
 12 MR. WALLACE: If we could scroll down. Keep going.
 13 Q I'm just going to have -- I'll start over. We see the
 14 chart here. It says, "financial analysis guarantor."
 15 Underneath guarantor is final summary. Although all three
 16 facilities are secured by collateral, given the unique nature of
 17 these credits, the credit exposure continues to be recommended
 18 for support based on the financial profile of the guarantor or
 19 the ability to rely once again on the guarantor if collateral
 20 value has dropped and LTVs increased."
 21 Why is that the primary basis for continuing to support
 22 credit?
 23 A The primary basis -- it's the primary basis because
 24 the collateral in all three cases was not the usual type of
 25 commercial real estate collateral that the bank would take.

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1 (Whereupon, the Document was marked in evidence as
 2 Plaintiff's Exhibit 3137.)
 3 Q If we could flip to page ten, at the bottom, do you
 4 recognize the signature on the right-hand side of the screen?
 5 A Yes, that's my signature.
 6 Q What is indicated by your signature?
 7 A That I approved the annual review.
 8 Q Can you explain what's meant as the notation I will
 9 read as "for DBTCA as regional head WM risk"?
 10 A So I was signing -- I was being clear that I was
 11 signing on behalf of Deutsche Bank Trust Company Americas as the
 12 regional head of the wealth management risk group effectively
 13 meant that my signature was sufficient for that -- for the
 14 approval of this annual review.
 15 Q If we could turn to page eight of this document, focus
 16 on the section that states "recommendation." It says,
 17 "recommendation approval of the annual review for facility A
 18 Doral facility; B, Chicago facility; C, OPO. Underneath that,
 19 it states, "all facilities financial strength of the guarantor,
 20 the financial profile of the guarantor includes a stated net
 21 worth of 5.7 billion which remains well above his \$2.5 billion
 22 minimum requirement even on an adjusted basis. Guarantor
 23 maintains a strong liquidity position, \$114 million in
 24 unencumbered liquidity. A decrease of \$60 million from the
 25 prior year due to political campaign costs."

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1 Q And once again, we see that there is information
 2 contained here about Donald J. Trump financial condition. I
 3 should say his financial summary from 2011 through 2016.
 4 Why, again, is the bank looking at his financial
 5 profile from 2011 to 2016?
 6 A Again, it is to enable trends to be identified.
 7 Q And being able to identify trends was relevant to your
 8 analysis of the credit report?
 9 A Yes.
 10 Q And was that relevant to your ultimate approval of this
 11 credit report for this year?
 12 A Yes.
 13 Q Mr. Haigh, you've been handed a document that's been
 14 marked Plaintiff's Exhibit 302. Take a moment to look through
 15 the document.
 16 (Witness reviewing document.)
 17 A Okay.
 18 Q Do you recognize this document?
 19 A Yes.
 20 Q What is this document?
 21 A It's an annual review this time for July 2018 for three
 22 credit exposures we had with Donald Trump.
 23 Q If we could turn to page ten of this. Do you recognize
 24 the signature on the far right-hand side of the screen?
 25 A That's my signature.

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1 Q What is indicated by your signature on this document?
 2 A Approval of the annual review.
 3 MR. WALLACE: Your Honor, I would ask that
 4 Plaintiff's Exhibit 302 be entered into evidence.
 5 THE COURT: Granted. It is in evidence.
 6 (Whereupon, the Document was marked in evidence as
 7 People's Exhibit 302.)
 8 Q Mr. Haigh, was the process for this annual review the
 9 same as the prior annual reviews we have been discussing this
 10 afternoon?
 11 A Yes.
 12 Q If we could turn to page eight.
 13 MR. KISE: For the record, I think the signature is
 14 on page nine. I saw it came up at ten.
 15 THE COURT: Anybody object to his signature being
 16 on page nine? I hereby deem it to be page nine. Ten-minute
 17 warning.
 18 Q Mr. Haigh, we see another chart showing the analysis of
 19 financial analysis. Was the process conducted in this financial
 20 analysis the same as we discussed for prior years?
 21 A Yes.
 22 Q Again, we see that the analysis contains the financial
 23 summary for Mr. Trump stretching from 2011 to what I believe is
 24 2017. It looks like it is kind of cut off at this point, maybe
 25 2018.

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1 Why is Deutsche Bank looking at Mr. Trump's financial
 2 condition across all of these years?
 3 A In order to identify any trends in his financial
 4 situation.
 5 Q Was that relevant to your analysis of this credit
 6 report?
 7 A Yes.
 8 Q And was it relevant to your signing off on this credit
 9 report?
 10 A Yes.
 11 MR. WALLACE: I'll try to finish at the same time
 12 that we are breaking. So we're close.
 13 Q Mr. Haigh, I handed you a document that's been marked
 14 as Plaintiff's Exhibit 466. If you could take a moment to look
 15 through this document.
 16 (Witness reviewing document.)
 17 A Okay.
 18 Q Do you recognize this document?
 19 A Yes.
 20 Q What is it?
 21 A It's a set of e-mails, an e-mail chain between myself
 22 and Marzio Hug who was the senior credit officer in London.
 23 Q Who is the senior credit officer?
 24 A He was the senior credit officer in London. He was
 25 Thomas Eggenschweiler's boss at the time.

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1 MR. WALLACE: I will note for the record that this
 2 e-mail chain is dated at the top, e-mail chain is dated July
 3 30, 2014. We ask that Plaintiff's Exhibit 466 be admitted
 4 into evidence.
 5 MR. ROBERT: Objection. Statute of limitations.
 6 THE COURT: Objection overruled. Granted. It is
 7 in evidence.
 8 (Whereupon, the Document was marked in evidence as
 9 Plaintiff's Exhibit 466.)
 10 Q Mr. Haigh, you remember the transactions being
 11 discussed in this e-mail chain?
 12 A I have some memories of it, yes.
 13 Q In your e-mail at the bottom of the first page, it
 14 states, "We" issued a letter to Morgan Stanley today. It
 15 includes language that is not a commitment. We got an
 16 acknowledgment from Donald Trump that the letter does not waive
 17 or modify the terms of our existing transactions, that it does
 18 not obligate us to waive or modify our terms. It does not
 19 prejudice and of our rights and it is not a commitment."
 20 Firstly, I would ask if you could turn to page three of
 21 this document.
 22 THE COURT: I assume "and" is meant to be "any."
 23 THE WITNESS: Correct.
 24 Q And is this letter the acknowledgment from Mr. Trump
 25 that you were referring to in your e-mail?

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1 A Yes.
 2 Q It states at the top, "Dear Donald. You have asked
 3 Deutsche Bank to provide a letter in connection with your bid
 4 for the acquisition of the Buffalo Bills of the National
 5 Football League and in connection therewith, you provided
 6 Deutsche Bank with a recent certification of your financial
 7 statement which includes liquidity and asset value. A copy of
 8 the letter is attached hereto as Exhibit A (the DB letter)."
 9 If we go back to your cover e-mail, why did you want an
 10 acknowledgment from Mr. Trump that this was not a commitment?
 11 A Deutsche Bank was not prepared or willing to increase
 12 its credit exposure to Mr. Trump at that time.
 13 Q And so do you have an understanding of what the purpose
 14 was of writing the letter to Morgan Stanley?
 15 A Morgan Stanley were looking for some kind of
 16 confirmation that Mr. Trump would be able to perform under any
 17 purchase agreement that he had to buy the Buffalo Bills.
 18 Q If we look at the last paragraph of your e-mail, it
 19 states, "We got a certification of his financial status which
 20 documents the liquidity that was shown to us through statements,
 21 addresses, changes in his assets, liabilities and leverage
 22 ratio."
 23 Just go to the last page in this document. Is this
 24 document the certification that you are referring to in your
 25 e-mail?

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1 A Yes.

2 Q Do you know who Jeffrey McConney is?

3 A No.

4 Q It states at the top, "I, Jeffrey McConney, controller,

5 do hereby certify to Deutsche Bank the accuracy of the following

6 with respect to Mr. Donald J. Trump (DT). DT's current

7 liquidity excluding any encumbered liquid assets, but including

8 cash on hand as of June 30, 2014 is approximately \$310 million."

9 Why did Deutsche Bank want this certification as to his

10 liquidity?

11 A We had loan agreements with Mr. Trump that had

12 covenants requiring him to maintain liquidity and we wanted him

13 to certify that he would be in compliance with those covenants.

14 Q Do you know if Deutsche Bank did any independent

15 testing to confirm the 310 million number recommended here by

16 Mr. McConney?

17 A I do not know whether we did.

18 Q Item B states, "There have been no material decrease

19 (in excess of ten percent) in the aggregate value of his

20 illiquid assets since the financials were reported to Deutsche

21 Bank as of June 30, 2013 that were certified by DT on

22 October 30, 2013.

23 Why did Deutsche Bank want this certification from Mr.

24 Trump?

25 A Again, to be comforted, to receive confirmation that

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1 independent procedures to verify this representation in

2 paragraph D from the Trump Organization?

3 A Not to my knowledge.

4 MR. WALLACE: Your Honor, at this time, we have

5 nothing further of Mr. Haigh.

6 THE COURT: Nothing further at this time. Okay.

7 Perfect break time.

8 After the break, you'll cross-examine? Okay. See

9 you in 15 minutes.

10 (Witness excused.)

11 (Whereupon, a recess was taken.)

12 (Continued on following page.)

N. HAIGH - DIRECT (MR. SOLOMON) Page 1072

1 there was no material change in his net worth and attesting to

2 the value of the illiquid assets would be part of how the bank

3 would be comfortable with that.

4 Q Did Deutsche Bank take any independent procedures to

5 verify the accuracy of the representation contained in paragraph

6 B?

7 A No, not that I am aware of.

8 Q Same question. Why did Deutsche Bank want this

9 representation as to any material decrease or -- why did

10 Deutsche Bank want this representation C as to whether or not

11 there were any material increase in excess of five percent in

12 liabilities?

13 A Again, it is a component of his net worth.

14 Q And, to your knowledge, did Deutsche Bank undertake any

15 independent procedures to confirm the accuracy of the

16 representation contained in paragraph C?

17 A I have no knowledge of us doing -- Deutsche Bank doing

18 that.

19 Q For paragraph D, it states, "The ratio of total assets

20 to total liabilities remains greater than 15X."

21 What -- could you explain what is meant by the ratio

22 of assets to liabilities?

23 A If one divides the total asset values by the total

24 liabilities, you would end up with a number that's more than 15.

25 Q To your knowledge, did Deutsche Bank undertake any

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1 THE COURT OFFICER: Come to order. All rise. Part

2 37 is back in session. Please be seated and come to order.

3 Witness entering.

4 (The witness enters the courtroom and approaches

5 the witness stand.)

6 THE COURT: Mr. Suarez, are you ready to cross

7 examine the witness?

8 MR. SUAREZ: Yes, Your Honor.

9 THE COURT: Proceed.

10 CROSS EXAMINATION

11 BY MR. SUAREZ:

12 Q Mr. Haigh, good afternoon.

13 A Good afternoon.

14 Q I'm Jesus Suarez. We met a number of months ago at

15 your deposition.

16 A Yes.

17 Q It's very nice to see you.

18 Mr. Haigh, you would agree with me that banks make

19 money by lending money; correct?

20 A That's one way of making one.

21 Q And a goal of credit risk management is to make good

22 risk decisions; correct?

23 A Yes.

24 Q And in doing so in analyzing risk, credit risk

25 management considers a number of factors; correct?

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1 A Yes.

2 Q The purpose of doing so among others is to make sure

3 that money lent gets repaid; correct?

4 A That's correct.

5 Q And among those factors are the nature of the

6 collateral associated with the loan; correct?

7 A Yes.

8 Q The quality of the collateral associated with the loan;

9 correct?

10 A It kind of goes along with the nature of the

11 collateral, yes.

12 Q The loan's value ratio of the loan?

13 A Yes.

14 Q The bank's lending history on that type of loan?

15 A Yes, that's true.

16 Q The actual lending experience with the specific

17 customer; correct?

18 A That's also true.

19 Q The bank's experience in a particular industry;

20 correct?

21 A Yes.

22 Q The client's experience in a particular industry?

23 A That's relevant as well.

24 Q The client's performance in a particular industry is

25 that also relevant?

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1 A Correct.

2 Q The guarantor's liquidity is a consideration; correct?

3 A Correct.

4 Q Unpledged access owned by the guarantor are a

5 consideration; correct?

6 A Part of the analysis, yes.

7 Q And whether the borrower has unpledged assets, those

8 are also consideration?

9 A Yes.

10 Q General economic climate is also a consideration?

11 A Yes, that can be a consideration too.

12 Q There are many, many things that you consider when

13 performing risk analysis; correct?

14 A There are -- yes, there are, yes.

15 Q And it's your job to weigh all of these factors when

16 making a risk determination; correct?

17 A That's correct.

18 Q And you use your considerable experience in the field

19 in order to reach those judgments; correct?

20 A That's part of having research judgments, yes.

21 Q The other part includes inputs collected by other

22 members of your team?

23 A Yes.

24 Q As well as the opinions of other members of your team

25 in reaching those judgments; correct?

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1 A Yes.

2 Q Whether the client has a proven track record in a

3 particular industry, is that something that's relevant?

4 A Yes, that's relevant.

5 Q The borrower's debt profile, is that's something that's

6 relevant, sir?

7 A Yes, it is.

8 Q The guarantor's debt profile as well; correct?

9 A Correct.

10 Q The primary source of repayment, that's a relevant

11 consideration in risk analysis?

12 A Yes.

13 Q As well as the secondary source of repayment?

14 A That's one of them, yes, yes.

15 Q And the tertiary source of repayment we heard earlier

16 is also relevant?

17 A Indeed and the fourth way out, if there is one as well.

18 Q And the fourth way out.

19 And that's a shorthand for source of repayment? It's a

20 way out? It's an exit strategy for the bank?

21 A Correct.

22 Q The likelihood of default is a relevant consideration;

23 correct?

24 A Yes, it is.

25 Q Borrower's liquidity is a consideration; correct?

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1 A Yes.

2 Q And that would include information supplied by the

3 lending group; correct?

4 A That's part of it, part of the analysis, yes.

5 Q The judgment of the lending group plays into your risk

6 analysis?

7 A It has a role. We expect the lending group to have

8 formed a judgment and to be supportive of the proposal.

9 Q And earlier we talked about a relationship group as

10 well, the frontline people; correct?

11 A Relationship managers, yes.

12 Q The relationship managers.

13 And the relationship managers they also provide input

14 as to whether a transaction should occur or not occur; correct?

15 A They have -- they certainly have an opinion, yes.

16 Q They certainly have an opinion.

17 And that's an opinion that you consider in doing risk

18 analysis?

19 A Their opinions aren't likely to affect our fundamental

20 risk analysis. It might affect whether we consider the

21 exception or not.

22 Q And these opinions and judgments made by the lending

23 group are typically reflected in the credit memos?

24 A That's the purpose of the credit memo is to collect

25 that information together.

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1 Q And you expect that the information that's collected by
2 the lending group is accurately reported on the credit memos?
3 A Yes, I do.
4 Q And then you typically review the credit memos in
5 connection with your decision to support or not support the
6 transaction?
7 A That's correct.
8 Q And in doing so you rely on what's in those credit
9 memos; correct?
10 A Yes, I do.
11 Q Let's look at the 2011 credit memo that was introduced
12 by the plaintiff as Exhibit 293, please. We can pull that up on
13 the screen. And this particular credit memo relates to the
14 transaction commonly known as the Doral transaction; correct?
15 A Correct.
16 Q And that was a loan to acquire a resort in what is now
17 Doral, Florida; correct?
18 A Yes.
19 Q Outside of Miami?
20 A Yes.
21 Q I believe you told the Attorney General's Office that
22 Vrablic and Scalzi were the relationship managers for this
23 account?
24 A Yes.
25 Q And those are folks who worked in the private wealth

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1 management group at Deutsche Bank?
2 A That's correct.
3 Q They were your colleagues for a period of years?
4 A Yes. We worked at Deutsche Bank at the same time.
5 Q You worked at Deutsche Bank at the same time during
6 these transactions?
7 A Right, right.
8 Q You regard them well?
9 A Yes.
10 Q Their support for a transaction is something you would
11 have considered?
12 A They're both experienced relationship managers with a
13 knowledge in credit.
14 Q The account manager, which I believe is Thomas
15 Sullivan, reflected here, that's also somebody that you worked
16 with at Deutsche Bank?
17 A That's correct.
18 Q And he's an individual with substantial experience in
19 the lending business?
20 A Yes.
21 Q And his judgment that you would have considered in
22 determining whether to support or not support this transaction?
23 A It would have been a requirement that he did support it
24 before we would sign off on it.
25 Q So Mr. Sullivan doesn't support the transaction it

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1 wouldn't even get to your desk?
2 A Correct or someone in his position.
3 Q Or someone in his position.
4 If Mr. Sullivan hadn't supported this transaction it
5 wouldn't have come to your desk?
6 A Correct.
7 Q And the same question about Mr. Stafford and
8 Ms. Schroeder who were the supporting lenders on this
9 transaction. They were the folks that went out into the field
10 and collected that information?
11 A They were more junior lending officers, yes.
12 Q And you would have relied upon what was communicated to
13 you by them in this memo?
14 A Yes.
15 Q And you would have considered their judgment in
16 connection with your risk analysis; correct?
17 A As more junior officers of the bank their opinions
18 would probably carry less weight than Mr. Sullivan's opinion,
19 for example.
20 Q The law firm of Loeb & Loeb?
21 A Loeb & Loeb.
22 Q Loeb & Loeb. That's how it's pronounced?
23 A I believe so.
24 Q They were legal counsel to the bank in this
25 transaction?

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1 A Correct.
2 Q And Loeb & Loeb is a highly sophisticated law firm?
3 A Again, I believe so.
4 Q You worked with them for a number of years; correct?
5 A Correct.
6 Q And they typically represented the bank well in these
7 transactions?
8 A Yes.
9 Q And specifically in this transaction there is no reason
10 to challenge their work?
11 A None that I'm aware of.
12 Q I'd like to draw your attention to page one in the
13 second paragraph in the section "Collateral."
14 And we reviewed this -- you reviewed this earlier today
15 in your testimony, so I'll move into the salient points where it
16 says in the second line, "DJT," Mr. Trump, "intends to hold the
17 property for the long-term benefit" -- "for the long-term to
18 benefit from the strong cash flows and significant development
19 opportunities." Do you see that?
20 A Yes, I do.
21 Q Was the use of the collateral something that you would
22 have considered in your risk analysis?
23 A So in the sense of the use of the collateral is an
24 integral part of the collateral itself and yes, so we would have
25 looked at how the collateral is being used as part of the

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1 analysis.

2 Q And is the long-term appreciation of the collateral

3 something that you consider in your risk analysis?

4 A Not really, no.

5 Q Is the borrower's strategy for how to use that

6 collateral over a long period of time something that you would

7 have considered?

8 A Only to the extent that it demonstrated some ability to

9 improve the cash flow or value from the real estate. The

10 long-term desired hold would have informed the likely length of

11 the loan that we were willing to consider.

12 Q Well, certainly you wouldn't want your collateral to

13 lose value over a period of time; correct?

14 A We don't want it to lose value although we're aware

15 that it may.

16 Q And in this particular case are you aware that the

17 Doral property is now worth more than a billion dollars?

18 A I'm not aware of that.

19 MR. WALLACE: Objection.

20 Q If in fact it is worth more than a billion dollars now

21 would you agree that the strategy or hold the property in

22 benefit from strong cash flows --

23 MR. WALLACE: Objection.

24 Q -- succeeded?

25 THE COURT: I'm not sure -- are you objecting or

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1 Q 20MM, that's million cash deposits?

2 A That stands for 20 million, that's right.

3 Q And part of the objective of the private wealth

4 management group is to bring deposits into the bank; correct?

5 A Correct.

6 Q That's part of its business purpose?

7 A That's part of its business strategy, yes.

8 Q To develop the relationships with high net worth and

9 ultra high net worth individuals?

10 A To cover those individuals, to offer them banking

11 deposits, investment products, loans, other products as well.

12 Q And Donald J. Trump, Jr. here reflects as 100M in cash

13 deposits?

14 A Stands for 100,000.

15 Q 100,000.

16 And these were facts that the bank considered in

17 connection with preparing on the credit report; correct?

18 A Yes.

19 Q And the fact that private wealth management was

20 building a client relationship with a high net worth client is

21 also something that the bank considered?

22 A The bank always wanted to be able to build what it

23 called a relationship with a client, meaning that it wasn't just

24 credit, but it did other things with that client as well.

25 Q If you turn to page three of this document, page three

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1 are you not objecting?

2 MR. WALLACE: I'm objecting.

3 MR. KISE: What's the objection?

4 MR. WALLACE: The objection is it assumes facts not

5 in evidence of Mr. Suarez's testimony.

6 MR. SUAREZ: I'm simply asking him a fact

7 statement.

8 MR. WALLACE: If the defendants have evidence that

9 it's worth a billion dollars, they can show --

10 THE COURT: Well, I'll allow hypotheticals, but

11 other parts of the question may be of concern.

12 Would you like a read back or do you want to ask

13 the same or similar question?

14 MR. SUAREZ: Let me try to ask it differently.

15 Q If in fact the property is now worth over a billion

16 dollars would you agree with me that Mr. Trump's long-term plan

17 for the property succeeded?

18 A Only if the cost to him of holding it over that period

19 and the present value of the cost of funding and the cost of the

20 improvements he made, only if that cost was less than the

21 million or billion dollars that you are saying it's worth.

22 Q If you take a look on page one, it says "Assets Under

23 Management." You can highlight that section.

24 See where it says "Donald J. Trump?"

25 A Yes.

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1 in the section "Recommendation," says, "The facility is being

2 recommended for approval based on" and then it lists the basis

3 for approval; correct?

4 A Yes, it lists those four bullet points.

5 Q And those are the grounds upon which approval of the

6 transaction is being recommended?

7 A Yes. I mean, those are a summary, if you'd like, of

8 the key points in favor of doing this transaction.

9 Q These are the important ones?

10 A From the point of view of the lending officer who wrote

11 the memo, yes.

12 Q When it describes the financial strength of the

13 guarantor, you would agree with me that the financial profile of

14 the guarantor it says there "includes, on an adjusted basis, 135

15 million in unencumbered liquidity;" correct?

16 A Correct.

17 Q 2.4 billion in net worth; correct?

18 A Correct.

19 Q And approximately 48 million in adjusted recurring net

20 cash flow; correct?

21 A Correct.

22 THE COURT: I just want to make sure because the

23 wording was a little strange. You're just asking him if

24 that's what it says; right?

25 MR. SUAREZ: Correct. In building on the fact that

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1 this was a key point in their decision ultimately to support
 2 the transaction.
 3 Q And I just want to confirm that those are the numbers
 4 that the bank based its recommendation for approving the
 5 transaction?
 6 A Those are -- okay. Those are numbers after the bank
 7 had made adjustments, I think. I'm not sure about the
 8 2.4 billion net worth. I'd have to read the memo again because
 9 we say adjusted liquidity of 135 million, but with the financial
 10 profile like that it was a recommendation to support this
 11 transaction.
 12 Q And that was the financial profile that the bank
 13 determined reflected the financial strength of the guarantor;
 14 correct?
 15 A Yes.
 16 Q So I just want to draw your attention it was the
 17 adjusted basis that formed the basis of the recommendation, the
 18 adjusted basis of 135 million in unencumbered liquidity,
 19 2.4 billion in net worth and 48 million in adjusted recurring
 20 net cash flow?
 21 A I mean, I see that language. I need to read through
 22 the memorandum itself to see whether the 2.4 billion in net
 23 worth is also adjusted, but I see the language there is just the
 24 position of the covenant, so.
 25 Q Let's take a look at the next page of the document.

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1 Do you see here where in the middle of the page it
 2 lists financial analysis and the second column reflects the
 3 client reported financial summary? And the second column
 4 includes the DB adjusted column for the year ending 6/30/2011?
 5 A Yes, I see that.
 6 Q The second column would reflect what the client
 7 reported from the bank; correct?
 8 A Yes.
 9 Q And the second column being Deutsche Bank's adjusted --
 10 THE COURT: That's the third column.
 11 Q The third column?
 12 A That's after Deutsche Bank had made adjustments.
 13 Q After Deutsche Bank had made adjustments.
 14 And in the first instance you've got cash marketable
 15 securities reported at 258.9 million and Deutsche Bank adjusted
 16 that to 135.8 million?
 17 A I see that.
 18 Q So that's the number ported over the basis for the
 19 recommendation?
 20 A Correct.
 21 Q And in fact, if we scroll down to the section on
 22 liquidity it would tell you why Deutsche Bank made that
 23 adjustment; correct? And we can walk through it. Do you see
 24 where it says "liquidity?"
 25 A I do, yes.

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1 Q "On December 20, 2011, a structured lending team of
 2 Dave Williams and Emily Schroeder visited the offices of the
 3 guarantor and reviewed bank and brokerage statements that
 4 confirmed 178 million in cash balances and 51.8 million
 5 marketable securities, totaling 229.9 million held in the name
 6 of the guarantor. In addition, they also reviewed statements
 7 for operating companies that were wholly owned by the guarantor
 8 which evidenced another 29 million cash and marketable
 9 securities." Do you see that?
 10 A I do.
 11 Q Are you aware that Dave Williams and Emily Schroeder
 12 visited the client's offices?
 13 A That's what he claims I assume they did.
 14 Q You assume they did you assume.
 15 They had the opportunity to ask questions?
 16 A Correct.
 17 Q Review documents?
 18 A Yes.
 19 Q And then report back in the credit memo their findings?
 20 A Yes.
 21 Q And if you go on to the next paragraph, it says, "The
 22 guarantor's personal liquidity is primarily" -- excuse me --
 23 "has been primarily generated through ongoing distributions from
 24 his diversified portfolio of operating companies which is
 25 highlighted in more detail in the cash flow section below."

N. Haigh - Petitioner - cross (Suarez) Page 1090

1 Do you see that?
 2 A Yes.
 3 Q "Such distributions include cash distributions from the
 4 guarantor's portfolio of premier private clubs, which generated
 5 these distributions through operating profit along with the
 6 collection of membership deposits."
 7 And we'll have to scroll two more pages over because
 8 this page repeats. And the memorandum it keeps going up here.
 9 This is the part I really wanted to draw your attention to, and
 10 it says:
 11 "In accordance with industry standards, premier golf
 12 clubs require new members to post a non-interest bearing 30-year
 13 deposit as part of their membership requirement. Terms of the
 14 deposit agreement include that such deposits are nonrefundable
 15 for 30 years without condition, after which the member may
 16 request the refund for such deposits, often contingent on being
 17 replaced by at least one new member.
 18 As of June 30, 2011, the total life-to-date balance of
 19 such deposits collected across the ten clubs owned by the
 20 guarantor was \$188 million. Given the lack of any conditional
 21 rights by member, such" -- "by the member," excuse me, "such
 22 deposits are not recorded on the operating books of the club as
 23 a liability. The guarantor has indicated that they have
 24 received tax opinions supporting the treatment of such deposits
 25 and are not required to be included as part of the taxable

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1 income, however for purposes of calculating adjusted liquidity,
 2 we have elected to include a 50 percent reserve (\$94,000,000
 3 representing 50 percent of the 188 million life-to-date deposit
 4 balance) against the reported liquidity." Do you see that?
 5 A Yes.
 6 Q Does this reflect the bank had an opportunity to go to
 7 review the cash holdings and discount them appropriately for
 8 purposes of adjusting the value in its determination of the
 9 guarantor's liquid assets?
 10 A I don't know which accounts they looked at to form this
 11 conclusion about these particular assets. In other words, I
 12 don't know whether they were in separate accounts by themselves
 13 or were part of some other commingled account. Looks to me as
 14 though the lending officers were to some extent relying on
 15 information to be provided to them by the client's people in
 16 terms of how they were treated from a tax point of view.
 17 Q But the determination to discount the reserve did not
 18 relate to the tax point of view?
 19 A I'm not sure about that. Normally with a cash deposit
 20 it was fully owned and unencumbered. We would take a very small
 21 haircut, if any. The fact that we're taking such a large
 22 haircut suggests to me we think there is some reason that this
 23 liquidity might not be there in the future and given that it
 24 states at the top these are deposited for a nonrefundable basis
 25 for 30 years and even then they may have to be replaced with a

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1 new investment in the golf club, a new member, whatever it's
 2 called. The haircut we're taking suggests to me we think there
 3 may be some sort of tax liability attached to them.
 4 Q But certainly the fact that the cash was generated from
 5 those membership deposits is clearly disclosed to the bank;
 6 correct?
 7 A Yes.
 8 Q And the fact that the bank had its own opinion as to
 9 how much of that liquidity it ought to consider was adjusted and
 10 then reflected in the financial analysis; correct?
 11 A The bank didn't did make that adjustment. That's
 12 correct.
 13 Q Then going back to the prior page. If we go back to
 14 the chart with the statement of the financial analysis. I'd
 15 just like to point out again that the 258.9 is reduced to 135.8;
 16 correct?
 17 A Correct.
 18 Q And in the escrow and reserve deposits the bank took
 19 the client's reported number of 9.1 million and reduced it to 0?
 20 A Correct.
 21 Q Correct.
 22 In the real estate category you've got the client
 23 reported value of 2 -- of what is effectively \$2,996,900,000;
 24 correct?
 25 A Correct.

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1 Q And the bank adjusted that net worth or that net equity
 2 number, excuse me, down to 1,000,737,900,000; correct?
 3 A Yes.
 4 Q And that was after the bank had an opportunity to
 5 review the client's real estate holdings in the matter reflected
 6 in the credit report; correct?
 7 A Yes.
 8 Q And if we would go to the page over which is page six
 9 of the PDF and scroll up to this chart here we see how the bank
 10 did that; correct?
 11 A That's correct.
 12 Q And I believe there were four properties that are
 13 listed as trophy properties; correct?
 14 A Yes.
 15 Q The first one being Trump Tower; right?
 16 A Yes.
 17 Q And the client reported a value of 490 million for
 18 Trump Tower and Deutsche Bank reduced that to 380.2 million for
 19 purposes of reaching its adjusted value for that property?
 20 A Yes.
 21 Q Niketown, same question. The client reported a value
 22 of 263.7 million and Deutsche Bank reduced that to 197 million
 23 for purposes of reaching the Deutsche Bank adjusted value?
 24 A Correct.
 25 Q And 40 Wall Street, the \$524.7 million valuation was

N. Haigh - Petitioner - cross (Suarez) Page 1094

1 reduced to 438 million by Deutsche Bank?
 2 A Yes.
 3 Q And in the case of the Trump Park Avenue, a similar
 4 reduction in value occurred; correct?
 5 A Yes.
 6 Q 311 million went down to 206.3 million; correct?
 7 A Correct.
 8 Q And in the third column or fourth column, "property
 9 level debt" that stayed the same; right? The debt of the
 10 property continues to be the debt of the property?
 11 A Correct.
 12 Q And the following column lists the net equity reported
 13 by the client and in the following column the net equity
 14 reported by Deutsche Bank?
 15 A Correct.
 16 Q And in order to reach the DB valuation, Deutsche Bank
 17 had the opportunity to consult with the folks from the Deutsche
 18 Bank Valuation Services Group; correct?
 19 A Yes.
 20 Q And the Deutsche Bank Valuation Services Group I
 21 understand are an internal unit of the bank?
 22 A That's correct.
 23 Q They're folks that have substantial experience valuing
 24 real estate assets?
 25 A Correct.

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1 Q They're folks whose job includes not only providing I
 2 think what's been described as sanity checks on real estate
 3 numbers?
 4 A Most of the time their job is reviewing actual
 5 appraisals, criticizing those appraisals, signing off on the end
 6 product at the end of the day. This was more of I think the
 7 phrase we used might have been a sanity check on the numbers.
 8 Transcript continues on the following page....
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N. HAIGH - CROSS (MR. SUAREZ)

1 A That's correct.
 2 Q In fact, there is an indication there of property level
 3 debt, right?
 4 A Yes.
 5 Q The property level debt would be debt from other banks
 6 that attached to the respective properties?
 7 A Yes.
 8 Q You would understand that, right?
 9 A We would be relying on information the client had
 10 reported to us that this debt existed.
 11 Q And the total outcome of the valuation of these four
 12 trophy properties was that the client reported number of
 13 1,590,000,000 was reduced to 1,221,100 -- excuse me was reduced
 14 to 1,221,500,000.
 15 A Correct.
 16 Q Which produced net equity from 1.326.4 million to
 17 957.9 million?
 18 A That's also correct.
 19 Q In order to adjust the valuation, so that from the
 20 bank's perspective it had a valuation that appears here, you
 21 consulted with the folks at Deutsche Bank evaluation?
 22 A On those four assets.
 23 Q I believe that that's reflected lower in this document
 24 under the four trophy properties. It is goes through for these
 25 four assets how the values were adjusted, correct?

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N. HAIGH - CROSS (MR. SUAREZ)

1 Q It was Deutsche Bank's opinion of what the value of
 2 those assets should be, correct?
 3 A It was Deutsche Bank's opinion of what the value of
 4 those assets might be.
 5 Q Might be because, of course, we understand there could
 6 be a broad range of outcomes when you value an asset?
 7 A Also, we didn't have -- we, the bank, including its
 8 valuation services group, hadn't done all the due diligence that
 9 one would do in order to form an opinion of value in the sense
 10 of the opinion of value you see in an appraisal.
 11 Q And, of course, I understand an opinion of value in the
 12 valuation world has a very specific definition.
 13 A Correct. Right.
 14 Q You, sir, are a surveyor?
 15 A Yes.
 16 Q Which I understand across the pond in the United
 17 Kingdom is very similar to our appraiser?
 18 A Correct.
 19 Q In fact, a RICS surveyor; is that correct?
 20 A That's the institution that certifies.
 21 Q The Royal Institute of Chartered Surveyors?
 22 A Correct.
 23 Q And here, each one of these properties that was
 24 evaluated, the trophy assets was not pledged as collateral to
 25 the bank, correct?

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1 A Correct.
 2 Q Specifically with respect to Trump Tower, Deutsche Bank
 3 Valuation Services Group suggested a more appropriate -- what it
 4 believed a more appropriate cap rate in order to reach a value,
 5 correct?
 6 A Yes.
 7 Q That formed the basis of Deutsche Bank's adjustment?
 8 A Correct.
 9 Q And in the Niketown, I don't believe the particular
 10 methodology was reported on the credit memo, but the result was
 11 that based on these reports square footage, Deutsche Bank
 12 Valuation Services Group indicated an adjusted value of 197; is
 13 that correct?
 14 A That's what's in the credit report. Like you, I'm not
 15 exactly sure how they reached that conclusion.
 16 Q But that ended up being the value that was listed as a
 17 DB adjusted value?
 18 A Yes.
 19 Q Then 40 Wall Street, the Deutsche Bank Valuation
 20 Services Group looked at that property and determined that a six
 21 percent aggregate was appropriate for purposes of adjusted
 22 value, correct?
 23 A Correct.
 24 Q Based on that, it reduced the value of the property for
 25 purposes of Deutsche Bank's consideration to 1 --

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1 A Doesn't say on there.

2 Q Doesn't say it here, but if you look back up on the

3 chart, it says it on the chart. It reduced to 438 billion which

4 that was an equity of 278 million for purposes of the adjusted

5 net equity, correct?

6 A That's correct.

7 Q Again, the same adjustment took place with respect to

8 the Trump Park Avenue; is that correct?

9 A Yes.

10 Q And in the Trump Park Avenue, there were discussions

11 with Deutsche Bank Valuation Services Group that aren't

12 disclosed here, but there were all of those discussions. There

13 was a 35 percent haircut taken on the value?

14 A That's correct.

15 Q And in this instance, it appears from reading the

16 credit report that Deutsche Bank had an opportunity to review

17 the asset with the Deutsche Bank Valuation Services Group and

18 apply an appropriate amount of a reduction?

19 A As I said before, this was not a full appraisal. It

20 was not based on due diligence, presuming it was based on

21 information provided by the client on the size of the real

22 estate, the leases and the rents.

23 Q But for Deutsche Bank's purposes, that was the number

24 that you used?

25 A Yes.

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1 Q Let's back out of here. Zoom back into the club

2 facilities. In the chart under real estate, you see a similar

3 reduction was taken from the client report value of

4 1,315,000,000.

5 A Looks to me the bank took a 50 percent reduction in the

6 value and did not consult with the Valuation Services Group over

7 that.

8 Q That's because the club facilities I believe I heard

9 you earlier testify were hard to value?

10 A I believe they are harder to value than of those other

11 four assets that were individually looked at.

12 Q And in a -- I think -- in extremis values produced

13 could be very different, correct?

14 A So in a -- in a loose stream market, whether it is a

15 extreme market, the value could be generated from his club

16 facilities to be very different from the value that he was

17 carrying them at as the value there.

18 Q For that reason, the values were just halved?

19 A Yes.

20 Q They were ball-parked?

21 A Ball-parked, indeed.

22 Q And the bank ballpark, those at having an estimate

23 of -- an estimated net equity to did he 633 million, correct?

24 A Yes.

25 Q And in fact, they did something similar with the

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1 properties under development 273.2 million and because

2 properties under development may yield very different sale, the

3 bank ball-parked it and said we are just going to consider

4 75 percent for the value of the net worth?

5 A 75 percent haircut which is a 25 percent of their value

6 considered.

7 Q So you chopped off 75 percent of what the client

8 reported about?

9 A That's correct.

10 Q That's what went into the DB adjusted net equity?

11 A Correct.

12 THE COURT: Ten-minute warning.

13 Q And this was with respect to the real estate, how the

14 client reported a valuation of 3,299.4 million was reduced to

15 2,040.4 million and after subtraction resulted in an adjusted

16 net equity of 1,737.9 million?

17 A That's the math, yes.

18 Q Then this is the number, the DB adjusted net equity of

19 the real estate level that then carries over to the financial

20 analysis on page four. Then produces the client reported value

21 for real estate net equity to the DB adjusted value for real

22 estate net equity, correct?

23 A Correct.

24 Q And in fact, the bank undertook a similar process of

25 reaching its own judgment on the different asset value

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1 categories for partnerships and joint ventures, correct?

2 A Yes, it looks like a ballpark 50 percent reduction.

3 Q The bank reduced partnerships and joint ventures from

4 720 million to 360 million, correct?

5 A Correct.

6 Q And real estate licensing was reduced from 89.3 to

7 44.6?

8 A Correct.

9 Q Other assets were reduced from 199.2 to 99.6, correct?

10 A Correct.

11 Q And after having the opportunity to consider the client

12 reported assets, the bank reached a judgment for DB adjusted.

13 Those assets would be reflected at a value of \$2,377,900,000,

14 correct?

15 A Correct.

16 Q Ultimately, that math after the subtraction of other

17 liabilities results in a net worth of 2,365,800,000 as adjusted

18 by Deutsche Bank?

19 A Yes.

20 Q This amount, it was that Deutsche Bank adjusted net

21 worth, not the client reported net worth, that formed the basis

22 of the statement in page three?

23 A Which was --

24 Q Page three. That the financial strength of the

25 guarantor included on an adjusted basis 135 million in

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1 unencumbered liquidity, 2.4 billion in net worth, correct?

2 A Correct.

3 Q And approximately 48 million in adjusted recurring net

4 cash flow, correct?

5 A Correct.

6 Q Another basis for recommending approval of the facility

7 was operating experience, correct?

8 A Yes.

9 Q And this summarizes the operating experience of

10 President Trump, Mr. Trump here, DJT as having extensive

11 experience in operating private clubs, correct?

12 A Yes.

13 Q And it goes on to say that his current portfolio

14 includes 10 such clubs with a reported value of 1.3 billion and

15 a DB adjusted value of 675 million?

16 A Correct.

17 Q And that would follow the same logic, correct?

18 A Yes.

19 Q And in fact, Mr. Trump, later President Trump, in fact

20 had an extensive experience, correct?

21 A I believe so.

22 Q That was a significant factor in recommending approval

23 of the loan transaction?

24 A Yes.

25 Q In the fourth reported basis for recommending the

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1 A Correct.

2 MR. SUAREZ: I think I am at a good stopping point,

3 your Honor.

4 THE COURT: We will give everybody a break.

5 Mr. Suarez, how much longer do you think cross will

6 take.

7 And then Attorney General, how long will your

8 re-direct take?

9 MR. SUAREZ: Your Honor, I think that working

10 through the documents will take me at least as long as it

11 took Mr. Wallace to work through the documents. I would

12 expect to be able to do it throughout the course of tomorrow

13 and early into the lunch break.

14 MR. ROBERT: Then I will have a few minutes as

15 well.

16 THE COURT: Collectively, when might you expect to

17 finish cross?

18 MR. SUAREZ: Tomorrow afternoon.

19 THE COURT: Midafternoon, early afternoon?

20 MR. SUAREZ: Midafternoon.

21 THE COURT: Okay.

22 MR. KISE: We may be able to bring Mr. Weisselberg

23 back if that's the question, if that's what you're getting

24 at. We will have him prepared, so they can continue with

25 his examination.

N. HAIGH - CROSS (MR. SUAREZ) Page 1104

1 facility, it says, "the expected enhanced value due to CAPEX."

2 One of the reasons that Deutsche Bank recommended to your

3 approval of this facility was that the resort was world class

4 location -- excuse me. The resort is a world class location

5 that has been home to a PGA event every year since the resort

6 opened in 1962. That's correct, right, Mr. Haigh?

7 A To the best of my knowledge.

8 Q And that DJT expects to invest approximately 50 million

9 on capital improvements and as a result, it is expected that the

10 value of the collateral will increase significantly over the

11 term of the facility, correct?

12 A Correct.

13 Q And on this basis, one of the reasons that Deutsche

14 Bank was recommending approval to the loan transaction was, in

15 fact, because it thought that the collateral would improve in

16 value over a period of time, correct?

17 A That was one of the reasons that the lending group put

18 forward to us.

19 Q It was one of the 14 reasons?

20 A Yes.

21 Q And in fact, that turned out to be true as well?

22 A I don't know for sure.

23 Q Well, then over the course of the credit reports, we'll

24 see how that number -- the value of that collateral continued

25 to increase as the guarantee was involved?

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1 THE COURT: Just so we know how much re-direct, if

2 any, there will be.

3 MR. WALLACE: I expect I wouldn't need more than 10

4 or 15 minutes.

5 MR. KISE: We will have Mr. Weisselberg prepared

6 and if it turns out we don't get to him, that's okay; but we

7 won't leave the Court waiting without a witness, that's for

8 sure.

9 THE COURT: That's the worse thing in the world.

10 MR. SOLOMON: I think finishing Mr. Weisselberg

11 will be 30 minutes or so. Clearly, less than an hour. So

12 depending when they're intending to finish this witness, we

13 may want to have the next witness available for tomorrow

14 late afternoon.

15 MR. KISE: We can do that.

16 MR. ROBERT: You want Mr. Birney here tomorrow,

17 just tell us.

18 MR. KISE: Sure. I think that's optimistic given

19 how past -- but, nonetheless, we can do it.

20 MR. ROBERT: If the Attorney General would just

21 contact them and tell him to be here tomorrow afternoon,

22 that's fine. Certainly, no objection from us.

23 THE COURT: Okay. See you at ten o'clock tomorrow.

24 MR. WALLACE: Thank you, your Honor.

25 MR. KISE: Thank you, Judge.

1 MR. ROBERT: Thank you.
2 (Whereupon, the trial was adjourned to October 12,
3 2023 at 10:00 a.m.)
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Donald Trump, et al.**

**Nicholas Haigh
October 11, 2023**

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In The Matter Of:
PEOPLE OF THE STATE OF NEW YORK v.
DONALD J. TRUMP, et al

NICHOLAS HAIGH, ALLEN WEISSELBERG, PATRICK BIRNEY
October 12, 2023

NICOLE C. ROBINSON

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DONALD J. TRUMP, et al October 12, 2023

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1 SUPREME COURT OF THE STATE OF NEW YORK
 2 COUNTY OF NEW YORK : CIVIL TERM : PART 37
 3 ----- X
 4 PEOPLE OF THE STATE OF NEW YORK, BY
 5 LETITIA JAMES, ATTORNEY GENERAL OF
 6 THE STATE OF NEW YORK,
 7
 8 Plaintiff,
 9
 10 Index No.
 11 -against- 452564/2022
 12 DONALD J. TRUMP; DONALD TRUMP, JR.; ERIC TRUMP;
 13 IVANKA TRUMP; ALLEN WEISSELBERG; JEFFREY MCCONNEY;
 14 THE DONALD J. TRUMP REVOCABLE TRUST; THE TRUMP
 15 ORGANIZATION, INC.; TRUMP ORGANIZATION, LLC;
 16 DJT HOLDINGS, LLC; DJT HOLDINGS MANAGING MEMBER;
 17 TRUMP ENDEAVOR 12, LLC; 401 NORTH WABASH VENTURE,
 18 LLC; TRUMP OLD POST OFFICE, LLC; 40 WALL STREET,
 19 LLC.; AND SEVEN SPRINGS, LLC,
 20
 21 Defendants. ----- X
 22 Supreme Courthouse
 23 60 Centre Street
 24 New York, New York
 25 October 12, 2023

BEFORE:
 HONORABLE ARTHUR F. ENGORON,
 Justice, Supreme Court

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(Appearances continued on the next page.)

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N. HAIGH - CROSS (MR. SUAREZ)

1 THE COURT OFFICER: All rise. Part 37 is now in
 2 session. The Honorable Judge Arthur Engoron presiding.
 3 Make sure all cellphones are on silent. Laptops and
 4 cellphones will be permitted, but only to members of the
 5 press. There's absolutely no recording or photography of
 6 any kind allowed in the courtroom. Now, please be seated
 7 and come to order.
 8 THE COURT: Tommy, you're getting better and better
 9 at that.
 10 Okay. Supposedly, the witnesses are going to be
 11 brought earlier, so we have less time to wait. Can we get
 12 Mr. Haigh?
 13 Counselors, anything to say, housekeeping?
 14 MR. WALLACE: Plaintiff is prepared to continue.
 15 THE COURT: Please.
 16 MR. SUAREZ: Thank you.
 17 THE COURT: For those of you who weren't here
 18 yesterday or didn't hear about it, we are resuming the
 19 cross-examination of Mr. Haigh formerly of Deutsche Bank.
 20 THE COURT OFFICER: Witness entering.
 21 THE COURT: I will remind the witness as I always
 22 do that he is still under oath.
 23 Mr. Suarez, would you like to continue?
 24 MR. SUAREZ: Thank you, your Honor.
 25

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 Senior Court Reporters

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N. HAIGH - CROSS (MR. SUAREZ)

1 CROSS-EXAMINATION.
 2 BY MR. SUAREZ: (CONT'D)
 3 Q Mr. Haigh, good morning.
 4 A Good morning.
 5 Q Turning back yesterday to Plaintiff's 293, we were
 6 reviewing on page three the basis for recommendation of the
 7 Doral facility and I just wanted to close the loop on something
 8 here.
 9 When we talk about the financial strength of the
 10 guarantor being based on the 48 million in part, the 48 million
 11 in adjusted recurring cash flow, do you see that number there?
 12 A Yes.
 13 Q I wanted to make sure that that tied out to the 48
 14 million in recurring net cash flow on page seven of this
 15 document which reflects in the second column the DB adjusted
 16 value for recurring net cash flow of 48.8 million, correct?
 17 A That's correct.
 18 Q And with respect to the expected enhanced value due to
 19 CapEx, again mentioned on page three of this document, as a
 20 basis for recommending the facility?
 21 A So I see that.
 22 Q The second sentence, "As DJT expects to invest
 23 approximately 50 million on capital improvements, it is expected
 24 that the value of our collateral will increase significantly
 25 over the term of the facility." Do you see that?

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1 A I see that.

2 Q Again, on page nine of this document, that reflects the

3 project overview in the third line of the second paragraph,

4 "Upon acquisition, the guarantor intends to invest an additional

5 50 million to renovate and reposition the record to its previous

6 world class standard."

7 Do you see that?

8 A Yes, I do.

9 Q And that's the basis of the statement on page three

10 that the recommendation was made in part based on the

11 anticipated investment by the guarantor into the property?

12 A I see that, yes.

13 Q And in fact, the guarantor ultimately invested more

14 than the \$50 million in the property?

15 A I don't recall how much he ultimately vested.

16 Q Okay. We can get to that. Turning to Plaintiff's

17 Exhibit 291, this is another document that you reviewed

18 yesterday in your testimony, Mr. Haigh. And I believe it's the

19 originating memo for the facility on the Trump Chicago the 401

20 North Wabash?

21 A Yes, that's correct.

22 Q The borrower in this transaction was an entity called

23 401 North Kabash Venture, L.L.C. correct?

24 A Correct.

25 Q The lender was Deutsche Bank Trust Company America,

N. HAIGH - CROSS (MR. SUAREZ) Page 1113

1 correct?

2 A Correct.

3 Q And the guarantor is Donald J. Trump, correct?

4 A Yes.

5 Q Eric Trump is not a party to this loan agreement,

6 correct?

7 A That's correct.

8 Q Neither is Donald J. Trump, Jr. correct?

9 A That is correct.

10 Q Let me say that better. Donald Trump, Jr. is not a

11 party to this loan agreement; is that correct?

12 A That is correct.

13 Q DJT Holdings, L.L.C. is not a party to this loan

14 agreement, correct?

15 A So I'd have to look at the loan documentation itself to

16 see who the ultimate parties ended up being. It is possible

17 there were some changes between this approval and the final set

18 of entities that signed the loan documentation.

19 Q At the time of the approval, there were no other

20 parties to the agreement other than the Deutsche Bank trust

21 company as the lender, Donald J. Trump as the guarantor and 401

22 North Wabash?

23 A That was certainly the intention at the time this

24 memorandum was approved.

25 Q DJT Holdings Managing Member, L.L.C. was not a party to

N. HAIGH - CROSS (MR. SUAREZ) Page 1114

1 this agreement?

2 A Like I said, I would have to look at the actual loan

3 documents to see what entities became a party to the agreement.

4 Q Was the Trump Organization Inc. a party to this loan

5 agreement?

6 A As I said, I'd have to look at the loan documentation.

7 Q As part of the underwriting reflected in the credit

8 report, the Trump Organization Inc. was not a party to the

9 transaction, correct?

10 A That's correct. Per the credit report, the Trump

11 Organization was -- as an entity was not one of the either the

12 borrower or the guarantor.

13 Q And pursuant to this credit report at least, DJT

14 Holdings, L.L.C. was neither the borrower or the guarantor?

15 A I agree with you, yes.

16 Q The same for DJT Managing, L.L.C.?

17 A It is not in the credit report.

18 Q The same for the Trump Organization, L.L.C.?

19 A It is not on the credit report.

20 Q The same for 40 Wall Street, L.L.C.?

21 A It is not on the credit report.

22 THE COURT: Mr. Suarez, why don't you just ask if

23 there are any other parties instead of asking ten different

24 entities whether they are a party? Wouldn't that work?

25 MR. SUAREZ: I think the first one, if I may, Your

N. HAIGH - CROSS (MR. SUAREZ) Page 1115

1 Honor, may take me a little bit longer and then on the

2 following ones, I have a script to cut it down.

3 THE COURT: I also suggest, again, not to ask

4 negative questions. He didn't do it, did he, and then you

5 don't know whether yes or no. Just did he do it? No.

6 Okay.

7 Q Per the credit report, Trump Endeavor, 12, L.L.C was

8 not a party to this loan agreement?

9 A Per the credit report, it is not a party.

10 Q Trump Old Post Office is not a party to this

11 transaction, correct?

12 A Per the credit report, it is not a party to this

13 transaction.

14 Q Okay. The 401 North Wabash transaction, which we

15 referred to as the Chicago transaction, had two components,

16 correct?

17 A Yes.

18 Q Facility A, we can scroll down. The collateral for

19 facility A was a first mortgage lien and a first priority

20 security interest in the residential component of the building

21 known as the Trump Chicago?

22 A Yes.

23 Q And that included residential condominium units that

24 were not sold, correct?

25 A That's correct.

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1 Q That were owned by the borrower, correct?

2 A Yes.

3 Q As those condominium units were sold, that facility was

4 paid down, correct?

5 A Yes.

6 Q And in the second facility B, the collateral was a

7 first mortgage lien and first priority security interest in the

8 commercial point of the Trump Chicago, correct?

9 A That's correct.

10 Q That included a lien on a full-service hotel within the

11 Trump Chicago that had 339 condo hotel rooms of which 175 were

12 owned by the borrower, correct?

13 A Yes.

14 Q The purpose of this loan, Mr. Haigh, was to refinance

15 another performing Deutsche Bank loan, correct?

16 A It was to refinance another Deutsche Bank loan, yes.

17 Q Deutsche Bank was familiar with the collateral,

18 correct?

19 A Certain members of Deutsche Bank -- the group that

20 originated that prior loan were clearly familiar with the

21 collateral and people within the wealth management business

22 became more familiar with the collateral as they did their due

23 diligence.

24 Q The Deutsche Bank loan that was refinanced through this

25 transaction was a performing loan, correct?

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1 A I don't know.

2 Q Does the credit report suggest anywhere that the

3 refinanced loan from Deutsche Bank was not a performing loan?

4 A So there's no reference to the credit report that it

5 was not performing at the time.

6 Q There is no reference in the credit report that the

7 prior loan was not performed?

8 A Correct. There's no indication that it was not

9 performing.

10 Q Correct. Thank you.

11 If we could turn to page five. The basis for

12 recommendation of this facility included the quality and

13 collateral -- excuse me. The quality of the collateral and the

14 loan to value, correct?

15 A Yes.

16 Q This was the first basis identified for the facility

17 being recommended, correct?

18 A Yes.

19 Q At inception, the collateral was anticipated to be

20 36 percent on one and 44.7 percent on both tranches, correct?

21 A So it says here that the loan to value, expected loan

22 to value on the commercial transaction was 36 percent and

23 overall between the two, the loan to value was just under

24 45 percent.

25 Q In fact, if we go to page two, you'll see it appears to

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1 be omitted here, but this was brought over for the reason -- for

2 presentation up top, it says facility A and at the end of that

3 paragraph it says the expected LTV as closing date is the

4 55 percent?

5 A Yes.

6 Q The expected LTV on closing date is 36 percent?

7 A Correct.

8 Q Which is now in the recommendation that ports over to

9 an aggregate expected LTV of 44.7 on closing?

10 A Correct.

11 Q That's a relatively low loan to value, correct?

12 A Depends what you're comparing it to. So I would say

13 it's slightly low loan to value for a condo inventory deal when

14 a condo is being emptied and being sold. It is lower than what

15 you would expect, say, on an office building.

16 Q The Doral transaction by comparison had a loan to value

17 at inception of 85 percent, correct?

18 A Correct.

19 Q So the Chicago transaction comparatively had a lower

20 average loan to value of nearly half?

21 A Certainly much lower than the Doral transaction.

22 Q Going back to page five, as the basis for

23 recommendation, we again have the financial strength of the

24 guarantor and it includes the financial profile of the guarantor

25 includes on an adjusted basis 146 million in unencumbered,

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1 correct?

2 A Yes.

3 Q 2.4 billion in net worth, correct?

4 A Correct.

5 Q And approximately 13 million in adjusted excess

6 recurring net cash flow, correct?

7 A Yes.

8 Q Those numbers reported over from Deutsche Bank's own

9 analysis as reflected in the credit report, correct?

10 A Yes.

11 Q They're, in fact, DB's adjusted values and we can walk

12 through them quickly. On page seven, you see again on the

13 fourth column a client reported net worth of \$4,559,000,000,

14 correct?

15 A That is correct.

16 Q And a DB adjusted client net worth of 2,436.1, correct?

17 A That's correct.

18 Q It was the DB adjusted value that was ported over as a

19 basis for recommendation?

20 A Yes.

21 Q Or I should say carried over as a basis for the

22 recommendation, correct?

23 A Correct.

24 Q And the same is true of the excess recurring net cash

25 flow of 13 million? That's a number that came from DB's own

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1 analysis at page ten of this report, correct?
 2 A There it is. 13.4 million on page ten.
 3 Q 13.4 million which was the DB adjusted net excess cash
 4 flow, correct?
 5 A That's correct.
 6 Q Going back to page five, another factor for supporting
 7 the facility was the operator's experience in operating this
 8 property type, correct?
 9 A That is correct.
 10 Q And that's a reference to Mr. Trump, correct?
 11 A Yes.
 12 Q It says that he's a well-known and experienced operator
 13 of properties of this type, correct?
 14 A That is correct.
 15 Q Then again, another factor was increasing Deutsche
 16 Bank's relationship with Mr. Trump and his affiliates, correct?
 17 A Yes.
 18 Q In page seven, I'd like to draw your attention to,
 19 again, analysis of the guarantor's balance sheet and below it,
 20 it states that on October 19, 2012, Tom Sullivan and Emily
 21 Schroeder visited the offices of the guarantor, correct?
 22 A Correct.
 23 Q You were not present at that meeting, correct?
 24 A I was not present at that meeting.
 25 Q But you are aware that based on the result of that

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1 meeting, DB made certain adjustments to the resulted -- excuse
 2 m-e. To the reported values on the credit report, correct?
 3 A Yes.
 4 Q Then turning over to page eight, we again see a
 5 valuation of the four trophy properties that included the
 6 Deutsche Bank Valuation Services Group analysis that we
 7 discussed yesterday, correct?
 8 A Correct.
 9 Q And Deutsche Bank Valuation Services Group performed
 10 the same type of analysis for these properties as that which we
 11 discussed yesterday, correct?
 12 A I believe so.
 13 Q That is what's reflected in this document, correct?
 14 A Yes.
 15 Q And you signed this document, correct?
 16 A I did.
 17 Q Page ten of this document, there are certain key ratios
 18 that are discussed here at the bottom and it states, "To
 19 demonstrate the strength of the guarantor, we have applied the
 20 unsecured lending guidelines assuming repayment of the
 21 obligation by the guarantor using DB adjusted balances to both
 22 the balance sheet and the net cash flow," correct?
 23 A That's correct.
 24 Q That means that when the key ratios were computed, the
 25 inputs that were put in were the DB adjusted values, correct?

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1 A Correct. The DB adjusted values were the inputs.
 2 Q Turning over to Plaintiff's Exhibit 290, this is the
 3 2013 credit report, correct?
 4 A Yes, it is.
 5 Q A document that you signed, correct?
 6 A Yes, I believe so.
 7 Q And the reason for this document was to modify the
 8 Trump Endeavor 12, L.L.C. loan facility, correct?
 9 A Yes.
 10 Q Proven interest rate swap?
 11 A Yes.
 12 Q Review the Trump Endeavor 12, L.L.C. loan facility?
 13 A Annual review, that's correct.
 14 Q Annual review and to request a change of the annual
 15 review date to July 30, 2014, correct?
 16 A Yes.
 17 Q And at this time, Trump Endeavor 12, L.L.C. had been
 18 substituted as the borrower in the Doral transaction, correct?
 19 A I believe so, yes.
 20 Q I should say by this time. When we reviewed it in
 21 2011, it said to be determined?
 22 A Right.
 23 Q And by now, we know that the borrower in the Doral
 24 transaction was Trump Endeavor 12, L.L.C., correct?
 25 A That is the actual legal entity.

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1 Q So with respect to the Doral transaction, you would
 2 agree with me that the borrower was Trump Endeavor 12, L.L.C.?
 3 A That was the borrower, yes.
 4 Q And the lender was Deutsche Bank Trust Company
 5 Americas?
 6 A Yes.
 7 Q And the guarantor was Donald J. Trump?
 8 A Yes.
 9 Q And no other party was a borrower, a guarantor or a
 10 lender?
 11 A No other party is mentioned in the credit report. I
 12 would have to look at the loan documentation to see whether
 13 there were any other parties actually on the loan documentation.
 14 Q Understood. If there were other parties on the loan
 15 documentation, would you expect to see them identified on the
 16 credit report?
 17 A Most likely, yes.
 18 Q This credit report dated July 24, 2013, you would agree
 19 with me, reflects that the Doral loan was performing?
 20 A Yes, I believe so. Yes.
 21 Q There were no missed payments correct?
 22 A Not to my recollection.
 23 Q No late payments?
 24 A Not to my recollection.
 25 Q That's something you would expect to see in the credit

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1 report?

2 A Yes.

3 Q And we would agree that the credit report doesn't

4 identify any missed payments or late payments, correct?

5 A That's correct.

6 Q If you could turn to page four of the credit report,

7 please. The credit report provides for a modification of the

8 Doral loan transaction, correct?

9 A Yes.

10 Q And it indicates that the maximum loan to value would

11 determine the guaranty level going forward, correct?

12 A Yes.

13 Q So when the collateral appraises over a certain loan to

14 value, the guaranty level goes stepping down, correct?

15 A That is correct.

16 Q Stated differently, as the loan to value ratio is

17 reduced with respect to the Doral loan, there is a corresponding

18 reduction in the amount of the guarantee, correct?

19 A Correct.

20 Q For example, when the loan to value is below

21 65 percent, the guaranty level drops to 40 percent, correct?

22 A That's correct.

23 Q When the loan to value is below 55 percent, the

24 guaranty level drops to 20 percent, correct?

25 A Yes.

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1 worth covenant, correct?

2 A Correct.

3 Q A little further down, page five, again, we see that

4 the modification to the facility is being recommended for

5 approval based on we see the financial profile of the guarantor

6 which includes on an adjusted basis 146 million in unencumbered

7 liquidity, correct?

8 A Yes.

9 Q And that's the DB adjusted value, correct?

10 A Yes.

11 Q And that's the DB adjusted value that's carried over

12 from page seven of the credit report, correct?

13 A Yes.

14 Q And we see 2.4 billion in net worth again is a

15 basis -- as a basis for the recommendation, correct?

16 A That's correct.

17 Q And that \$2.4 billion figure is the DB adjusted value,

18 correct?

19 A That is correct.

20 Q And that's the DB adjusted value that's reflected in

21 page seven of this credit report, correct?

22 A Yes.

23 Q And again, with respect to the 13.4 million in adjusted

24 recurring net cash flow, that's also based on DB's own analysis

25 at page nine of this credit report, correct?

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1 Q When the loan to value is below 45 percent, the

2 guaranty level drops to ten percent, correct?

3 A Yes.

4 Q And when the loan to value is below 35 percent, the

5 guaranty level is zero, correct?

6 A Correct.

7 Q On page five of this credit memo, we also see approval

8 of a change in the net worth covenant, correct?

9 A Yes, that's correct.

10 Q And in fact, it provides that as the guaranty level is

11 reduced, the net worth covenant is also reduced, correct?

12 A That appears to be correct, yes.

13 Q So that when the guaranty level is at 100 percent, the

14 net worth covenant is 2 and-a-half billion, correct?

15 A Yes.

16 Q When the guaranty level drops to 40 percent, the net

17 worth covenant is only 1 billion, correct?

18 A Yes.

19 Q When the guaranty level is at 20 percent, the net worth

20 covenant is only 500 million, correct?

21 A Yes.

22 Q When the guaranty level is at 10 percent, the net worth

23 covenant is 250 million, correct?

24 A Yes.

25 Q And when the guaranty level is at zero, there is no net

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1 A Yes.

2 Q An additional factor for recommendation here is also an

3 equity injection by the guarantee, correct?

4 A Yes.

5 Q It states that while the initial injection of the

6 guarantor was estimated at 50 million, we have been told that

7 the estimate has been increased to anywhere from 150 to 160

8 million with approximately 30 million already invested, correct?

9 A That's correct.

10 Q And again, on the following page of this credit memo,

11 yet another basis for recommendation is that the LTV levels

12 required and it says "to for." I think it probably should say

13 the LTV is required for a decrease in the guaranty levels are

14 low enough to ensure that the is more than adequately

15 collateralized; right?

16 A Correct.

17 Q Again, initial bases are the operating experience of

18 the operator and the enhanced expected value due to capital

19 improvements, correct?

20 A Yes.

21 Q And with respect to increasing the relationship between

22 Deutsche Bank and President Trump and his relationship, that was

23 something that was important to the private wealth management

24 group, correct?

25 A That was something that was? I didn't hear.

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1 Q Increasing the relationship with President Trump and
 2 his group, correct?
 3 A It was important? Was that your question?
 4 Q Right.
 5 A Yes, it was one of the aims of the private wealth
 6 management business to increase its business relationship with
 7 all of its clients. That was not President Trump at the time,
 8 but --
 9 Q Correct. With Mr. Trump later President Trump?
 10 A Yeah.
 11 Q And one of those metrics that was important to the bank
 12 was an increase in the assets under management, correct?
 13 A Yes.
 14 Q And here, in the first page of this document, we see
 15 that the assets under management have gone up from 20 million to
 16 29.7 million, correct?
 17 A Yes.
 18 Q And again, this credit report reflects on page seven
 19 that there was an October 19, 2012 due diligence meeting that
 20 took place, correct?
 21 A Yes.
 22 Q And that based on that meeting, DB adjusted values in
 23 the credit report, correct?
 24 A Yes.
 25 (Continued on the next page.)

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1 Q And when I refer to "DB," I'm obviously referring to
 2 Deutsche Bank. That's understood?
 3 A Thank you.
 4 Q And again on page eight, we see the same analysis of --
 5 provided by the Deutsche Bank Valuation Services Group as we see
 6 in prior credit reports?
 7 A That's correct.
 8 Q And on page nine we see a similar analysis of the free
 9 cash flow prepared by Deutsche Bank; correct?
 10 A Yes.
 11 Q And on page ten we see that the DB adjusted balances to
 12 both the balance sheet and the net cash flow were used to
 13 compute the key ratios by Deutsche Bank; correct?
 14 A Correct.
 15 Q Turning to PX 294.
 16 MR. WALLACE: Your Honor, I'm sorry. I apologize
 17 for interrupting. We entered Exhibit 290 into evidence. I
 18 don't know if they don't want to because of statute of
 19 limitation parameters, but given the discussion with
 20 Mr. Haigh, we would ask that it be entered into evidence.
 21 THE COURT: Any objection?
 22 MR. KISE: No, there is no objection. The only
 23 thing I want to note for the record because of the anomaly
 24 because we are introducing something prior to the statute of
 25 limitations is we are doing this basically because we have

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1 to because the Court has allowed other evidence in and this
 2 is just evidence to meet -- the evidence that the government
 3 has presented. But this is in no way a waiver of our
 4 statute of limitations objection.
 5 THE COURT: Of course. Understood.
 6 MR. KISE: Thank you.
 7 THE COURT: And it's in evidence.
 8 MR. KISE: Thank you.
 9 (Whereupon, the item previously referred to is
 10 received and marked Plaintiff's Exhibit Number 290 in
 11 evidence.)
 12 Q Turning to PX 294.
 13 Mr. Haigh, you'd agree with me this is an annual review
 14 of the Trump Endeavor 12 LLC loan facility?
 15 A That's one of the reasons.
 16 Q And another reason is an annual review of the Chicago
 17 loan facility with the borrower is 401 North Wabash Venture LLC?
 18 A Together with an increase in that facility.
 19 Q And then there is also an approval of the \$170 million
 20 facility for the borrower Trump Old Post Office LLC?
 21 A That's correct.
 22 Q The annual review of the Doral loan reflects that there
 23 are no missed payments; correct?
 24 A I believe that's correct.
 25 Q That there are no late payments; correct?

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1 A I believe that's correct.
 2 Q And that the Doral loan is a performing loan at this
 3 point; correct?
 4 A I believe so, yes, yes.
 5 Q The same for the Chicago loan facility. The review
 6 reflects that there were no missed payments; correct?
 7 A Correct.
 8 Q No late payments; correct?
 9 A Correct.
 10 Q And that it is a performing loan; correct?
 11 A That's right.
 12 Q With respect to the now third facility, this is
 13 \$170 million first mortgage to the borrower Trump Old Post
 14 Office LLC that is to be used for the development of the Old
 15 Post Office property in Washington, D.C.; correct?
 16 A Yes.
 17 Q The borrower in that transaction is Trump Old Post
 18 Office LLC; correct?
 19 A Yes.
 20 Q And the lender is Deutsche Bank Trust Company Americas;
 21 correct?
 22 A Yes.
 23 Q And the guarantor is Donald J. Trump; correct?
 24 A Yes.
 25 Q This credit report suggests that there are no other

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1 parties to that transaction; correct?
 2 A If that's what the credit report suggests it's probably
 3 correct.
 4 Q And we can see further down page one in the review of
 5 each loans that the Doral facility reflects a loan to value of
 6 85 percent; correct?
 7 A Yes.
 8 Q That the Trump International Hotel and Tower reflects a
 9 loan to value of 51 percent; correct?
 10 A Yes.
 11 Q And that the Old Post Office reflects a loan to value
 12 of 80 percent; correct?
 13 A That's correct.
 14 Q Turning to page ten of this document we again see the
 15 basis for recommendation for the approval of the annual reviews
 16 and the origination of the Old Post Office facility; correct?
 17 A Yes.
 18 Q And with respect to the financial strength of the
 19 guarantor now under year 2014 this again is based off of the DB
 20 adjusted values for net worth of 2.6 billion; correct?
 21 A Yes.
 22 Q And 154.5 million in unencumbered liquidity per the DB
 23 adjusted values; correct?
 24 A Yes.
 25 Q And those DB adjusted values are reflected again in the

N. Haigh - Plaintiff - cross (Suarez) Page 1134

1 Q With respect to Facility A, we again see there is an
 2 equity injection by the guarantor that was originally required
 3 to be 50 million but ended up being budgeted to increase to 150
 4 to 160 million with approximately 30 million already invested;
 5 correct?
 6 A Yes.
 7 Q And that must enhance Deutsche Bank's collateral;
 8 correct?
 9 A One would expect so.
 10 Q And that in fact is what the credit report says that it
 11 was expected to enhance the collateral due to the capital
 12 investment; correct?
 13 A Yes.
 14 Q Page 13 again reveals that in 2013 there was a meeting
 15 at -- page 14. I'm sorry.
 16 At page 14 there was a meeting on October 21, 2013.
 17 Tom Sullivan and Emily Schroeder visited the offices of the
 18 guarantor; correct?
 19 A Yes.
 20 Q You were not present at that meeting; correct?
 21 A I was not there.
 22 Q And based on that meeting asset values were adjusted on
 23 this credit report; correct?
 24 A That's correct.
 25 Q Page 15 of this document again shows the analysis of

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1 credit report. First on page 14 of this document you'll see
 2 there the DB adjustment to the guarantor's net worth reflects an
 3 adjustment from the reported -- client reported value of four
 4 billion nine hundred seventy-eight million to a DB adjusted
 5 value of two billion six hundred forty-five million; correct?
 6 A Yes.
 7 Q And that's the number that then carries over as a basis
 8 for the recommendation at page ten of this document; correct?
 9 A Yes.
 10 Q And the same is true of the 154.5 million in liquidity.
 11 That is a number that carries over from page 14 of this document
 12 into the basis of recommendation at page ten; correct?
 13 A Yes.
 14 Q And again, a basis for recommendation of both the new
 15 facility and the approval of the annual review was Mr. Trump's
 16 extensive experience in operating private wealth and country
 17 clubs; correct?
 18 A That was relevant in particular to the Doral facility.
 19 Q And again, it reflects that the portfolio of 13 such
 20 clubs had a reported value of 1.66 billion but DB had adjusted
 21 that value to 680.6 million; correct?
 22 A Yes.
 23 Q And the DB adjusted value was the number that DB relied
 24 upon to approve the facility; correct?
 25 A Yes.

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1 the trophy properties with input from the Deutsche Bank
 2 Valuation Services Group; correct?
 3 A Yes.
 4 Q And that analysis was used to adjust asset values by
 5 Deutsche Bank; correct?
 6 A Yes.
 7 Q And on page 16 we again see that Deutsche Bank
 8 performed its own net cash flow analysis; correct?
 9 A So DB adjusted the cash flow the client had reported,
 10 that's right.
 11 Q Okay. And they do that every year as the credit memos
 12 go on?
 13 A I think that's correct.
 14 Q On page 17 we again see that the key ratios are
 15 computed this year based on the -- the Deutsche Bank adjusted
 16 balances to both the guarantor's balance sheet and net cash
 17 flow; correct?
 18 A Yes.
 19 Q On page 21 of this document with respect to the Old
 20 Post Office transaction, a feature of the loan facility,
 21 page 21, the fourth paragraph, it says:
 22 "Per the borrower, the full renovation budget is
 23 \$215 million with the borrower's 20 percent being deployed prior
 24 to the lender's fund."
 25 That's the defined equity amount; correct?

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1 A Yes.
 2 Q And this means that the borrower was obligated to
 3 inject its own cash into the project before Deutsche Bank
 4 advanced the first dollar under the loan facility; correct?
 5 A Yes. It means it actually has to use its first
 6 \$20 million before Deutsche Bank's funding would start.
 7 Q I'm sorry?
 8 A It has to use that \$20 million in the project before
 9 Deutsche Bank's funding starts.
 10 Q Correct. In other words, the guarantor had to utilize
 11 20 million of his own dollars in the project before Deutsche
 12 Bank would start advancing under the credit facility?
 13 A Correct, yes.
 14 Q And that's in fact what happened; correct?
 15 A I believe so, yes.
 16 Q And this document at page six also approves a similar
 17 stepdown feature on the guaranty for the Chicago credit
 18 facility; correct?
 19 A Yes.
 20 Q And again, the approval provides that -- withdrawn.
 21 As a result of this approval, Mr. Haigh, the guaranty
 22 level is reduced as the loan to value of the Chicago loan is
 23 reduced; correct?
 24 A Yes.
 25 Q So that when the loan to value of the Chicago loan

N. Haigh - Plaintiff - cross (Suarez) Page 1137

1 falls below 65 percent, the guaranty level is only 40 percent;
 2 correct?
 3 A Yes.
 4 Q And when the loan to value of the Chicago loan falls
 5 below 55 percent, the guaranty level is only 20 percent;
 6 correct?
 7 A That's correct.
 8 Q And when the loan to value of the Chicago loan drops
 9 below 45 percent, the guaranty level is only ten percent;
 10 correct?
 11 A That's correct.
 12 Q And when the loan to value of the Chicago loan drops
 13 below 35 percent, the guaranty level is zero; correct?
 14 A That's correct. All those numbers are predicated on
 15 the entire loan being below \$45 million.
 16 Q And in fact, the entire loan went under \$45 million as
 17 the condo units were being sold; correct?
 18 A I -- assuming Tranche A did. I don't recall regarding
 19 Tranche B.
 20 Q But certainly that was the stepdown feature of the
 21 loan?
 22 A Yes.
 23 Q And again, we see a similar stepdown feature as we saw
 24 with the Doral loan on the net worth covenant; correct?
 25 A Yes.

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1 Q And that's reflected on page seven of this document
 2 where we again see on the Chicago loan once the guaranty level
 3 is reduced to 40 percent the net worth covenant is only
 4 \$1 billion; correct?
 5 A That's correct.
 6 Q And when the guaranty level is 20 percent the net worth
 7 covenant is only \$500 million; correct?
 8 A Yes.
 9 Q And when the guaranty level falls to ten percent or
 10 below the net worth covenant is only \$250 million; correct?
 11 A That's correct.
 12 Q And with a guaranty level on the Chicago loan at
 13 zero percent the net worth covenant then is zero?
 14 A Yes.
 15 THE COURT: I haven't heard a very frequent
 16 objection yet, "the document speaks for itself."
 17 We're going over things that are A, redundant; B,
 18 obvious; and C, the document says what it says. Most of
 19 this testimony seems to be "isn't that what it says" when we
 20 can all read, so I don't understand why we're spending so
 21 much time on this.
 22 Mr. Kise?
 23 MR. KISE: With all due respect, that's basically
 24 what Mr. Wallace did all day yesterday is to walk through
 25 the document, showed him provisions that say isn't that

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1 correct, is that incorrect. I mean, that was basically the
 2 whole day yesterday so I think it's fair for the record that
 3 we're entitled to clean out things that the government
 4 didn't just like they pointed out things like we might not
 5 bring up.
 6 And Mr. Suarez is moving along pretty rapidly. I
 7 don't think we'll have anymore documents to go. We're
 8 certainly not going to take as much time as the government
 9 took with this witness. I think it's only fair that we make
 10 our record.
 11 THE COURT: Mr. Wallace, did you do that yesterday?
 12 MR. WALLACE: I believe we tried to establish facts
 13 on early documents and then introduce the later documents
 14 being consistent with the earlier documents. I am not
 15 objecting because we were going to give them some time to
 16 establish what they're doing. I agree. I thought
 17 Mr. Suarez had already established that the net worth
 18 covenant dropped as the guaranty level went down, but it's
 19 his case to try and make it his way. We would definitely
 20 appreciate moving things along more quickly.
 21 MR. KISE: He won't bring that up again.
 22 THE COURT: Okay. Continue as you were.
 23 MR. SUAREZ: Thank you.
 24 Q Moving along to Plaintiff's Exhibit 298.
 25 Mr. Haigh, this document which you had an opportunity

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1 to review yesterday is a review of the Trump Doral Chicago and
 2 Old Post Office loans in the year 2015; correct?
 3 A Yes.
 4 Q And this credit report reflects that the three loans
 5 are performing; correct?
 6 A Yes.
 7 Q That there are no missed payments; correct?
 8 A None that are referred to in here.
 9 Q And you would expect to see a missed payment referred
 10 to in the credit report; correct?
 11 A Most likely yes; unless it was completely de minimis,
 12 nothing, no.
 13 Q And you would expect to see a late payment reflected in
 14 this credit report?
 15 A Most likely. I mean, it's possible if a client had
 16 made a payment a few days late it might not have been referred
 17 to in the report.
 18 Q Certainly nothing material?
 19 A Nothing material. I agree.
 20 Q And there are no material late payments reflected?
 21 A None that I'm aware of.
 22 Q And by all measures indicated here the loans appear to
 23 be performing; correct?
 24 A Yes.
 25 THE COURT: Let me just add one other thing.

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1 I believe I said in the September 26th decision and
 2 order very clearly there were no defaults, everything was
 3 paid, everything was paid on time.
 4 Let me ask the Attorney General's side, were there
 5 any defaults on any of these loans that you're aware of?
 6 MR. WALLACE: That I'm aware of sitting here today,
 7 no.
 8 THE COURT: No.
 9 MR. WALLACE: And actually --
 10 THE COURT: Any late payments, any complaints?
 11 MR. WALLACE: On payment issues, no.
 12 THE COURT: Maybe we can save some time and not ask
 13 was it a performing loan. Were they all performing loans?
 14 MR. WALLACE: I think we have issues with some of
 15 the covenants and whether they were. The answer is -- I
 16 don't want to get into it in front of the witness, but we
 17 would take issue on some of the covenants.
 18 THE COURT: Okay.
 19 All right. Let's continue.
 20 Q Mr. Haigh, the date of this report is July 20, 2015;
 21 correct?
 22 A Yes.
 23 Q And if we could turn to page four, please.
 24 I'd like to point out in page four in the box
 25 "guaranty" it states: "Donald Trump's personal guarantee may

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1 have been eliminated due to the fact that the facility LTV is
 2 below the 35 percent threshold. Based on the latest appraisal
 3 completed, the hotel collateral was valued at \$133 million which
 4 results in a 34 percent LTV."
 5 Is that your handwriting there, Mr. Haigh?
 6 A Yes, it is. I think so.
 7 Q And you would agree with me that this credit report
 8 reflects the fact that as of July 20, 2015, Mr. Trump's personal
 9 guaranty with respect to the Chicago property has been
 10 extinguished?
 11 A It looks that way. I don't know whether it was ever
 12 captured in the actual documentation, but certainly from a
 13 credit point of view we were willing to do without the personal
 14 guarantee.
 15 Q In other words, it does; correct?
 16 A From my credit approval point of view, yes.
 17 Q And you signed the credit report?
 18 A Yes.
 19 Q If you signed the credit report it meant you approved
 20 it; correct?
 21 A Yes.
 22 Q Turning to page six of this document.
 23 Again, we see a recommendation that the annual review
 24 for the Doral, Chicago and OPO facilities be approved; correct?
 25 A Yes.

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1 Q And as in prior years the net worth of the guarantor of
 2 \$2.7 billion is based on Deutsche Bank's own adjusted values;
 3 correct?
 4 A That's right. Those are Deutsche Bank's adjusted
 5 numbers.
 6 Q And the 285 million in unencumbered liquidity, that's
 7 also based on Deutsche Bank's adjusted values; correct?
 8 A Yes.
 9 Q And the same is true with respect to the operating
 10 experience of the -- of Mr. Trump; correct?
 11 A As I said, that applies mainly to the Doral facility.
 12 Q It applies mainly to the Doral facility, but it is in a
 13 section described as "all facilities;" correct?
 14 A It is in a section described as "all facilities."
 15 THE COURT: Let me ask this: It says "all
 16 facilities." Does that mean that each of these bullet
 17 points applies to all facilities or you just listing all the
 18 facilities basically?
 19 THE WITNESS: I think the writer of the credit memo
 20 tried to summarize it. These are the overall strengths of
 21 the transaction for all the facilities. Personally, I don't
 22 think that the operating experience on resorts and golf
 23 clubs has much relevance to construction projects, for
 24 example.
 25 THE COURT: Okay. Thank you.

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1 Q But then we do see in the following page the
 2 recommendations basis -- the bases for recommendations for
 3 approval of the annual report for each of the different
 4 facilities; correct?
 5 A Yes.
 6 Q And these are the loans that apply to each specific
 7 facility; correct?
 8 A Yes.
 9 Q All right. And with respect to Facility A and Facility
 10 B, it says "the LTV levels require to for." Again, I believe it
 11 meant to say "the LTL levels required for a decrease in the
 12 level. Guaranty levels are low enough to ensure that the loan
 13 is more than adequately collateralized as evidenced by the
 14 current Facility B in which the guaranty was eliminated once the
 15 loan was paid down to \$45 million;" correct?
 16 A Correct.
 17 Q And that was the paydown that you referred to earlier;
 18 correct?
 19 A So that -- I mean, that would be really the evidence
 20 I'm assuming that the loan on Facility B which was in two
 21 tranches was paid down in total to below 45 million.
 22 Q And as a result, the guaranty was eliminated?
 23 A For Facility B, yes.
 24 Q Okay. And Facility B is the Chicago loan; correct?
 25 A That's right, yes.

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1 Q And again, with respect to Facility B, it establishes
 2 that the collateral was valued at 133 million which resulted in
 3 a 34 percent LTV?
 4 A That's right.
 5 Q And that valuation is done based on DB's own ordered
 6 appraisal; correct?
 7 A Yes.
 8 Q In other words, to compute the loan to value ratio and
 9 any changes in the loan to value ratio Deutsche Bank orders an
 10 appraisal for itself to confirm that?
 11 A Yes.
 12 Q On page ten of this credit report -- oh, excuse me.
 13 Let's turn back to page seven for a second. I'd also like to
 14 draw your attention to Facility C, which is a Trump Old Post
 15 Office; correct?
 16 A Yes.
 17 Q And here it confirms that as of June 2015, the
 18 guarantor, Mr. Trump, completed the required 20 percent equity
 19 investment and began to draw on the facility; correct?
 20 A Yes.
 21 Q And that means that the bank would have concluded that
 22 President Trump, Mr. Trump, at the time had put in the money he
 23 had required to put into the project and permitted him to start
 24 drawing into the project; correct?
 25 A That's correct.

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1 Q In page ten of this document, again, we see the
 2 adjustments -- I'm sorry.
 3 On page 11 we see that the Deutsche Bank Valuation
 4 Services Group has had an opportunity to review the trophy
 5 properties; correct?
 6 A Yes.
 7 Q And the DB adjusted values are reflected as a result of
 8 those evaluations; correct?
 9 A That's correct.
 10 Q And in page ten, I'd just like to point out that again.
 11 It says up at the top, "guarantors." It says "as part of the
 12 underwriting we have met with several members of the family
 13 update" -- excuse me -- "of the family office to update our due
 14 diligence on the client reported financial information."
 15 Do you see that?
 16 A Yes.
 17 Q You were not present at those meetings; correct?
 18 A I was not present at those meetings.
 19 Q But as a result of those meetings, though, the Deutsche
 20 Bank adjusted the value of assets on the financial analysis;
 21 correct?
 22 A Yes.
 23 Q As reflected in the credit memo?
 24 A Yes.
 25 Q Okay. Let's take a look at a document that has been

N. Haigh - Plaintiff - cross (Suarez) Page 1147

1 marked for identification as Plaintiff's Exhibit 2960.
 2 Do you recognize this document, Mr. Haigh?
 3 A Yes.
 4 Q What is this document?
 5 A It's an amendment to a prior credit approval.
 6 Q And if you see on page four of this document it bears
 7 your signature?
 8 A Yes.
 9 MR. SUAREZ: We'd like to move, Your Honor,
 10 Plaintiff's Exhibit 28960 into evidence.
 11 MR. WALLACE: No objection.
 12 THE COURT: Granted. It's in evidence.
 13 MR. KISE: Same reservation as before, Your Honor.
 14 THE COURT: Understood. Still reserved.
 15 (Whereupon, the item previously referred to is
 16 received and marked Plaintiff's Exhibit Number 2969 in
 17 evidence.)
 18 Q Page one of this document, Mr. Haigh, "reason for
 19 presentation." Do you see the third bullet point it states,
 20 "request approval to reduce personal guaranty level from
 21 100 percent to 10 percent based on the most recent appraised
 22 value and overall LTV percentage." Then it says in italics
 23 "this change was contemplated at the loan's origination."
 24 A I see that.
 25 Q And this refers to Trump Endeavor 12 LLC; correct?

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1 A Yes.
 2 Q And ultimately this request was approved; correct?
 3 A Yes.
 4 Q And the date of this document is August 3, 2015;
 5 correct?
 6 A Yes.
 7 Q And with respect to the Doral loan as a result in the
 8 change of the guaranty level from 100 percent to ten percent,
 9 the net worth covenant on the Doral loan is now \$250 million;
 10 correct?
 11 A Sorry. Would you repeat the question?
 12 Q Yes. As a result of the approval of the reduction in
 13 the personal guaranty level from 100 percent to ten percent
 14 based on the most recent appraised value in overall loan to
 15 value percentage, the net worth covenant on the Doral loan is
 16 now \$250 million; is that correct?
 17 A We're not changing the net worth level by making that
 18 amendment. We're changing the amount of the guaranty that would
 19 -- that would cover us.
 20 Q Correct, but if we go back to the stepdowns that we
 21 went through earlier?
 22 A Okay. That's what you're referring to?
 23 Q That's what I'm referring to.
 24 A Then --
 25 Q And we can pull it up again, if you'd like?

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1 A They're reflected in that section that says "assets
 2 under management," yes.
 3 Q Going back to page one of Plaintiff's Exhibit 2960.
 4 We see the market value of the Doral Golf Resort & Spa
 5 has increased to 366 million based on a Cushman & Wakefield
 6 appraisal dated July 29, 2015; correct?
 7 A Yes.
 8 Q And that would be an appraisal that Deutsche Bank
 9 ordered for its own purposes; correct?
 10 A I'm not sure that it did. I think there is a note in
 11 here that says Deutsche Bank did not order that appraisal for
 12 some purposes in the italics above this section.
 13 Q But it would have been an appraisal that Deutsche Bank
 14 received; correct?
 15 A I imagine Deutsche Bank did actually receive that
 16 appraisal.
 17 Transcript continues on the following page.....
 18
 19
 20
 21
 22
 23
 24
 25

N. Haigh - Plaintiff - cross (Suarez) Page 1149

1 A I'll agree that that's the case, yes.
 2 Q But you would agree that once the stepdown to a ten
 3 percent guaranty level was approved the net worth covenant
 4 followed with it and went down to 250 million; correct?
 5 A Yes.
 6 Q And then I'd also like to draw your attention in this
 7 document to the "assets under management" in page two of this
 8 document. Do you see where it says "assets under management?"
 9 And it reflects now again that the relationship between
 10 President Trump and Deutsche Bank continues to grow.
 11 Donald J. Trump, President Trump, has 31.295 million in
 12 cash deposits; correct?
 13 A Yes.
 14 Q And entities associated with him have now deposited
 15 over 86.49 million in cash deposits; correct?
 16 A Yes.
 17 Q So all in all, President Trump and entities associated
 18 with him at this point have deposited over \$100 million in
 19 Deutsche Bank; correct?
 20 A Yes.
 21 Q And those are assets under management by the private
 22 wealth group; correct?
 23 A Those are deposits at Deutsche Bank, yes.
 24 Q Which the credit report reflects as assets under
 25 management; correct?

N. HAIGH - CROSS (MR. SUAREZ) Page 1151

1 Q It would have been --
 2 MR. SUAREZ: I withdraw the question.
 3 Q And the result of the appraisal, the loan to value was
 4 reduced to 34 percent, correct?
 5 A Yes.
 6 THE COURT: Ten-minute warning.
 7 Q If we turn to page three of this document, we see in
 8 the recommendations, "approval based on "and then at the bottom,
 9 "equity injection of the guarantor" and it says, "the estimated
 10 equity injection was nearly \$250 million or a three-year
 11 construction period," correct?
 12 A Correct.
 13 Q And "expected enhanced value due to CapEx," correct?
 14 A Yes.
 15 Q And that second sentence says, "As noted, DJT has
 16 invested nearly 250 million on capitol improvements since 2012
 17 and the result has been an increase in collateral value to
 18 \$366 million," correct?
 19 A Yes.
 20 Q And this again proved correct the 2011 credit memo that
 21 said that the asset value of the collateral was expected to
 22 increase based on the investment by the guarantor, correct?
 23 A Yes.
 24 MR. SUAREZ: Your Honor, I'm ready to move to a new
 25 exhibit. I can start that exhibit or we can take the break.

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1 THE COURT: Let's start.
 2 MR. SUAREZ: Okay.
 3 Q Let's take Plaintiff's Exhibit 300. This is the 2016
 4 credit report, correct, Mr. Haigh?
 5 A Yes.
 6 Q And again, it reviews the loans to Trump Endeavor 12,
 7 L.L.C., 401 North Wabash Venture, L.L.C. and Trump Old Post
 8 Office, L.L.C., correct?
 9 A Yes.
 10 Q And it does not note that there are any missed
 11 payments, correct?
 12 A Correct.
 13 Q Stated differently, the report indicates that there are
 14 no missed payments, correct?
 15 A Yes.
 16 Q And there are no late payments indicated in the report
 17 either, correct?
 18 A Right.
 19 Q And in fact, the three loans at this point are
 20 performing loans, correct?
 21 A Yes.
 22 Q Again, in the lower section of the page, we see an
 23 increase to the market value of the Doral property to
 24 \$382 million, correct?
 25 A Yes.

N. HAIGH - CROSS (MR. SUAREZ) Page 1153

1 Q And here, it says, "LW hospitality advisors appraisal
 2 dated March 25, 2016 ordered and reviewed by CRM READ, Phil
 3 Ribolow," correct?
 4 A That's correct.
 5 Q That would be Deutsche Bank Credit Risk Management?
 6 A That's the new name, what was previously called the
 7 Valuation Services Group.
 8 Q So Valuation Services Group is now operating as CRM
 9 READ?
 10 A That's correct.
 11 Q And with respect to the Trump International Hotel &
 12 Tower Chicago, 401 North Wabash, the market value is identified
 13 as 133 million which is a value consistent as per guidance from
 14 CRM -- how do you pronounce that acronym, READ?
 15 A Just as good as any.
 16 Q From the new Deutsche Bank Valuation Services Group,
 17 Phil Ribolow as of July 2016, correct?
 18 A That's correct. I think it stands for real estate
 19 advisory something, but I don't remember what the D stood for.
 20 Q Understood. That marks the value at 3 -- loan to value
 21 at 34 percent?
 22 A Correct.
 23 Q With a loan value of 45 million, correct?
 24 THE COURT: Maybe the "D" stands for department.
 25 Is that possible?

N. HAIGH - CROSS (MR. SUAREZ) Page 1154

1 THE WITNESS: Beg your pardon?
 2 THE COURT: Maybe "D" stands for department.
 3 THE WITNESS: Sounds way too obvious for Deutsche
 4 Bank's acronyms.
 5 Q Then if we turn to page two, with respect to the Old
 6 Post Office building and annex in the description of the
 7 collateral, the last sentence states, "Additional commentary can
 8 be referenced in the recently completed appraisal, but the
 9 general conclusion is that the hotel will become the most elite
 10 hospitality establishment in Washington, D.C. once stabilized.
 11 Members of the lending and banking team have visited the
 12 property twice over the last 12 months," correct?
 13 A Correct.
 14 Q Those would be the lending and banking teams of the
 15 Deutsche Bank management group?
 16 A Yes.
 17 Q And they are the individuals that would have prepared
 18 this document which you approved, correct?
 19 A That's right.
 20 Q And in 2016, the basis for recommendation of the annual
 21 report again reflects that construction -- on page three, "That
 22 construction/redevelopment of the Doral Resort in Florida has
 23 been completed with a substantial increase in property value,
 24 \$382 million corroborated by a bank ordered appraisal dated
 25 March 2016 resulting in a 32.7 percent LTV", correct?

N. HAIGH - CROSS (MR. SUAREZ) Page 1155

1 A Yes.
 2 Q And then the last paragraph states that the
 3 relationship has been reviewed and supported from a management
 4 board perspective in connection with the guarantor's candidacy
 5 for president of the United States. Do you see that?
 6 A I do.
 7 Q Who is the management board?
 8 A I'm not exactly sure who was on it. It says
 9 senior -- Deutsche Bank had a management board of executives
 10 who took care of very high level decisions.
 11 Q Suffice it to say that the relationship with President
 12 Trump and companies associated with him was reviewed at the
 13 highest levels of management of Deutsche Bank Trust Company?
 14 A Yes, because Mr. Trump was at the time a candidate for
 15 the presidency, it had been escalated to a fairly senior level.
 16 Q Okay. And moving on to page seven of this document,
 17 you have the basis for approval of the annual review for the
 18 three facilities. And again, I just want to confirm as we did
 19 in prior years that the financial profile of the guarantor on an
 20 adjusted basis means the DB adjusted values for the guarantor's
 21 net worth of 2.8 million?
 22 A Yes.
 23 Q That checkmark, that's your handwriting, Mr. Haigh?
 24 A I think those checkmarks are more likely to be Mr.
 25 Allegra's handwriting if he signed it.

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1 Q But you would agree with me that the 2.8 billion of net
2 worth is the Deutsche Bank adjusted value as reflected on page
3 15 of this document for the year ending June 30, 2015?
4 A Yes.
5 MR. WALLACE: The objection was because he had
6 already answered the question about the 2.8 billion.
7 THE COURT: Well, it doesn't really matter if I
8 sustain it because he already answered it.
9 MR. WALLACE: Events overtook my objection.
10 MR. SUAREZ: I'm trying to move along.
11 THE COURT: Well, after the break. We are coming
12 back at a quarter to 12:00.
13 (Witness exits the witness stand.)
14 (Whereupon, a recess was taken.)
15 THE COURT OFFICER: All rise. Part 37 is back in
16 session. Please be seated and come to order.
17 THE COURT: Ever noticed how I bound up to the
18 steps to the bench here? Any history of this trial should
19 include that. Bounds up the steps. Okay. Let's continue.
20 We have a new system. The witness is going to be quicker
21 than previously.
22 Right, Officer? Right there.
23 THE COURT OFFICER: Fast, not faster.
24 THE COURT: Everything in life is relative.
25 THE COURT OFFICER: Witness entering.

N. HAIGH - CROSS (MR. SUAREZ) Page 1157

1 THE COURT: Just like I said.
2 (Witness resumes the stand.)
3 THE COURT: Okay. Let's continue.
4 Q Mr. Haigh, picking up on where we left off, the basis
5 for recommendation in the 2016 credit report again reflects the
6 operating experience of the guarantor; in this case, President
7 Trump? Well, not yet President Trump, but Mr. Trump, "Extensive
8 experience in operating private golf and country clubs."
9 Again, it reflects that the overall equity position in
10 various commercial real estate interests was adjusted to 2.195
11 on an adjusted basis. That's a DB's adjustment to the
12 commercial real estate interest, correct?
13 A Yes, that 2.195 million number is the DB adjusted one.
14 Q And then again, we can see in page 15 of the credit
15 report the various adjustments that are made to the guarantor's
16 holdings, correct?
17 A Yes.
18 Q And in page 16, we see that the Valuation Services
19 Group, which is still referred to as DBVSG here, also provided
20 input into the trophy properties, correct?
21 A Yes.
22 Q And page 18, we can see that the key ratios again are
23 computed based on the DB adjusted balances to both the balance
24 sheet and the net cash flow, correct?
25 A Yes, I believe so.

N. HAIGH - CROSS (MR. SUAREZ) Page 1158

1 Q That is what the credit report reflects, correct?
2 A Yes.
3 Q Turning to PX 3137, we have here the 2017 credit
4 report, correct?
5 A Correct.
6 Q And by July 20, 2017, the guarantor Donald J. Trump is
7 the president of the United States, correct?
8 A That's right.
9 Q And this credit report reflects that with respect to
10 all three loan facilities, Doral, Chicago and the Old Post
11 Office in Washington, D.C., the loans are performing, correct?
12 A That's correct.
13 Q The credit report does not note missed payments,
14 correct?
15 A Doesn't note any missed payments that I'm aware of.
16 Q And it doesn't note any late payments?
17 A Similarly, I don't see any reference to late payments.
18 Q And with respect to the bank's collateral on page two
19 for the Trump Old Post Office, the credit report states, "That
20 additional commentary can be referenced in the appraisal, but
21 the general conclusion is that the hotel, now operational for a
22 few months, has already become one of the most elite hospitality
23 establishments in Washington, D.C., correct?
24 A That's what it states, yes.
25 Q And at this point, we see that the hotel is also open

N. HAIGH - CROSS (MR. SUAREZ) Page 1159

1 for business, correct?
2 A Yes.
3 Q And that the loan has performed how the bank
4 anticipated it to, correct?
5 A That's correct.
6 Q In page eight, we see again, "The financial strength of
7 the guarantor reflecting a stated net worth of 5.7 billion which
8 is well above the net worth requirement even on an adjusted
9 basis," correct?
10 A Yes.
11 Q And that reference to adjusted basis is the reference
12 that Deutsche Bank's adjusted basis of the guarantor's net
13 worth, correct?
14 A Yes, it is.
15 Q And moving on to page nine, we again see that "The
16 relationship continues to be monitored at the highest levels of
17 senior management within the firm and any issues arising from
18 the guarantor's status as president of the United States are
19 immediately addressed, taken to the appropriate reputational
20 risk committee and discussed with appropriate legal counsel."
21 Do you see that?
22 A I see that.
23 Q Would you agree with me that the relationship with now
24 President Trump and the three loan transactions associated with
25 him are being monitored by the bank at their highest levels?

N. HAIGH - CROSS (MR. SUAREZ) Page 1160

1 A Certainly the highest levels of senior management were
 2 aware of the facilities in general terms. Monitoring in the
 3 sense of specifically monitoring the terms of this loan
 4 agreement, that did not happen. That continued to be managed by
 5 private wealth management.
 6 Q That continued -- and you continued to be the head of
 7 credit risk management at private wealth management?
 8 A In the Americas, yes.
 9 Q In the Americas?
 10 A Yes.
 11 Q And that was the group that was responsible for those
 12 three loan transactions, correct?
 13 A Yes.
 14 Q And the commentary here in the credit report that you
 15 signed, I believe, was all positive, correct?
 16 A Sorry. I didn't hear.
 17 Q The commentary was positive?
 18 A Positive? Yes.
 19 Q And you would agree with me that again in page 12, the
 20 trophy properties reflect the bank's own analysis including with
 21 input with what is still referred to as the Deutsche Bank
 22 Valuation Services Group as to those specific asset values,
 23 correct?
 24 A That's correct. I'm not sure as of which date they
 25 consulted with that group, but that's what it says.

N. HAIGH - CROSS (MR. SUAREZ) Page 1161

1 Q And the key ratios that are applied to test the loans
 2 are again on page 14. Those key ratios are again --
 3 A Sorry. Can you highlight which --
 4 Q Sure. See where it says "key ratios"?
 5 A Yes.
 6 Q They are again utilized using Deutsche Bank's adjusted
 7 balances as to both the balance sheet and the net cash flow,
 8 correct?
 9 A That's correct.
 10 Q Deutsche Bank used its own numbers to perform the key
 11 ratio analysis?
 12 A Yes, Deutsche Bank used its adjusted numbers to
 13 perform -- calculate those ratios.
 14 Q And moving on to Plaintiff's Exhibit 302, this was the
 15 last year that you participated in the credit review of
 16 the -- three Trump-related loans, correct?
 17 A That's correct.
 18 Q The relationship now with President Trump?
 19 A Correct.
 20 Q Moving on to the Old Post Office facility on page two
 21 again, we see at the top that, "The LTV has come down based on a
 22 January 1, 2017 appraisal that was ordered and reviewed and
 23 approved by CRM READ Phil Ribolow," correct?
 24 A Yes.
 25 Q And we again see in the basis for recommendation on

N. HAIGH - CROSS (MR. SUAREZ) Page 1162

1 page three that, "The financial profile of the guarantor
 2 includes a stated net worth of 5.58 billion which well in excess
 3 of the 2.5 billion minimum requirement even on an adjusted
 4 basis," correct?
 5 A That's correct.
 6 Q And that adjusted basis is the DB adjusted value,
 7 correct?
 8 A That's right, so using a DB adjusted value for the
 9 assets, the net worth still exceeded 2.5 billion.
 10 Q And in the third bullet point with respect to the DB's
 11 relationship, DB relationship, it says, "WM has had a long and
 12 satisfactory relationship," correct?
 13 A Yes, it does.
 14 Q And in part, that's because as of July 20, 2108, the
 15 three loans were still performing, correct?
 16 A Yes.
 17 Q There were no missed payments noted on the credit
 18 report, correct?
 19 A None that I'm aware are captured in the credit report.
 20 Q There were no late payments identified in the credit
 21 report, correct?
 22 A None that I'm aware of, yeah.
 23 Q And again, as we move through to page ten of the
 24 report, we see the valuations for the four trophy properties
 25 have been adjusted by Deutsche Bank in consultation with the

N. HAIGH - CROSS (MR. ROBERT) Page 1163

1 DBVSG, correct?
 2 A That's what it states.
 3 Q Again on page 12, we see that, "The key ratios applied
 4 by Deutsche Bank to the guarantee are applied using Deutsche
 5 Bank's own adjusted balances to both the guarantor's balance
 6 sheet and net cash flow," correct?
 7 A That's correct.
 8 MR. SUAREZ: I have no further questions on cross
 9 for this witness.
 10 THE COURT: Mr. Robert, would you like to go next?
 11 MR. ROBERT: I will, and I will be exceedingly
 12 brief.
 13 May I proceed, sir.
 14 THE COURT: You may proceed.
 15 CROSS-EXAMINATION.
 16 BY MR. ROBERT:
 17 Q Good afternoon, Mr. Haigh. I know you are a very
 18 precise man. That's why I checked. We are two minutes into the
 19 afternoon. I just have a few questions for you this afternoon.
 20 The first one is something that is very important to my
 21 client Donald Trump, Jr., so I want to bring it to your
 22 attention.
 23 MR. ROBERT: If we could pull up Plaintiff's Exhibit
 24 290, which is the 2013 credit report.
 25 Q Mr. Haigh you remember being asked some questions about

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N. HAIGH - CROSS (MR. ROBERT) Page 1164

1 this earlier today, correct, sir?
 2 A Yes.
 3 Q If I could draw your attention, and if we could scroll
 4 down to the assets under management portion, and if you could
 5 blow that up a little, please.
 6 You see where it says, Donald J. Trump has 29.7 MM cash
 7 deposits?
 8 A Yes.
 9 Q That means 29.7 million, correct?
 10 A That's correct.
 11 Q And for Donald Trump, Jr., that's 500,000, not 500
 12 million, right, because if it's 500 million, it is going to be a
 13 very uncomfortable conversation with his dad tonight. So it is
 14 500,000,000, right?
 15 A The "M" represents thousand, so it is 500,000.
 16 Q In terms of -- and I don't want to waist anyone's
 17 time -- Mr. Suarez was talking to you this morning about parties
 18 to the loan transaction. Do you remember that?
 19 A Yes.
 20 Q He was showing you the documents which were these
 21 credit reports and you very precisely and correctly said, "I can
 22 only speak now as to what's contained in the credit report." Do
 23 you remember that, sir?
 24 A Yes.
 25 Q So would you agree with me that it is a fair statement

N. HAIGH - CROSS (MR. ROBERT) Page 1165

1 that the parties to the loan transaction are the ones actually
 2 identified in the loan transactions?
 3 A In the loan documentation?
 4 Q In the loan documentation itself.
 5 A Yes.
 6 Q Okay. Yesterday, you remember that Mr. Wallace had
 7 shown you the Statement of Financial Condition from 2011. Do
 8 you remember that?
 9 A Yes.
 10 Q And your testimony was in essence that in very general
 11 terms you looked at it. Do you remember that?
 12 A Yes.
 13 Q And you had said that you and your team had looked at
 14 it as well. Do you remember that as well?
 15 A Yes.
 16 Q And Mr. Wallace showed a portion of one paragraph. I
 17 just want to show you the second part of that paragraph that Mr.
 18 Wallace didn't show you.
 19 MR. ROBERT: Nate, if we can call up PX 330, please.
 20 Q And rather than hand it to you, Mr. Haigh, I think it
 21 will just be easier if we go from the screen with Your Honor's
 22 permission.
 23 THE COURT: Fine with me.
 24 Q If we could turn to page four. Or actually, it says
 25 page 9 of 42. It is page four of the Statement of Financial

N. HAIGH - CROSS (MR. ROBERT) Page 1166

1 Condition.
 2 MR. ROBERT: And if you can enlarge the second full
 3 paragraph, please, Nate.
 4 Q Yesterday when Mr. Wallace was questioning you, Mr.
 5 Haigh, he took you up to the line where it says, "outside
 6 professionals." Do you see that, sir?
 7 A Yes.
 8 Q Would you, please, read into the record what the rest
 9 of that paragraph says on page four of the Statement of
 10 Financial Condition?
 11 MR. WALLACE: Objection. These aren't his words.
 12 I don't know why the witness would read it into the record
 13 as opposed to counsel.
 14 MR. ROBERT: Okay. No problem. Withdrawn. I will
 15 do it the easier way.
 16 THE COURT: Withdrawn.
 17 Q So when you and your staff were reviewing it, the
 18 language was "Considerable judgment is necessary to interpret
 19 the market data and develop the related estimates of current
 20 value. Accordingly, the estimates presented herein are not
 21 necessarily indicative of the amounts that could be realized
 22 upon the disposition of the assets or payment of the related
 23 liabilities. The use of different market assumptions and/or
 24 estimation methodologies may have a material effect on the
 25 estimated current value amounts." Do you see that, Mr. Haigh?

N. HAIGH - CROSS (MR. ROBERT) Page 1167

1 A I do.
 2 Q And that's the language that's contained in the 2011
 3 Statement of Financial Condition that you spoke of yesterday
 4 that you reviewed in general terms correct, sir?
 5 A Correct.
 6 Q Okay. Throughout the course of the testimony over the
 7 last day and-a-half and even in response to Your Honor's
 8 questions, we can agree, sir, that under the loans with Deutsche
 9 Bank, every obligation under the loans was met, correct, as far
 10 as you know?
 11 MR. WALLACE: Objection.
 12 THE COURT: Well, it is as far as he knows.
 13 MR. ROBERT: As far as he knows. The witness was
 14 very careful to say it was only based on his knowledge and I
 15 don't want him to go beyond that. It is what Mr. Haigh
 16 knows as the chief risk officer at the bank at the time.
 17 THE COURT: So overruled.
 18 A So far as I recall, the loans were performing.
 19 Q And all the expectations that were required of the
 20 borrower were met, as far as you know?
 21 A So far as I know, yes.
 22 Q Okay. And we've already spoken -- Your Honor was clear
 23 about it. I'm going to be very brief. There were no late
 24 payments that you are aware of, correct?
 25 A I'm not aware of any late payments.

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N. HAIGH - CROSS (MR. ROBERT) Page 1168

1 Q You were not aware of any missed payments, correct?
 2 A I'm not aware of any missed payments.
 3 Q And as a matter of fact, on two of the three loans,
 4 during the time you were at Deutsche Bank, the guarantees were
 5 either reduced or eliminated, correct?
 6 A That's -- that's right.
 7 Q And you had testified yesterday that the purpose of
 8 your department or the credit exercise is to make sure that the
 9 bank gets paid, correct?
 10 A That's one of the purposes of my group.
 11 Q One of the more important reasons that you have a group
 12 such as yours, correct, sir?
 13 A I guess I'd agree with that.
 14 Q Okay. And would you agree with me that you and your
 15 team conducted a thorough analysis of these loans, correct, sir?
 16 A I think we conducted an appropriate analysis of those
 17 loans, yes.
 18 Q And it was a thorough analysis? I mean, you take pride
 19 in your work. You had the position you achieved at the bank. I
 20 think you can agree with me that it was a thorough analysis. I
 21 mean, we see the depth and I'm not going to go through all the
 22 credit memos, but we see the depth of these memos that you
 23 signed off on, correct, sir?
 24 A Yes.
 25 Q And as a matter of fact, in your testimony, it was

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1 he was not --
 2 MR. WALLACE: That was not the nature of the
 3 question.
 4 MR. ROBERT: If I could have the question read back
 5 and I will modify it.
 6 THE COURT: Please read back.
 7 MR. ROBERT: Thank you.
 8 (Whereupon, the requested portion of the record was
 9 read back.)
 10 (Continued on the next page.)

N. HAIGH - CROSS (MR. ROBERT) Page 1169

1 yesterday morning, you said you were the final line for most of
 2 these that you -- it needed your approval for this to go
 3 through, correct, sir?
 4 A Yes.
 5 Q And as a result, you and your team conducted a thorough
 6 analysis, fair?
 7 MR. WALLACE: Objection. I think he asked and
 8 answered that.
 9 THE COURT: I'm not sure it is about the exact
 10 same --
 11 MR. ROBERT: I'll rephrase it.
 12 Q You and your team did a good job didn't you?
 13 A Based on the information we had at the time, I think we
 14 did a reasonably thorough analysis of the information.
 15 Q Well, you did a good job in that your goal of making
 16 sure the bank was repaid was achieved, correct?
 17 MR. WALLACE: Objection.
 18 MR. KISE: What's the objection?
 19 THE COURT: What's the objection?
 20 MR. KISE: You don't like the question?
 21 MR. WALLACE: I don't know that he knows -- he
 22 left the bank in 2018. The loans were outstanding. I don't
 23 know that he has a foundation to answer the question the way
 24 that Mr. Robert asked it.
 25 MR. KISE: He's only asking about 2011 to 2017 when

N. Haigh - Plaintiff - cross (Robert) Page 1171

1 Q Through 2018, which is when you left the bank; correct,
 2 sir?
 3 MR. WALLACE: I'll just note an objection that I
 4 believe the loans were being paid on interest, so I don't
 5 know the bank repaid its principles.
 6 MR. ROBERT: I don't appreciate you putting words
 7 in the witness's mouth. The witness can answer the
 8 question.
 9 THE COURT: Overruled. Please answer the question.
 10 A So to the extent that we had been repaid with some
 11 partial paydowns, yes the bank got repaid on those elements.
 12 Q And up until the time you left in 2018, Deutsche Bank
 13 received millions of dollars in interest; correct?
 14 A I presume so.
 15 Q And at the end of the day, you and your team made a
 16 good credit decision by these loans being made in this case;
 17 correct?
 18 A That's a more subjective question.
 19 Q Well, sir, when you were there you were in charge of
 20 risk; correct? From 2011 to 2018; correct?
 21 A Yes.
 22 Q And it was your final approval that allowed these loans
 23 to go into existence; correct?
 24 A That's correct.
 25 Q And the fact that when you left in 2018 and these loans

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1 were performing is a credit to the fact that you and your team
 2 made a good credit decision; correct?
 3 A I think based on the information.
 4 Q Yes or no sir, please?
 5 THE COURT: Well, you know I favor yes-or-no
 6 answers to yes-or-no questions, but if he needs to explain
 7 it, he can explain it, if you need to.
 8 MR. KISE: That's certainly not the standard that
 9 applied to other witnesses, Your Honor. The other day you
 10 insisted that other witnesses responded to the government's
 11 questions with yes-or-no answers. That was a yes-or-no
 12 question. And respectfully, Your Honor, I think it's a
 13 different standard.
 14 THE COURT: I respectfully disagree that I'm
 15 applying a different standard. Look, I've been doing this
 16 job for 20 years now. If a question can be answered yes or
 17 no without an explanation, then do that, but sometimes an
 18 explanation is necessary, but we understand each other.
 19 Q Do you want the question read back with the Court's
 20 permission?
 21 THE COURT: Please read back.
 22 (Whereupon, the requested portion of the
 23 proceedings was read back by the court reporter.)
 24 A I will agree with that.
 25 Q You did a good job; right?

N. Haigh - Plaintiff - cross (Robert) Page 1173

1 MR. ROBERT: That's a yes or no, Your Honor.
 2 A I'd say yes to that.
 3 Q Very good.
 4 MR. ROBERT: Thank you, Your Honor. I have no
 5 further questions.
 6 THE COURT: Thank you.
 7 And any redirect by the plaintiff?
 8 MR. WALLACE: Mr. Haigh, I'll try to be brief.
 9 REDIRECT EXAMINATION
 10 BY MR. WALLACE:
 11 Q Is whether or not a loan gets repaid the same question
 12 as whether or not the bank has accurately rated the risk in a
 13 loan?
 14 A No.
 15 Q What is the difference?
 16 A So getting repaid is just one element of what the
 17 bank's trying to achieve. The risk rating goes to assessing the
 18 risk and from that we set aside capital to reserve it against
 19 the loan -- potential loan losses and the amount of capital that
 20 we set aside is driven by the risk rating and by the collateral.
 21 And in order to get a fair return on our capital, in other
 22 words, charge the right interest rate, we have to have the
 23 correct risk rating. So just getting repaid on the principal
 24 doesn't address at all whether we got properly recompensed for
 25 the risk we were taking.

N. Haigh - Plaintiff - cross (Robert) Page 1174

1 Q And you were asked by Mr. Robert if you had done a good
 2 job. I take your answer is you did a good job with the
 3 information you had?
 4 A Correct.
 5 Q You have no way of knowing whether there was
 6 information that wasn't provided to you that might have been
 7 relevant to your analysis; is that correct?
 8 A That's correct.
 9 MR. WALLACE: No further questions, Your Honor.
 10 THE COURT: Any recross?
 11 MR. ROBERT: No, Your Honor. Your Honor, thank
 12 you.
 13 THE COURT: Okay. The witness is excused
 14 everybody; right? Okay.
 15 THE COURT OFFICER: The audience remain seated,
 16 please.
 17 (Whereupon, the witness is excused from the witness
 18 stand.)
 19 THE COURT: Do we need to discuss anything, resolve
 20 any issues before Mr. Weisselberg returns?
 21 MR. WALLACE: Not that I'm aware of.
 22 MR. ROBERT: We wanted to talk scheduling for a
 23 second.
 24 (Whereupon, an off-the-record discussion is held
 25 between Counsel.)

A. Weisselberg - Plaintiff - direct (Solomon) Page 1175

1 THE COURT: Mr. Solomon, are you continuing the
 2 direct examination of Mr. Weisselberg?
 3 MR. SOLOMON: I am, Your Honor.
 4 THE COURT: Okay. Let's get Mr. Weisselberg up
 5 here.
 6 CONTINUED DIRECT EXAMINATION
 7 BY MR. SOLOMON:
 8 Q Good afternoon, Mr. Weisselberg.
 9 A Good afternoon.
 10 Q May I ask to have Exhibit PX 1386 put back in front of
 11 you?
 12 THE COURT: And I'll remind the witness, as I
 13 always do, that he's still under oath.
 14 CONTINUED DIRECT EXAMINATION
 15 BY MR. SOLOMON:
 16 Q Do you have that in front of you, sir?
 17 A I do.
 18 Q Do you recall or recognize this as comprising the
 19 certifications for various loans that we talked about on
 20 Tuesday?
 21 A Yes.
 22 Q Okay.
 23 MR. SOLOMON: Your Honor, we move the family of
 24 documents in evidence as PX 1386.
 25 THE COURT: Granted. They're in evidence.

A. Weisselberg - Plaintiff - direct (Solomon) Page 1176

1 (Whereupon, the items previously referred to are
 2 received and marked Plaintiff's Exhibit Number PX 1386 in
 3 evidence.)
 4 Q I'd like to mark for identification PX 1157.
 5 Sir, PX 1157 for identification is an e-mail from
 6 Patrick Birney to Donna Kidder with a copy to you dated
 7 February 1, 2016. Do you see that, sir?
 8 A I do.
 9 Q Do you recognize it?
 10 A Yes.
 11 Q What do you recognize it to be?
 12 A Just an e-mail from Patrick Birney to Donna Kidder
 13 regarding a corporate cash flow that he was going to put into a
 14 -- I assume the word "shell" means pro forma, without numbers.
 15 Q Okay.
 16 MR. SOLOMON: The People move PX 1157 into
 17 evidence.
 18 MR. ROBERT: Objection. Statute of limitations and
 19 as to the prior submission by Mr. Solomon because it was so
 20 thick to the extent any of those have a statute of
 21 limitations objection, we just raise those with the Court.
 22 Thank you.
 23 THE COURT: Understood. Overruled. They're in
 24 evidence, both.
 25 Q Sir, does this cover e-mail indicate that there is an

A. Weisselberg - Plaintiff - direct (Solomon) Page 1177

1 Excel spreadsheet attached?
 2 A I see the word "attachments" where it says "Trump
 3 Organization cash flow" -- "corporate cash flow."
 4 Q Yes. Do you recognize at the end the .xlsx to refer to
 5 an Excel spreadsheet?
 6 A Is that what that means?
 7 Q I'm asking if you know, sir.
 8 A I don't know what it means, no. I'm sorry.
 9 Q That's fine.
 10 Could we please have 1157 native put up?
 11 You mentioned the corporate cash flow spreadsheet. Do
 12 you see it up on the screen?
 13 A Yes.
 14 Q Is that what you were referring to in your prior
 15 answer, sir?
 16 A Yes.
 17 Q You see there is a column for "business segment" at the
 18 top? He'll highlight it for you. Top left?
 19 MR. SOLOMON: Your Honor, may I approach the screen
 20 and point it to the witness?
 21 A Yes, I see it.
 22 Q Thank you.
 23 And what do you understand "business segment" to refer
 24 to there?
 25 A I would imagine that's the type of business that falls

A. Weisselberg - Plaintiff - direct (Solomon) Page 1178

1 under a category.
 2 Q And could we look at lines 23 and 24, please? Do you
 3 see that?
 4 A I do.
 5 Q Those two lines, the first 23 references "1290 Avenue
 6 of the Americas" with a "(b)?"
 7 A Yes.
 8 Q And the next line 24, "555 California Street" with a
 9 "(b)." Do you see that?
 10 A Yes.
 11 Q Those are the two properties that were owned by the
 12 partnership between the Trump Organization and Vornado; correct?
 13 A Correct.
 14 Q Can we scroll down, please, to Note B?
 15 And I will read into the record "Note B: Although
 16 there could be operating profits, distributions are at the
 17 discretion of Vornado." Do you see that, sir?
 18 A I do.
 19 Q Did you direct Mr. Birney to add Note B to the
 20 spreadsheet or shell?
 21 A I don't remember doing that. I think Mr. Birney knew
 22 the parameters of the Vornado Partnership regarding
 23 distributions.
 24 THE COURT: Does anyone know is it Vornado or
 25 Vornado? Anybody work for them or something? Invest money

A. Weisselberg - Plaintiff - direct (Solomon) Page 1179

1 in them?
 2 MR. SOLOMON: Your Honor, I'm going with Vornado.
 3 THE COURT: We're all on the same page.
 4 MR. SOLOMON: All right. May I ask for a read back
 5 of the witness's last answer?
 6 THE COURT: Please.
 7 (Whereupon, the requested portion of the
 8 proceedings was read back by the court reporter.)
 9 Q What is the basis, sir, for that answer that you
 10 believe Mr. Birney knew the parameters?
 11 A Mr. Birney had been working on this -- on our financial
 12 statements I believe at that point. I don't know when he
 13 arrived at the company. Maybe he wasn't, but the limited
 14 partnership calls for being given distributions only when
 15 Vornado distributes money as a whole. In other words, if they
 16 don't distribute money themselves, we don't receive anything.
 17 If they receive a dollar, we get \$0.30 based upon the
 18 30 percent. I don't know if Mr. Birney knew that because I told
 19 him to do that or whether or not he knew it from some other
 20 source.
 21 Q Okay. Actually, sir, not to quibble, but numbers are
 22 quite important in this case.
 23 If they got a dollar, you got \$0.30? Isn't it actually
 24 if they got \$0.70, you got \$0.30?
 25 A Yes -- well, out of the dollar we should have gotten

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1 \$0.30. Out of the dollar --

2 Q Out of the dollar, but out of that dollar they got --

3 A \$0.30, yes.

4 Q But as you sit here today, you do not know how

5 Mr. Birney came to learn that distribution -- excuse me --

6 operating profits, distributions are at the discretion of

7 Vornado?

8 A I don't remember. I don't remember.

9 MR. SOLOMON: All right. Can we mark PX -- I'm

10 sorry. Can we move into evidence the native version of PX

11 1157?

12 MR. ROBERT: Statute of limitations objection, Your

13 Honor.

14 THE COURT: Overruled. It's in evidence.

15 MR. SOLOMON: Okay.

16 (Whereupon, the item previously referred to is

17 received and marked Plaintiff's Exhibit Number PX 1157 in

18 evidence.)

19 MR. SOLOMON: Can we please mark PX 1293 for

20 identification?

21 Q Sir, is PX 1293 for identification another e-mail from

22 Patrick Birney to you this time with a cc to Mr. McConney?

23 A Yes.

24 Q Dated February 25, 2016?

25 A Yes.

A. Weisselberg - Plaintiff - direct (Solomon) Page 1181

1 MR. SOLOMON: The People offer it into evidence.

2 MR. ROBERT: Statute of limitations objection.

3 THE COURT: Overruled. It's in evidence.

4 (Whereupon, the item previously referred to is

5 received and marked Plaintiff's Exhibit Number PX 1293 in

6 evidence.)

7 Q Do you recognize this e-mail, sir?

8 A Yes.

9 Q What do you recognize it to be?

10 A Patrick Birney telling me that he put three copies for

11 the kids in their folders on my chair. "You and Jeff have

12 copies on your desks and I'll call you tomorrow." So it was an

13 e-mail that he put together, some information of which he wanted

14 each one of the kids to receive, as well as myself and Jeff.

15 Q Let's take that one step at a time.

16 What information did you understand that he was

17 attempting to convey to you there?

18 A I don't remember whether or not -- whether that was --

19 the timing of it is what's throwing me off. Is it a shell or

20 was it a shell or with numbers already in it, I don't remember.

21 Do you have something to show me that would help me?

22 Q We will, actually. I just want to understand what your

23 recollection is before seeing this document, sir.

24 When you refer to you "the kids," is that the adult

25 children of Donald Trump?

A. Weisselberg - Plaintiff - direct (Solomon) Page 1182

1 A Correct.

2 Q That would be Donald Trump, Jr.?

3 A Correct.

4 Q Eric Trump?

5 A Correct.

6 Q And Ivanka Trump?

7 A Correct.

8 MR. SOLOMON: Could we please mark PX 1293 native

9 for identification?

10 Q Sir, looking at the document on the screen entitled

11 "Corporate Operating Financial Summary 2015," does that refresh

12 your recollection as to what was attached to the cover e-mail we

13 were just talking about?

14 A Yes. That's what I thought was in there, yes.

15 Q So is this the shell you were referring to?

16 A No, this is not a shell. A shell would have no numbers

17 on it. It's what you showed me initially. This is no longer a

18 shell. This is now numbers being put into that shell.

19 Q And that is based on the performance of the various

20 entities under the Trump Organization umbrella; correct?

21 A I don't know all the sources how Mr. Birney got all his

22 numbers together. I assume it's a combination of things.

23 Q Was that your -- was that your understanding of what it

24 was intended to show?

25 A Yes. The -- I have a question, if you don't mind.

A. Weisselberg - Plaintiff - direct (Solomon) Page 1183

1 Was this a historical -- I'm sorry.

2 THE COURT: Well, I often tell witnesses you're

3 there to answer questions, not ask them, but.

4 THE WITNESS: I understand.

5 THE COURT: If Mr. Solomon --

6 A I want to help you, give you a correct answer.

7 Q Mr. Weisselberg, I will take all the assistance you're

8 willing to offer.

9 THE COURT: I think he said he has a question.

10 A No. Was this given historically or prospectively, this

11 statement? I don't know the dates.

12 MR. SOLOMON: Scroll down.

13 Q Does it help you to look at the totals of the bottom

14 line to see if those were historical results or projected future

15 results?

16 A No.

17 Q Maybe I can do this another way. Look at the cover

18 e-mail for a moment, please. It should be in front of you. Oh,

19 did we take that back?

20 A Yes.

21 Q PX 1293.

22 A Based upon the date of 2/25/16, I would -- thank you.

23 Q Please. Does that -- does that assist you, sir?

24 A That would make it historical.

25 Q Historical.

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1 And in fact, if you look at the subject, "Financial
2 Summary, Corporate Operating Financial Summary" and the next
3 line, the attachment is the financial summary for 2015?
4 A Now -- yes.
5 Q So --
6 A To answer your question, it's historical.
7 Q Thank you.
8 A You're welcome.
9 MR. KISE: Your Honor, real quickly. This realtime
10 has stopped. It stopped realtimming. I'm not sure why.
11 It's going but it's not scrolling.
12 (Whereupon, there is a pause in the proceedings.)
13 Q Did Mr. Birney undertake on his own to put together
14 this Operating Financial Summary for 2015?
15 A When you say did he undertake himself, meaning just out
16 of the clear blue sky decided one day to do that or was he
17 directed to do it? Is that the question?
18 Q Was he directed to do it to your knowledge?
19 A I believe somebody asked him to put together some
20 information. I don't recall who specifically asked for that
21 information, but I believe he was asked to do it.
22 Q Was there a point in time that any of the three adult
23 children asked for that information?
24 A I don't remember who it was specifically.
25 Q You don't recall yourself asking Mr. Birney to put

A. Weisselberg - Plaintiff - direct (Solomon) Page 1185

1 together this information, do you?
2 A It's a possibility one of the three children may have
3 asked me to do it then I in turn may have asked Mr. Birney to do
4 it. I just don't recall which child it was.
5 Q To your knowledge when all of the communications
6 between or were from any of the three adult children, did
7 Mr. Birney have to go through you?
8 A Not necessarily.
9 Q They could have spoken to him directly?
10 A They could have, yes.
11 Q Do you have any understanding as to why Mr. Birney was
12 leaving a copy on Jeff's desk?
13 A Just for information purposes to have in case somebody
14 asked him a question.
15 Q Do you understand or did you understand at the time
16 that the purpose of this creating and distributing the Trump
17 Organization Operating Financial Summary 2015 to the adult
18 children was an effort to keep them informed of the performance
19 of the business?
20 A That sounds about right. I would agree with that.
21 Q Were you at anytime either requested or directed to
22 keep them advised of the information contained on that
23 spreadsheet we just saw?
24 A I don't believe I was -- it was more of a request to do
25 this as opposed to a direction. Maybe they mean the same thing,

A. Weisselberg - Plaintiff - direct (Solomon) Page 1186

1 I don't know.
2 Q My question is --
3 A Yes, I don't want to mince words. It's a chance
4 because they were just getting involved in running the business
5 as Mr. Trump had now become president. They wanted to be
6 knowledgeable about the running of the business.
7 So 2016, he was in the process of running for president
8 and they wanted to get up to speed on how the business was
9 operating.
10 Q Okay. The third page of PX 1293 after the slip page,
11 which says "document provided natively."
12 A Yes.
13 Q Let's take a look at that. It was produced to us I
14 will tell you in this format.
15 Is this document part of the first two pages or is it a
16 separate document, to your knowledge?
17 A I don't remember. It's -- I don't remember if it was
18 separate or part and parcel of the original package.
19 Q Okay. Do you recall in or about February of 2016
20 forwarding on this summary information to Donald J. Trump, Jr.,
21 Ivanka Trump and Eric Trump?
22 A I imagine I did.
23 Q Yet you have no reason to doubt that this is what you
24 did at that time?
25 A Correct.

A. Weisselberg - Plaintiff - direct (Solomon) Page 1187

1 Q Okay. Mr. Weisselberg, do you recall that we had some
2 discussions at your prior session on Tuesday relating to a
3 review at Trump Tower by the insurers?
4 A A review of the --
5 Q The insurers came to Trump Tower, sat, I believe --
6 tell me if I'm correct -- sat in a conference room and reviewed
7 the Statements of Financial Condition. We talked about that?
8 A Correct, correct.
9 Q Do you recall that?
10 A I do recall.
11 Q Am I correct, sir, that the Trump Organization declined
12 to provide a copy to the insurers to take with them; correct?
13 A I was only told to when I was given direction to meet
14 with them. No one asked me to give it to them, take with them.
15 So I just on my own decided here it is, you can read it, look at
16 it. If they wanted a copy, I certainly would have had them sign
17 an NDA and probably given it to them if they asked. But year
18 after year they were satisfied coming in, sitting there, taking
19 their time for the entire day reviewing it.
20 Q To your knowledge did any of the insurers or sureties
21 ever ask to take a copy of the financial statement with them?
22 A Not that I can remember.
23 Q To your knowledge were the insurers or sureties
24 required to sign a Non-Disclosure Agreement before being
25 provided access to the then-current Statement of Financial

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1 Condition?

2 A I don't remember.

3 Q Is it possible you just don't know one way or the

4 other?

5 A No, I don't know if our attorneys ever requested it. I

6 don't know.

7 Q Okay. Now, sir, on Tuesday in asking you questions

8 about this meeting with the insurance company, and I'm going to

9 put that up on the screen, you were asked, starting on page 953

10 -- excuse me -- 953, line 24:

11 "QUESTION: Were you present for all the

12 conversations Jeff and Patrick had with Ms. Markarian?

13 "ANSWER: It was all purpose of the same meeting.

14 "QUESTION: So were you there when they described

15 to her how the assets were valued?

16 "ANSWER: Yes, I was at the meeting and they told

17 her that they called Doug Larson and Larson provided a

18 summary of comps for downtown Manhattan or midtown Manhattan

19 and he would take those -- Jeff would take those comps or

20 Patrick would, valuations and cap rates and so on and then

21 he would do his computation, but to say that we --

22 "THE COURT: Finish, please.

23 "ANSWER: To say that we got appraisals from them,

24 that was -- I don't recall that conversation at all."

25 And then there is a read back and an answer.

A. WEISSELBERG - DIRECT(MR. SOLOMON) Page 1190

1 Q And you came to our offices, correct?

2 A Correct.

3 Q You were accompanied by counsel?

4 A Yes.

5 Q That deposition was recorded by stenographic means?

6 A Yes.

7 Q It was also recorded by video, correct?

8 A I believe so, yes.

9 Q Mr. Weisselberg, I'm going to ask my colleague to play

10 the video of certain particular questions and answers you gave

11 on the same subject back then and that's beginning on the

12 transcript page 224, line 22 through 225, line 19.

13 (Whereupon, the video was played.)

14 Q Sir, that was your testimony back in May, right?

15 A Did I recall what exactly --

16 Q Sir, yes or no, that was your testimony back in May?

17 THE COURT: Yes or no.

18 A Yes.

19 Q That was your testimony --

20 THE COURT: He said yes. You got to listen to his

21 answer.

22 Q It is just coincidence that's exactly five months to

23 the day, right? Today is October 12th.

24 A Okay.

25 Q Let's talk about the Seven Springs payoff, shall we?

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1 Q Now, Mr. Weisselberg, do you recall sitting for your

2 deposition in May of this year?

3 A Yes.

4 Transcript continues on the following page....

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A. WEISSELBERG - DIRECT(MR. SOLOMON) Page 1191

1 Do you recall a time when --

2 A Seven Springs loan payoff?

3 Q Yes.

4 A Okay.

5 Q Are you familiar with any discussions about a desire to

6 pay off the Seven Springs loan before it came due?

7 A I -- I do recall talking to Eric about paying off a

8 number of loans that I felt we should pay off at that time. It

9 wasn't just Seven Springs. There were other loans that we

10 talked about as well.

11 THE COURT: Ten-minute warning.

12 MR. SOLOMON: Yes, Your Honor, thank you.

13 Q The conversations -- withdrawn.

14 Did you have conversations with Eric Trump in or about

15 2015 about paying off the Seven Springs loan?

16 A It's certainly possible. I just don't remember

17 exactly.

18 Q Do you recall telling Eric Trump that he should wait

19 until after June 30th to pay off the loan, so the cash position

20 on Mr. Trump's Statement of Financial Condition would not be

21 decreased by the payoff amount?

22 A That's certainly possible. That's certainly possible,

23 yes.

24 MR. SOLOMON: Can we, please, mark PX 1112 for

25 identification.

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A. WEISSELBERG - DIRECT(MR. SOLOMON) Page 1192

1 Q Sir, PX 1112 for identification has been put in front
 2 of you. Do you recognize it?
 3 A Yes.
 4 Q What do you recognize it to be?
 5 A An e-mail to Eric Trump suggesting to him that if we
 6 are going to pay off the loan, to do it subject post June 30th.
 7 Q In order to keep his cash balance as high as possible,
 8 right?
 9 A Right.
 10 MR. SOLOMON: The People offer PX 1112 in evidence.
 11 MR. ROBERT: Statute of limitations objection.
 12 THE COURT: Overruled. It is in evidence.
 13 (Whereupon, the Document was marked in evidence as
 14 Plaintiff's Exhibit 1112.)
 15 Q In each year, the efforts to start preparing the
 16 Statement of Financial Condition occurred after June 30th; is
 17 that right?
 18 A Correct.
 19 Q So here, we have a situation back in April even before
 20 the people in the Trump Organization are starting any work on
 21 the Statement of Financial Condition for that year where you're
 22 trying to accommodate the cash balance position for the
 23 statement that's coming up, right?
 24 A Correct.
 25 Q Mr. Weisselberg, I would like to talk to you about the

A. WEISSELBERG - DIRECT(MR. SOLOMON) Page 1193

1 crimes to which you pled guilty on August 18, 2022. Do you
 2 recall you were charged with 15 separate counts?
 3 A Yes.
 4 Q Including several counts of falsification of business
 5 records?
 6 A Whatever is in my -- I forgot the name of the legal
 7 document.
 8 Q Okay. And you pled guilty under oath to all 15 counts,
 9 correct?
 10 A I did.
 11 Q And you were required to pay back taxes penalties and
 12 interest in the amount of \$1.9 million; is that correct?
 13 A That sounds about right.
 14 Q And with interest and other costs, it came out to be
 15 about \$2 million. Do you recall that?
 16 A Sounds about right.
 17 Q And you were incarcerated as a result of that guilty
 18 plea?
 19 A Sorry?
 20 Q You were incarcerated as a result of that guilty plea,
 21 correct?
 22 A I was.
 23 Q Now, after pleading guilty to all of these crimes, the
 24 years long scheme of talks fraud you and the Trump Organization
 25 entered into that separation agreement that we discussed on

A. WEISSELBERG - DIRECT(MR. SOLOMON) Page 1194

1 Tuesday, right?
 2 A Correct.
 3 Q What did you have to agree to do or not to do in
 4 exchange for the severance package?
 5 A If you have the document.
 6 Q Let's pull it up.
 7 MR. SOLOMON: Please pull up PX 01751 already in
 8 evidence. Paragraph three, subsection "D" as in dog. Can
 9 we go to the top just for the introduction, please.
 10 Q It starts with "employee promises, in exchange for the
 11 benefits provided in paragraph two, employee promises." Do you
 12 see that, sir?
 13 A Yes.
 14 Q And paragraph D, "That except for acts or testimony
 15 directly compelled by subpoena or other lawful process issued by
 16 a court of competent jurisdiction, he will not one, communicate
 17 with, provide information to, or otherwise cooperate in any way
 18 with any other person or entity" and then that goes on. Do you
 19 see that?
 20 A Yes, I see that.
 21 Q Sir, did you understand that this subsection precluded
 22 you from voluntarily cooperating with anyone adverse to the
 23 Trump Organization including the Attorney General's office?
 24 A I -- I didn't give it a lot of thought to be honest.
 25 Q But you agreed to it?

A. WEISSELBERG - DIRECT(MR. SOLOMON) Page 1195

1 A I agreed -- if it was -- if I was ordered to meet
 2 with a court or some lawful person or a subpoena, then I would
 3 meet with them, yes.
 4 Q You would not voluntarily cooperate, right?
 5 A That's what it says, yes.
 6 Q Now, sir, let's be clear. This is a yes-or-no
 7 question. There is no misunderstanding. Is it just a
 8 coincidence that under this severance agreement, that you are
 9 being paid \$2 million which is almost the same exact amount that
 10 you had to pay in connection with your guilty plea?
 11 A Coincidence.
 12 Q Pure coincidence?
 13 A Coincidence.
 14 MR. SOLOMON: We have nothing further at this time,
 15 Your Honor. Excuse me one moment.
 16 I apologize, Your Honor. We are not complete. May
 17 I have a moment?
 18 THE COURT: Sure.
 19 (Whereupon, there was a pause in the proceedings.)
 20 MR. SOLOMON: I apologize for the confusion. We
 21 might have more after lunch. We would like to take a few
 22 minutes. I think you gave me the warning. We have two
 23 minutes. If we could break for lunch and we will let the
 24 defendants know if we need Mr. Weisselberg to come back or
 25 not.

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1 THE COURT: Okay. I just want to point out not to
 2 be such a stickler, but one of the documents that Mr. Robert
 3 objected to on statute of limitations grounds was dated
 4 February 24th or so, 2016. That's after statute of
 5 limitations period.
 6 MR. ROBERT: Understood, but it had to do with
 7 information that was from '15. That's what we talked about
 8 last week and it is part of the Statement of Financial
 9 Condition. I understand what Your Honor is saying, but
 10 that's why we preserved the objection.
 11 THE COURT: I see. Okay. Understood. All right.
 12 So let's break for lunch.
 13 MR. SOLOMON: I apologize for the confusion.
 14 THE COURT: We come back at the usual 2:15, right?
 15 MR. SOLOMON: Yes.
 16 (Witness exits the stand.)
 17 (Whereupon, a luncheon recess was taken.)
 18 A F T E R N O O N S E S S I O N
 19 * * * * *
 20 THE COURT OFFICER: All rise. Part 37 is back in
 21 session. The Honorable Judge Arthur Engoron presiding.
 22 Make sure all cellphones are on silent. Laptops and
 23 cellphones will be permitted, but only to members of the
 24 press. There's absolutely no recording or photography of
 25 any kind allowed in the courtroom. Now, please be seated

P. BIRNEY - DIRECT (MR. HAREN) Page 1198

1 business or home address on the record.
 2 THE WITNESS: Patrick Birney. 725 Fifth Avenue,
 3 New York, New York.
 4 THE COURT: You have to be really close to the
 5 microphone. Speak right into it, slowly, loudly, clearly.
 6 And let's start the examination.
 7 MR. HAREN: Thank you, Your Honor.
 8 DIRECT EXAMINATION
 9 BY MR. HAREN:
 10 Q Good afternoon, Mr. Birney, where are you currently
 11 employed?
 12 A Trump Organization.
 13 Q And how long have you worked at the Trump Organization?
 14 A Since 2015.
 15 Q Approximately when in 2015 did you start working at the
 16 Trump Organization?
 17 A January 2015.
 18 Q What was your title when you started with the Trump
 19 Organization?
 20 A Senior financial analyst.
 21 Q Can you walk us through the titles you have held at the
 22 Trump Organization since you started there in 2015?
 23 A Yes.
 24 Q Please do.
 25 A Senior financial analyst, associate assistant

A. WEISSELBERG - DIRECT(MR. SOLOMON) Page 1197

1 and come to order.
 2 THE COURT: I understand there is a request for a
 3 front bar. It may eventually have to be made public, but
 4 for right now, it is okay.
 5 (Whereupon, an off-the-record sidebar discussion
 6 was held.)
 7 THE COURT: I think we have an agreement. The
 8 plaintiff will not be questioning Mr. Weisselberg anymore at
 9 this particular time. You reserve the right to recall him
 10 later. The defendants have the right to call him. And I'm
 11 instructing him -- I'm lifting the prohibition on
 12 discussing the case with counsel or with anyone else. And
 13 is there more to it than that at this point.
 14 MR. WALLACE: Nothing from the plaintiff, Your
 15 Honor.
 16 MR. ROBERT: Nothing from defendants, Your Honor.
 17 Thank you.
 18 THE COURT: Let's move on to the next witness.
 19 MR. HAREN: Good afternoon, Your Honor. Eric Haren
 20 on behalf of the People. The People call Patrick Birney.
 21 THE COURT OFFICER: Witness entering.
 22 P A T R I C K B I R N E Y, a witness called by the Plaintiff,
 23 after having been first duly sworn by the Clerk of the Court,
 24 took the witness stand and testified as follows:
 25 THE COURT OFFICER: State your full name and either

P. BIRNEY - DIRECT (MR. HAREN) Page 1199

1 vice-president financial operations, and currently vice
 2 president of financial operations.
 3 Q Can you give us just the rough time periods of those
 4 positions?
 5 A Most recently, I was promoted in last year, at some
 6 point in 2022. I can't really give you specifically the other
 7 ones.
 8 Q Okay. Did raises generally accompany promotions at the
 9 Trump Organization?
 10 A Yes.
 11 Q Who informed you of your promotions at the Trump
 12 Organization?
 13 A Allen Weisselberg and Ron Lieberman.
 14 Q Let's talk about your background. Could you describe
 15 your educational background after high school?
 16 A Yes. I went to the University of Michigan. I got a
 17 degree in economics.
 18 Q When did you graduate from the University of Michigan?
 19 A 2013.
 20 Q What did you do after you graduated from the University
 21 of Michigan in 2013?
 22 A I worked for a company called Aon.
 23 Q What did you do for Aon?
 24 A Aon is an insurance brokerage and I worked on a sales
 25 and account management team.

P. BIRNEY - DIRECT (MR. HAREN) Page 1200

1 Q What did your role at Aon entail in general terms?
 2 A A live claim management. I would deal with the brokers
 3 a lot, deal with the clients a lot, a lot of e-mails, schedules
 4 of insurance requested certificates, invoice management.
 5 Q Have you ever held any professional licenses?
 6 A Yes.
 7 Q Which licenses have you held?
 8 A I had an insurance broker's license back in 2014, I
 9 think.
 10 Q Do you still have that license today?
 11 A I really don't know. I can't imagine that I do.
 12 Q Okay. Do you hold any licenses as an appraiser?
 13 A No.
 14 Q Do you hold a designation as a member in the Appraisal
 15 Institute?
 16 A No.
 17 Q Do you hold any other licenses or associations relating
 18 to appraisers?
 19 A No.
 20 Q Have you ever been a certified public accountant?
 21 A No.
 22 Q During your tenure at Aon, did you work on Trump
 23 Organization insurance accounts?
 24 A Yes.
 25 Q Can you describe your work on those accounts, please?

P. BIRNEY - DIRECT (MR. HAREN) Page 1201

1 A Sure. Similar to the other clients that I managed,
 2 again, schedules of insurance, invoice management, certificates
 3 of insurance requests, auto I.D. cards, I was the -- I was one
 4 of the main contacts that if somebody from Trump needed
 5 something, they would reach out to me.
 6 Q During your work at Aon or at the Trump Organization,
 7 did you ever come across the phrase "team of four"?
 8 A Yes.
 9 Q What did you understand that phrase to refer to?
 10 A The team of four from the Trump Organization who worked
 11 on the insurance program.
 12 Q Was it called "team of four" because there were four
 13 members of the team?
 14 A I believe so, yes.
 15 Q Who were the four members of the team?
 16 A Ron Lieberman, Allen Weisselberg, mat calendar Marie
 17 and Mike Cohen.
 18 Q Thank you. You said that you joined the Trump
 19 Organization in January of 2015.
 20 Who offered you a job at the Trump Organization?
 21 A Allen Weisselberg and Ron Lieberman.
 22 Q And where did they offer you the job?
 23 A In Allen Weisselberg's office.
 24 Q Thank you. You said your title when you joined the
 25 Trump Organization was senior financial analyst.

P. BIRNEY - DIRECT (MR. HAREN) Page 1202

1 Can you describe generally your duties in that role?
 2 A I worked on a lot of projects. I worked -- worked on
 3 the insurance program. I did financial reporting for the golf
 4 clubs. I worked -- I did projects for Allen Weisselberg. I
 5 did projects for Jeff McConney.
 6 Q You said "I did financial reporting for the golf
 7 clubs." What did you mean by that?
 8 A Golf clubs would send monthly financials and yearly
 9 budgets to the corporate office. I would consolidate those and
 10 analyze those on a monthly and annual basis.
 11 Q And did the monthly financials include income and
 12 expense figures?
 13 A Yes.
 14 Q And can you tell us more about your work on the monthly
 15 golf course financial reporting?
 16 A Sure. There was an Excel -- Microsoft Excel document
 17 that would be updated every month, had all the clubs on the same
 18 spreadsheet. There would be a column for actual year-to-date.
 19 There would be a column for budget year-to-date, a column for
 20 last year year-to-date, and a column for annual budget, and I
 21 would update those figures in Microsoft Excel every month.
 22 Q Did you have a practice of sharing the monthly golf
 23 course financial reporting information with anyone?
 24 A Yes.
 25 Q With whom was it your practice to share that

P. BIRNEY - DIRECT (MR. HAREN) Page 1203

1 information?
 2 A I would share it with my direct boss Ron Lieberman
 3 first and then we would review it together and then I would
 4 share it with Larry Glick, Allen Weisselberg, Ron Lieberman and
 5 Eric Trump.
 6 Q Thank you.
 7 During your time at the Trump Organization, who did you
 8 understand were your supervisors?
 9 A Ron Lieberman, and then I did work for a lot of other
 10 people above me. So Ron Lieberman would be my direct boss, but
 11 I would consider Allen Weisselberg, Jeffrey McConney, Mat
 12 Calamari to be my superiors. Larry Glick, too.
 13 Q And is it fair to say that for matters that you worked
 14 on with Jeffrey McConney and Allen Weisselberg, you viewed them
 15 as your superiors?
 16 A Yes.
 17 MR. HAREN: Let's mark for identification
 18 Plaintiff's Exhibit 1162, please.
 19 Q Mr. Birney, do you recognize this document?
 20 A Yes.
 21 Q What do you recognize it to be?
 22 A An e-mail from Jeff McConney to myself.
 23 Q And what is the date on the e-mail?
 24 A November 16, 2016.
 25 Q And what is the subject of the e-mail?

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P. BIRNEY - DIRECT (MR. HAREN) Page 1204

1 A DJT SOFC.
 2 Q What did you understand that subject to refer to?
 3 A The Statement of Financial Condition for Donald J.
 4 Trump.
 5 MR. HAREN: I move Exhibit 1162 be moved in
 6 evidence.
 7 THE COURT: Granted. It is in evidence.
 8 (Whereupon, the Document was marked in evidence as
 9 Plaintiff's Exhibit 1162.)
 10 Q Does the e-mail note that there is an attachment?
 11 A Yes.
 12 Q What is the file name of the attachment?
 13 A 1-Jeffsupportingdataxlsx.
 14 Q Do you have an understanding of the term "Jeff
 15 supporting data"?
 16 A Yes.
 17 Q What do you understand it to refer to?
 18 A The main backup spreadsheet that supported the numbers
 19 on the Statement of Financial Condition.
 20 Q And the word "Jeff," who does that refer to?
 21 A Jeff McConney.
 22 MR. HAREN: I would like to pull up on the screen a
 23 native file that is a component of Exhibit 1162.
 24 Q Mr. Birney, it is the attachment to the e-mail that you
 25 were just looking at. Do you recognize this document?

P. BIRNEY - DIRECT (MR. HAREN) Page 1205

1 A Yes.
 2 Q What do you recognize it to be?
 3 A A draft of the Statement of Financial Condition for the
 4 year June 30, 2016.
 5 Q When you say, "draft of the Statement of Financial
 6 Condition," do you mean a draft of the supporting data for the
 7 Statement of Financial Condition?
 8 A Yes. Sorry.
 9 Q Okay.
 10 MR. HAREN: I would like to move this native file into
 11 evidence?
 12 THE COURT: Granted. It is in evidence.
 13 Q What is indicated to you by the information in cell H1?
 14 A That things highlighted in yellow are open.
 15 Q And what do you understand the phrase "open items" to
 16 mean?
 17 A I understand it to be these items need to be updated or
 18 finalized.
 19 Q So is it fair to say that an open item in the context
 20 of this spreadsheet is not an item that's been finalized?
 21 A That's fair to say.
 22 MR. HAREN: Okay. Let's pull up Plaintiff's
 23 Exhibit 1167, please.
 24 Q Mr. Birney, do you recognize this document?
 25 A Yes.

P. BIRNEY - DIRECT (MR. HAREN) Page 1206

1 Q What do you recognize this document to be?
 2 A An e-mail from Jeff McConney to myself on November 16,
 3 2016.
 4 Q That's the same date as the prior e-mail, correct?
 5 A I believe so.
 6 Q What is the subject of this e-mail?
 7 A 2105 DJT Statement of Financial Condition.
 8 MR. HAREN: I would like to move this exhibit into
 9 evidence.
 10 THE COURT: Granted. It is in evidence.
 11 (Whereupon, the Document was marked in evidence as
 12 Plaintiff's Exhibit 1167.)
 13 Q What did you understand the subject of the e-mail to
 14 refer to?
 15 A The Statement of Financial Condition for Donald J.
 16 Trump for the year 2015.
 17 Q Does the e-mail have an attachment?
 18 A Yes.
 19 Q Do you see --
 20 MR. HAREN: Back to the e-mail, please.
 21 Q Do you see the information at the bottom of the e-mail
 22 that states "scanemail@trumporg.com?" Do you see that?
 23 A Yes, sir.
 24 Q What is the e-mail at the bottom of this message that
 25 begins "from scanemail@trumporg.com" indicate to you?

P. BIRNEY - DIRECT (MR. HAREN) Page 1207

1 A It indicates that it was scanned in on the 26th floor
 2 copier machine by the pantry and then forwarded by Jeff to me.
 3 Q Let's look at the attachment starting on page two of
 4 the exhibit. Mr. Birney, do you recognize this document?
 5 A Yes.
 6 Q What do you recognize it to be?
 7 A The cover page to the 2015 Statement of Financial
 8 Condition for Donald J. Trump.
 9 Q If you could just flip through the exhibit, you should
 10 see that on page 27 there's the rear page of Statement of
 11 Financial Condition. Do you see that?
 12 A Yes. If that's page 27, yes.
 13 Q So if you could flip through from page 2 to page 27 and
 14 just confirm that the full Statement of Financial Condition for
 15 2015 was forwarded to you on November 16, 2016?
 16 A It appears to be the full statement.
 17 Q So, Mr. McConney sent you a supporting data for the
 18 Statement of Financial Condition and a copy of the 2015
 19 Statement of Financial Condition on November 16, 2016; is that
 20 correct?
 21 A Yes.
 22 Q Did you at some point in time become involved in the
 23 process of preparing Mr. Trump's Statement of Financial
 24 Condition?
 25 A Yes.

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P. BIRNEY - DIRECT (MR. HAREN) Page 1208

1 Q When was that?

2 A Shortly after this e-mail.

3 Q So in or about November 2016?

4 A Yes.

5 Q And for which years had you been involved in the

6 process of preparing Mr. Trump's Statement of Financial

7 Condition?

8 A From 2016 to 2021.

9 Q So each of the years in that range?

10 A Yes.

11 Q Did you understand that working on Mr. Trump's

12 Statements of Financial Condition was part of your job at the

13 Trump Organization?

14 A Yes.

15 Q What did you understand the Statements of Financial

16 Condition for the years that you worked on them to show?

17 A Mr. Trump's net worth.

18 Q And is that as of a particular date?

19 A As of June 30th of each year.

20 Q Do you have an understanding of the phrase "back up" in

21 the context of Mr. Trump's Statements of Financial Condition?

22 A Yes.

23 Q What do you understand that phrase to refer to?

24 A The backup to the supporting data spreadsheet. So

25 anything that was used to -- wherever the numbers came from, I

Page 1209

1 would usually refer to that as the backup.

2 Q Let me see if I understand correctly. Supporting data

3 spreadsheet contains number and the backup is additional

4 information supporting those numbers. Is that fair?

5 A Yes.

6 MR. HAREN: Let's mark for identification

7 Plaintiff's Exhibit 756. Excuse me. This one is in

8 evidence already.

9 Q Mr. Birney, the document on the screen, Plaintiff's

10 Exhibit 756, is in evidence as Statement of Financial Condition

11 for Donald J. Trump as of June 30, 2016. I just want to direct

12 you to page two. Do you see at the bottom of the independent

13 accountant's compilation report on this page that there is a

14 date?

15 A Yes.

16 Q And do you see that the date is March 10, 2017?

17 A Yes.

18 Q And that date is after you began working on Mr. Trump's

19 Statement of Financial Condition in November of 2016?

20 A Yes.

21 Q So is the Statement of Financial Condition for the year

22 ending June 30, 2016 the first statement of Statement of

23 Financial Condition that you worked on for Mr. Trump?

24 A Yes, I think so.

25 (Continued on the next page.)

P. Birney - Plaintiff - direct (Haren) Page 1210

1 Q Did somebody assign you to work on Mr. Trump's annual

2 Statement of Financial Condition in November 2016?

3 A Yes.

4 Q Who assigned you to work on that project?

5 A I don't know who -- I don't know who assigned me. It

6 was either Jeff McConney or Allen Weisselberg.

7 Q Do you have, you know, any indication of which of those

8 people is a more probable answer?

9 A Probably Jeff McConney.

10 Q With respect to preparing Mr. Trump's Statement of

11 Financial Condition, did you ever receive any training documents

12 in writing?

13 A For the preparation of the Statement of Financial

14 Condition?

15 Q Yes.

16 A I don't believe there are any official training

17 documents in writing.

18 Q And speaking generally are you aware that asset

19 evaluations in the Supporting Data for Mr. Trump's Statement of

20 Financial Condition are something called cap rates?

21 A Yes.

22 Q Before working on Mr. Trump's Statement of Financial

23 Condition had you ever valued a property using a cap rate?

24 A I don't think so.

25 Q When did you complete your work on the 2021 Statement

P. Birney - Plaintiff - direct (Haren) Page 1211

1 of Financial Condition for Donald J. Trump?

2 A In late 2021.

3 Q Let's --

4 A I think.

5 Q So prior to the completion of your work on the 2021

6 Statement of Financial Condition, had you had any professional

7 training in applying accounting principles generally accepted in

8 the United States of America also known as GAAP?

9 A I don't think so.

10 Q Prior to the completion of your work on the 2021

11 Statement of Financial Condition, did you know what the

12 Financial Accounting Standards Board was?

13 A I don't think so.

14 Q Prior to the completion of your work on the 2021

15 Statement of Financial Condition, did you understand the phrase

16 "accounting standards codification?"

17 A No.

18 Q Prior to the completion of your work on the 2021

19 Statement of Financial Condition, were you familiar with

20 Accounting Standards Codification 274 governing personal

21 financial statements?

22 A No.

23 Q Prior to the completion of your work on the 2021

24 Statement of Financial Condition, did you have a general

25 understanding of what Accounting Standards Codification 274

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P. Birney - Plaintiff - direct (Haren) Page 1212

1 provides?
 2 A No.
 3 Q Prior to the completion of your work on the 2021
 4 Statement of Financial Condition had anybody at the Trump
 5 Organization ever mentioned Accounting Standards Codification
 6 274 to you?
 7 A Not that I know of.
 8 Q Can you describe in general terms Allen Weisselberg's
 9 role in preparing Mr. Trump's Statement of Financial Condition
 10 from 2016 to 2019?
 11 A He would review drafts with me that I would provide to
 12 him. In a lot of those drafts I would bring questions to him,
 13 he would make decisions based on the questions that I brought.
 14 Q And you said "drafts." Can you be more specific?
 15 Drafts of what?
 16 A Drafts of the supporting data spreadsheet.
 17 Q So as a general matter you will bring drafts of the
 18 Supporting Data to Mr. Weisselberg with questions and he would
 19 make decisions. Is that fair?
 20 A That's fair.
 21 Q All right. And can you describe in general terms Jeff
 22 McConney's role in preparing Mr. Trump's Statements of Financial
 23 Condition from 2016 to 2019?
 24 A It was similar, but I think with Jeff I would go to
 25 Jeff if I needed a specific document, if I needed a financial

P. Birney - Plaintiff - direct (Haren) Page 1214

1 A Yes.
 2 Q Do you recognize this document?
 3 A Yes.
 4 Q What do you recognize it to be?
 5 A A draft of the Supporting Data spreadsheet.
 6 MR. HAREN: Your Honor, I think this document has
 7 been reviewed with other witnesses and the magic words may
 8 not have been said, so I'd just like to move it into
 9 evidence.
 10 MR. ROBERT: I'm trying to keep order so we don't
 11 have the same document going around twice. To the extent
 12 it's not, statute of limitations objection.
 13 THE COURT: Okay. To the extent it's not. It's
 14 now in over objection.
 15 (Whereupon, the item previously referred to is
 16 received and marked Plaintiff's Exhibit Number 756 in
 17 evidence.)
 18 Q Who was the principal drafter of the spreadsheet on the
 19 screen?
 20 A What do you mean?
 21 Q The spreadsheet itself as opposed to any decisions that
 22 may have led to numbers being included in it. Did you
 23 prepare the spreadsheet?
 24 A I probably worked on the spreadsheet.
 25 Q Did the process of preparing the Supporting Data for

P. Birney - Plaintiff - direct (Haren) Page 1213

1 statement from some entity or something like that. I would go
 2 to Jeff and ask for it.
 3 Q I meant did you in the time period I referenced, 2016
 4 to 2019, review drafts of the Supporting Data with Mr. McConney,
 5 as well?
 6 A Yes.
 7 Q Okay. Did you have an understanding as to whether you
 8 were the final decisionmaker on any valuation in the Statements
 9 of Financial Condition from 2016 to 2019?
 10 A Can you repeat the question, please?
 11 Q Did you have an understanding as to whether you were
 12 the final decisionmaker on any valuation in the Statements of
 13 Financial Condition from 2016 to 2019?
 14 A Yes.
 15 Q What was your understanding?
 16 A That I was not the final decisionmaker.
 17 Q And did you have an understanding as to who the final
 18 decisionmaker was?
 19 A Yes.
 20 Q And what was your understanding?
 21 A Allen Weisselberg.
 22 Q Okay. Let's go to Plaintiff's Exhibit 742.
 23 Mr. Birney, do you see on the screen an Excel
 24 spreadsheet entitled, "Donald J. Trump Statement of Financial
 25 Condition as of June 30, 2016?"

P. Birney - Plaintiff - direct (Haren) Page 1215

1 the 2016 Statement of Financial Condition involve more than one
 2 draft?
 3 A Yes.
 4 Q How many approximately?
 5 A I don't know.
 6 Q How many drafts in a typical year then would you go
 7 through?
 8 A Could be 20, could be 30. I really don't know.
 9 Q All right. Will you -- were you the decisionmaker on
 10 which valuation methods to choose -- excuse me.
 11 Were you the decisionmaker on which valuation methods
 12 were used in the spreadsheet?
 13 A No.
 14 Q Who was?
 15 A Either Jeff McConney or Allen Weisselberg.
 16 Q All right. Can you be -- is it that one side on some
 17 and one side on others? Can you kind of explain your answer?
 18 A Sure. This was 2016 so this would have been the first
 19 year I was working on it so I would have just asked Jeff a lot
 20 of questions. I don't know if I even asked Allen questions
 21 about this year if it even got to that point. It was probably
 22 just me and Jeff for things that I worked on for this year, so I
 23 don't know who made the ultimate decisions.
 24 Q All right. Did you follow a process to go from draft
 25 versions of the Supporting Data to the final version of the

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1 Supporting Data in 2016?
 2 A Can you repeat the question, please?
 3 Q Did you follow a process to go from draft versions of
 4 the Supporting Data to the final version of the Supporting Data
 5 in 2016?
 6 A I don't really know.
 7 Q Let's pull up some of your testimony to see if it
 8 refreshes your recollection.
 9 MR. HAREN: Let's go to page 103 of Mr. Birney's
 10 testimony. Well, first let's go to the first page. Could
 11 you go to the first page, please?
 12 Q Mr. Birney, do you recall testifying under oath on
 13 June 25, 2020?
 14 A Not that specific date, but I do recall in 2020, yes.
 15 MR. HAREN: All right. And let's go to page 103.
 16 Q Just if you take a look at page 103, starting at line
 17 six. It states:
 18 "QUESTION: You mentioned earlier that you have
 19 meetings with Jeff McConney and Allen Weisselberg to go over
 20 drafts of the spreadsheet -- sporting spreadsheet; right?
 21 "ANSWER: Yes.
 22 "QUESTION: Between the first draft and the final
 23 draft, approximately how many meetings would there be in a
 24 typical year?
 25 "ANSWER: I don't know. It depends on the specific

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1 year. Anywhere from -- I'm just -- it depends. It varies.
 2 "QUESTION: You'd have at least one meeting a year;
 3 right?
 4 "ANSWER: Yes, there would be at least one meeting.
 5 "QUESTION: Would there be only one meeting?
 6 "ANSWER: Probably not.
 7 "QUESTION: So just try to give me an
 8 approximation; five meetings, between five and ten?
 9 "ANSWER: Between five and ten."
 10 Now, does that testimony refresh your recollection
 11 as to any process you may have had in terms of going from
 12 the draft version of the Supporting Data to the final
 13 version of the Supporting Data in 2016?
 14 A Yes.
 15 Q And so what is your recollection?
 16 A Sorry. The reason I'm getting -- I don't know if that
 17 -- what we just looked at was specific to 2016, was it?
 18 Q I think it was a general question with a general
 19 answer.
 20 A Giving -- I can give you a general answer.
 21 Q Sure. Give me a general answer.
 22 A Sure. In 2016, we would -- I worked together with
 23 Jeff, but in general I would work on drafts of the spreadsheet.
 24 There would be meetings with Jeff McConney and Allen
 25 Weisselberg. It could have been, yes, five to ten meetings to

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1 finalize it and then we would send it over to Mazars along with
 2 all of our backup and we would work with Mazars on the Statement
 3 of Financial Condition until we were done.
 4 Q And so were Jeff McConney and Allen Weisselberg
 5 involved in finalizing the 2016 Statement of Financial
 6 Condition?
 7 A Sorry. One more time?
 8 Q Were Jeff McConney and Allen Weisselberg involved in
 9 finalizing the 2016 Statement of Financial Condition?
 10 A I imagine they were, yes.
 11 Q You imagine or they were?
 12 A I know Jeff McConney was involved. I can't remember if
 13 Allen was. He probably was involved.
 14 Q All right. And during the course of preparing the 2016
 15 Statement of Financial Condition did you understand that
 16 Mr. Weisselberg and Mr. McConney were your superiors?
 17 A Yes.
 18 MR. KISE: Your Honor, not to interrupt, but it's a
 19 question regarding an exhibit that I think was just
 20 introduced, PX 1167. And it took me a minute because I'm a
 21 little slow, but it's got 35 pages attached, but the native
 22 version these -- this appears to be two different documents
 23 I guess is my question. And I just want to clear that up.
 24 I'm sure, far be it for me to accuse the government
 25 of doing anything intentional, I am sure that, if anything,

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1 it's inadvertent or it could be that I'm mistaken. Often I
 2 am, but from what we can see of the native version of this
 3 e-mail that is the cover of Plaintiff's Exhibit 1167, the
 4 remaining pages that start with this part, with the
 5 handwriting on it were not part of the original attachment
 6 to the e-mail. The only thing attached to the e-mail was
 7 the Statement of Financial Condition and these remaining
 8 pages appear to be a different exhibit. I just didn't know
 9 if that was introduced. And we don't have to take up
 10 courtroom time right now. I just wanted to place this on
 11 the record before we go farther. If they are not going to
 12 use this exhibit for the rest of the day, we can clear this
 13 up later, but I just didn't want to go any further without
 14 at least noting it.
 15 THE COURT: Okay. Any response?
 16 MR. HAREN: Yes, I think we'll look at it at a
 17 break we. Can take a look at it and see if there was an
 18 inadvertent error.
 19 MR. KISE: Thank you.
 20 Q And back to the exhibit that was on the screen ,
 21 Exhibit 742. Mr. Birney, in this Supporting Data spreadsheet
 22 are there capitalization rates used to value assets? If it
 23 would help you to scroll through the document, I'm happy to
 24 direct you.
 25 A Please.

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1 MR. HAREN: Could we go to 147, please?

2 Q So is there a cap rate reflected in Row 47?

3 A Yes.

4 MR. HAREN: Could we go to Row 104, please?

5 Q Is there a cap rate reflected in Row 104?

6 A Yes.

7 Q Now, did you have an understanding when working on the

8 2016 Statement of Financial Condition as to who was the

9 decisionmaker about which capitalization rates to use?

10 A I really don't remember 2016.

11 Q Do you have a general recollection of yourself ever

12 being the final decisionmaker about a cap rate to be used in the

13 Supporting Data for Mr. Trump's Statement of Financial

14 Condition?

15 A I don't believe I was ever the final decisionmaker.

16 Q And do you have a general understanding of who was the

17 final decisionmaker about capitalization rates and Mr. Trump's

18 Statements of Financial Condition?

19 A Yes.

20 Q And what's your understanding?

21 A Allen Weisselberg.

22 Q I'd like to just have pull up on the screen your prior

23 testimony at page 191 beginning at line seven:

24 "QUESTION: So when you say that your role is just

25 to update the spreadsheet, are you saying that you're not

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1 participating in the choice between cap rates?

2 "ANSWER: I'm not the one making the choice.

3 "QUESTION: So who is the one making the choice?

4 "ANSWER: Either Jeff McConney or Allen Weisselberg

5 on any given year."

6 I think in the answer you just gave to my question

7 here your answer was Allen Weisselberg, so I just want to

8 clarify what was Jeff McConney's role in choosing

9 capitalization rates speaking generally from Mr. Trump's

10 Statement of Financial Condition?

11 A He was involved.

12 Q And can you describe his involvement, please?

13 A Sure. Jeff would forward me e-mails from third parties

14 that have lists of recent sales in the area. Those lists would

15 have cap rates on them. I would then usually discuss that with

16 Jeff or Allen. It depends -- it really depends on the asset.

17 Q You said "it really depends on the asset." Can you be

18 -- give any additional recollection you have about that?

19 A Yes. I've talked on the phone with Jeff, a third party

20 before asking about storefronts and cap rates to be used for

21 storefronts in New York City. I think most of that is in the

22 Supporting Data spreadsheets. But Jeff was involved in that and

23 those are typically smaller than larger properties. I don't

24 know if Allen would have been 100 percent involved in those

25 decisions.

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1 Q Okay. Let's move to Plaintiff's Exhibit 758.

2 Mr. Birney, the document on the screen, Plaintiff's

3 Exhibit 758 is in evidence as the final 2017 Supporting Data

4 spreadsheet. Do you recognize it as such?

5 A I'll take your word.

6 Q Do you recognize it as a Supporting Data spreadsheet

7 for Mr. Trump's Statement of Financial Condition as of June 30,

8 2017?

9 A Yes.

10 Q Did you prepare this spreadsheet?

11 A Probably.

12 Q And earlier you gave me an answer about a number of

13 drafts that you would go through in a typical year about --

14 number of drafts of the Supporting Data spreadsheet. Do you

15 recall that?

16 A Yes.

17 Q Did that -- would that same answer apply to the 2017

18 year?

19 A Probably.

20 Q Were you the decisionmaker on valuation methods to use

21 in the spreadsheet?

22 A No.

23 Q Who was?

24 A Either Jeff McConney or Allen Weisselberg.

25 Q And can you, you know, give anymore information about

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1 which of those two is, you know, more probable?

2 A Probably Allen Weisselberg.

3 Q And you earlier described a process of reviewing the

4 draft Supporting Data with Mr. McConney and Mr. Weisselberg. Do

5 you recall that?

6 A Yes.

7 Q Is that a process that you followed in 2017 as well?

8 A Yes.

9 Q And are there capitalization rates used to value assets

10 in this spreadsheet?

11 A Probably.

12 Q Did you have an understanding when working on the 2017

13 Statement of Financial Condition as to who was the ultimate

14 decisionmaker about capitalization rates to use?

15 A Probably.

16 Q Did you have an understanding?

17 A I don't know if I had an understanding.

18 Q So you worked on this project in 2017; right?

19 A Yes.

20 Q And there are capitalization rates reflected in the

21 spreadsheet?

22 A Can you scroll down to --

23 Q Sure. Let's go to Row 68 as an example.

24 A Yes.

25 Q Were you the final decisionmaker about capitalization

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1 rates to use in the 2017 Statement of Financial Condition?
 2 A No.
 3 Q Who was?
 4 A Either Jeff McConney or Allen Weisselberg, depending on
 5 the asset.
 6 Q You say "depending on the asset." Were there some that
 7 Mr. Weisselberg chose for?
 8 A Yes.
 9 Q Which were those?
 10 A It really depends. The reason I'm answering this way
 11 is as I've -- as we've spoken about in the past, when I update
 12 the spreadsheet there is a year like there are two years on
 13 every spreadsheet, right. So if I'm not making a change, if I'm
 14 valuing it the exact same way who is valuing it before, who is
 15 really making the decision that year, right? You have to go
 16 back to who made the decision the year before.
 17 So ultimately, Allen Weisselberg was probably -- had --
 18 had -- had the authority to approve everything. I'm not sure if
 19 every single asset on this schedule was approved by Allen.
 20 Q And just so I understand if a capitalization rate was
 21 carried forward from the year before was it -- was a decision
 22 made to just carry it forward?
 23 A Maybe.
 24 Q And who would make a decision to just carry forward the
 25 exact same cap rate from the prior year?

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1 A Allen or Jeff.
 2 Q All right.
 3 THE COURT: Ten-minute warning.
 4 MR. HAREN: Let's pull up Plaintiff's Exhibit 774.
 5 Q Mr. Robert can correct me, but I think the magic words
 6 also might not have been said about this spreadsheet.
 7 But Mr. Birney, do you recognize this document?
 8 A Yes.
 9 Q What do you recognize it to be?
 10 A A draft of the Supporting Data spreadsheet for the next
 11 year, 2018.
 12 MR. HAREN: I move this document into evidence to
 13 the extent it's not already in evidence.
 14 MR. KISE: No objection.
 15 THE COURT: Granted. It's in evidence.
 16 (Whereupon, the item previously referred to is
 17 received and marked Plaintiff's Exhibit Number 774 in
 18 evidence.)
 19 Q Mr. Birney, did you draft the spreadsheet?
 20 A Probably.
 21 Q You gave an answer earlier about going through 20 to 30
 22 drafts of the Supporting Data. Would that answer apply to 2018
 23 as well?
 24 A Yes. The reason I'm saying probably or the -- whatever
 25 is in the Column F, that wasn't me, the 4100.01.

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1 Q Oh, understood. We do I think have testimony on the
 2 record that those markings had come from the accounting firm,
 3 but as to the other information in the spreadsheet, that's not
 4 -- either the blue numbers or the red lettering on the top, you
 5 prepared the spreadsheet; is that right?
 6 A I probably prepared the spreadsheet. If you want to
 7 show the name it would help me tell.
 8 Q You mean the file name?
 9 A File name.
 10 Q But putting aside this particular file, you prepared
 11 the Supporting Data for the 2018 Statement of Financial
 12 Condition?
 13 A Yes.
 14 Q Were you the decisionmaker about which valuation
 15 methods to use in the spreadsheet?
 16 A No.
 17 Q Who was?
 18 A Either Allen Weisselberg or Jeff McConney.
 19 Q And again, can you give the Court or me an indication
 20 as to which of those people is more probable?
 21 A Probably Allen Weisselberg.
 22 Q And the process that you mentioned of reviewing the
 23 draft Supporting Data with Mr. McConney and Mr. Weisselberg, is
 24 that a process you would have followed in 2018 as well?
 25 A Yes.

P. Birney - Plaintiff - direct (Haren) Page 1227

1 Q And your answer concerning the choice of capitalization
 2 rates, you gave answers about that in the 2017 spreadsheet that
 3 we were looking at a few minutes ago?
 4 A Yes.
 5 Q Would those answers apply to the 2018 Statement of
 6 Financial Condition, as well?
 7 A Yes, probably.
 8 Q Well, let's just -- we might as well do it.
 9 Mr. Birney, could you take a look at Row 47, please?
 10 You see there there is a cap rate of 2.6 percent?
 11 A Yes.
 12 Q And in Row 119 there is a cap rate of 2.36 percent?
 13 A Yes.
 14 Q Were you the decisionmaker about which capitalization
 15 rates to use in the spreadsheet?
 16 A No.
 17 Q Who was?
 18 A Jeff and Allen.
 19 Q And when you say "Jeff and Allen," you mean Jeff
 20 McConney and Allen Weisselberg?
 21 A Yes.
 22 Q All right. Let's pull up on the screen Plaintiff's
 23 Exhibit 843. This document is in evidence as the Supporting
 24 Data for the June 30, 2019 Statement of Financial Condition.
 25 Mr. Birney, do you recognize this document?

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1 A Yes.

2 Q Did you draft the supporting data for the 2019

3 Statement of Financial Condition?

4 A In general, yes.

5 Q And you gave an answer concerning a number of drafts

6 that you would go through on a typical year would that answer

7 apply to the 2019 Statement of Financial Condition?

8 A Yes.

9 Q And were you the decisionmaker about which valuation

10 methods to use in the spreadsheet?

11 A No.

12 Q Who was?

13 A Either Allenes Weisselberg or Jeff McConney.

14 Q And can you give an indication as to which of those two

15 people was more probable?

16 A Allen Weisselberg.

17 Q And the process that you mentioned of going through

18 drafts of the supporting data with Mr. McConney and

19 Mr. Weisselberg, was that a process you filed in 2019?

20 A Yes.

21 Q And let's take a look at Row 66, please.

22 Mr. Birney, do you see that there is a cap rate there

23 of 2.67 percent?

24 A Yes.

25 Q Let's go to Row 100 , please.

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1 A Yes.

2 Q How is it different?

3 A There was more input from more people.

4 Q And when you say "more people," who else was involved

5 in -- who else was involved?

6 A Myself, Allen Weisselberg Jeff McConney, Ray Flores,

7 Jody Whitsec, Adam Rosen, Alan Garten.

8 Q And at the time Allen Weisselberg was still the chief

9 financial officer of the Trump Organization?

10 A I think so.

11 Q What was Jeff McConney's position at the time?

12 A I think he was controller.

13 Q And how about Ray Flores?

14 A Vice president development and acquisitions or

15 something like that.

16 Q And can you just give us a general idea of Mr. Flores'

17 role in the 2020 Statement of Financial Condition?

18 A Ray gave input on backup and certain cap rates, certain

19 properties.

20 Q And just so I have the list right, Mr. Garten was the

21 chief legal officer at the time?

22 A I think so.

23 Q And Mr. Rosen worked under Mr. Garten; is that right?

24 A He worked in the legal department.

25 Q So Mr. Garten was the senior most legal person involved

P. Birney - Plaintiff - direct (Haren) Page 1229

1 Do you see there there is a cap rate of 2.42 percent?

2 A Yes.

3 Q Were you the ultimate decisionmaker regarding the

4 capitalization rates to use in the 2019 Statement of Financial

5 Condition?

6 A No.

7 Q Who was?

8 A Same as before, Allen and Jeff.

9 Q And you mean Allen Weisselberg and Jeff McConney?

10 A Yes.

11 Q All right. Let's --

12 MR. HAREN: I guess how close am I to the ten

13 minutes?

14 THE COURT: You have another three or four if you

15 want.

16 MR. HAREN: It's a fortune.

17 Let's pull up on the screen Plaintiff's

18 Exhibit 857.

19 Q Mr. Birney, the document on the screen is in evidence

20 as the Supporting Data for the 2020 Statement of Financial

21 Condition. Do you recognize this document?

22 A Yes.

23 Q Was the process of preparing the Supporting Data for

24 the 2020 Statement of Financial Condition in any way different

25 than the process from 2016 to 2019?

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1 in the 2020 Statement of Financial Condition?

2 A Yes.

3 Q And Mr. Weisselberg was the senior most accounting

4 person involved in the 2020 Statement of Financial Condition?

5 A Yes.

6 MR. HAREN: All right.

7 THE COURT: Before you go, let's revisit the

8 important question of the warning. The ten-minute warning

9 seems to make you all nervous and you're looking at the

10 clock, you want to know how long -- I have a better idea.

11 How about a five-minute warning and a one-minute warning?

12 Anybody object to that?

13 MR. WALLACE: No objection.

14 MR. HAREN: We could use a little red light.

15 THE COURT: Or a sign or hold up my hands.

16 All right, 15-minute break. See you soon.

17 THE COURT OFFICER: Remain seated in the audience.

18 (Whereupon, there is a recess in the proceedings

19 and the transcript continues on the following page.)

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1 THE COURT OFFICER: All rise. Part 37 is back 24
2 session.
3 MR. KISE: While we are waiting for the witness, I
4 think over the break, we reached an understanding and Ms.
5 Faherty can state.
6 MS. FAHERTY: Our PTG folks were able to resolve
7 the issue. It seems it was a technological family coupling
8 issue. Our goal to have a corrected exhibit in the morning.
9 Some additional pages were added. That's all, Your Honor.
10 I apologize for the mistake. We will correct it
11 immediately.
12 THE COURT: I'm glad Mr. Kise caught you on it.
13 MS. FAHERTY: Well, you know, I do try to sneak
14 things in apparently.
15 MR. KISE: I'm a little slow, but I read things.
16 THE COURT: We are getting the witness, yes?
17 THE COURT OFFICER: The witness is here.
18 (Witness resumes the stand.)
19 THE COURT: Let's continue.
20 Q Welcome back, Mr. Birney.
21 A Hi.
22 MR. HAREN: Let's call up Plaintiff's Exhibit 1501.
23 Q Mr. Birney, this document is in evidence as the
24 supporting data spreadsheet for the 2021 Statement of Financial
25 Condition. Do you recognize it?

P. BIRNEY - DIRECT (MR. HAREN) Page 1233

1 A I recognize the format of it, but not two of the notes.
2 Q By notes, you mean the information Excel E4 that refers
3 to WP?
4 A Yes.
5 Q But apart from those notes, do you recognize it to be a
6 2021 supporting data spreadsheet for Mr. Trump's Statement of
7 Financial Condition?
8 A Yes.
9 Q Can describe just in general terms the process of
10 preparing the 2021 Statement of Financial Condition?
11 A Yes. It was very similar to the 2020 statement.
12 Wherever we pulled information from from 2020, I think why
13 pulled it from 2021. There was one change for valuations that I
14 can recall right now and that was the golf courses.
15 Q Just speaking about process, can you say who was
16 involved in the process of preparing the 2021 statement?
17 A Yes. It was the team that I had mentioned for 2020
18 except I do not believe Allen Weisselberg was involved and Jeff
19 McConney was barely involved.
20 Q All right. Let's pull up on the screen a document that
21 is Plaintiff's Exhibit 758.
22 Mr. Birney, this document is in evidence as the
23 supporting data for Mr. Trump's 2017 Statement of Financial
24 Condition.
25 MR. HAREN: Could we scroll down to row 969, please.

P. BIRNEY - DIRECT (MR. HAREN) Page 1234

1 Q What is indicated to you by the information in columns
2 B, C and H in row 969?
3 A The triplex valuation for the previous year I believe
4 is column H based on columns from Trump International Realty at
5 30,000 square feet multiplied by \$10,900 per square feet.
6 Q I'll just note for the record the Court has reached an
7 official understanding about the pronunciation. Triplex.
8 A What did I say?
9 Q Triplex. It's very important here in this courtroom.
10 A Sorry.
11 Q I would like to direct your attention to row 971. What
12 is indicated to you by the information in columns B and C and G
13 in that row?
14 A The valuation for the triplex based on comp for 432
15 Park, 10,996.39 square feet multiplied by \$10,625 per
16 square-foot.
17 Q And based on the information in columns B and C in row
18 969 and row 971, there was a change in the square footage used
19 for Mr. Trump's triplex apartment between the 2016 and 2017
20 Statements of Financial Condition, right?
21 A Yes.
22 Q Do you have an understanding of any events that led to
23 that change in square footage?
24 A Yes.
25 Q What's your understanding?

P. BIRNEY - DIRECT (MR. HAREN) Page 1235

1 A My understanding is there was an article written that
2 stated that Mr. Trump's triplex apartment was actually 10,900 or
3 so square feet and then we used that -- we verified that square
4 footage internally and then we used that for the 2017 Statement
5 of Financial Condition.
6 Q You say "we verified that internally." Who was
7 involved in that verification?
8 A Allen Weisselberg, probably Jeff McConney and I believe
9 Stephanie Lennig.
10 Q How do you spell her name?
11 A L-E-N-N-I-G.
12 Q Thank you.
13 MR. HAREN: Let's pull up Plaintiff's Exhibit 1605
14 unless there was a different version of this marked
15 yesterday. I understand this document is in evidence
16 already.
17 Q Mr. Birney, do you see that the title of the article is
18 "Donald Trump has been lying about the size of his penthouse"?
19 A Yes.
20 Q Does the article have a date?
21 A May 3, 2017.
22 Q Is this the article that prompted the change in square
23 footage reported in the supporting data to Mr. Trump's Statement
24 of Financial Condition?
25 A Probably.

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1 Q Is it the article or was there some other article?
 2 A I don't know.
 3 MR. HAREN: Let's turn back to the 2016,
 4 Plaintiff's Exhibit 756.
 5 Q Do you remember that we agreed there is a date on the
 6 independent accountant's compilation report on page two. The
 7 date is March 10, 2017, right?
 8 A Yes.
 9 Q All right. Let's move to plaintiff's 01324.
 10 Mr. Birney, this document is in evidence. Does it
 11 appear to be an e-mail from Dan Alexander at Forbes to Allen
 12 Weisselberg and Jeff McConney on February 22, 2017?
 13 A Yes.
 14 MR. HAREN: And could you scroll down just generally
 15 through the e-mail, so Mr. Birney can look at it.
 16 Q Mr. Birney, do you see on the second page of the
 17 exhibit, there's an item entitled, "Trump Tower Penthouse"?
 18 A Yes.
 19 Q Does it state a square footage?
 20 A Yes.
 21 Q What is the square footage that is stated?
 22 A 10,996.
 23 MR. HAREN: Let's pull up Plaintiff's Exhibit 1327.
 24 We apparently have a version of this that's already in
 25 evidence, so I would like to use that one instead of this

P. BIRNEY - DIRECT (MR. HAREN) Page 1237

1 one. Let's pull up Plaintiff's Exhibit 1345.
 2 Q Okay. Mr. Birney, Plaintiff's Exhibit 1345 is in
 3 evidence already.
 4 MR. HAREN: If we could scroll down, please.
 5 Continue to scroll. Please continue. Now scroll back up to
 6 the top of this e-mail.
 7 Q Mr. Birney, do you see on the screen an e-mail from a
 8 person named Noah Kirsch to Alan Garten on March 3, 2017?
 9 A Yes.
 10 Q And do you see that the subject is urgent in all caps
 11 fact checking inquiry from Forbes?
 12 A Yes.
 13 Q If you could scroll down, please. Do you see the item
 14 there entitled Trump Tower penthouse in all caps?
 15 A Yes.
 16 Q Do you see where the e-mail states under the heading
 17 Trump Tower penthouse, "president Trump has told Forbes in the
 18 past that his penthouse occupies 33,000 square feet comprising
 19 the entirety of the floors 66-68 of Trump Tower. And it goes on
 20 is the 1994 declaration accurate and up-to-date. It shows
 21 president Trump's apartment is 1009996.39 square feet. Do you
 22 see that.
 23 A Yes.
 24 Q Did Allen Weisselberg ever inform you before the 2016
 25 Statement of Financial Condition was finalized that he had been

P. BIRNEY - DIRECT (MR. HAREN) Page 1238

1 notified by e-mail from Forbes that Mr. Trump's triplex
 2 apartment was 10,996 square feet?
 3 A Just to be clear, you said 2016?
 4 Q Yes.
 5 A I don't think he did.
 6 Q Did Jeff McConney ever inform you before the 2016
 7 Statement of Financial Condition was finalized that he had been
 8 notified by e-mail from Forbes that Mr. Trump's triplex
 9 apartment was 10,996 square feet?
 10 A I don't -- I don't know. I don't think he did.
 11 Q Let's go back to the 2017 supporting data, Plaintiff's
 12 Exhibit 758. Let's look at again row 969 actually look at row
 13 971. Do you see where it states "triplex-based on comp from 432
 14 Park"?
 15 A Yes.
 16 MR. HAREN: Let's pull up Plaintiff's Exhibit 767.
 17 Q Mr. Birney, could you look through the document?
 18 A Yes.
 19 Q Do you recognize it?
 20 A Yes.
 21 Q What do you recognize it to be?
 22 A The backup to the triplex valued for the 2017.
 23 MR. HAREN: I move this document into evidence.
 24 MR. KISE: For what purpose? It's hearsay. What's
 25 it being admitted for?

P. BIRNEY - DIRECT (MR. HAREN) Page 1239

1 THE COURT: It is hearsay. Depends on -- actually,
 2 it depends upon what they're trying to admit it for. What's
 3 the purpose of admitting it?
 4 MR. HAREN: The witness just testified that this
 5 was the backup to the 2017 valuation of Mr. Trump's triplex.
 6 THE COURT: Well, it's in for that so --
 7 MR. KISE: It is in for the fact that it is a
 8 backup, but not --
 9 THE COURT: But not for the truth --
 10 MR. KISE: Right.
 11 THE COURT: Contents.
 12 MR. KISE: Okay.
 13 THE COURT: Okay.
 14 Q Mr. Birney, there's information contained on the first
 15 page that is in handwriting. Do you see that?
 16 A Yes.
 17 Q What does that information represent?
 18 A The square footage of Mr. Trump's triplex.
 19 Q Do you have an understanding as to whose handwriting is
 20 on this page?
 21 A I think is Stephanie Lennig. I don't know for sure.
 22 Q That was the person you mentioned who was involved in
 23 verifying the square footage of Mr. Trump's triplex after the
 24 article came out?
 25 A Yes.

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1 Q Let's turn to page two of the exhibit. Do you have an
 2 understanding what is reflected in the mathematical computations
 3 on the right side of this page?
 4 A Yes.
 5 Q And what is your understanding?
 6 A It's the dollar per square-foot.
 7 Q The dollar per square-foot of what?
 8 A Of this unit in 432 Park.
 9 Q And the dollar per square-foot that's calculated here
 10 was then used to value Mr. Trump's triplex in the 2017 Statement
 11 of Financial Condition; is that right?
 12 A Can you show me the previous exhibit?
 13 Q Sure.
 14 MR. HAREN: Let's go back to Plaintiff's
 15 Exhibit 758 and down to row 971.
 16 A Probably. It's not the same number, but it's very
 17 close to that number.
 18 Q It says 432 Park in the spreadsheet, doesn't it?
 19 A Yes.
 20 Q And can you look at Exhibit 767 on the second page.
 21 Does that also reference 432 Park?
 22 MR. HAREN: Could you zoom -- yeah.
 23 A Yes.
 24 Q So does the information on this page represent support
 25 for the \$10,625 per square-foot number that was used to value

P. BIRNEY - DIRECT (MR. HAREN) Page 1241

1 Mr. Trump's triplex for the 2107 statement?
 2 A It does. I just don't know why we wouldn't have used
 3 10,624 instead of 625. It is very particular.
 4 Q Might be a dollar off?
 5 A Sorry?
 6 Q So it might be a dollar off?
 7 A Yes.
 8 Q Let's look at page -- continuing on page two of the
 9 exhibit. Do you see at the bottom there is an Internet address
 10 <https://www.alux.com> and then it continues?
 11 A Yes.
 12 Q What do you understand that to refer to?
 13 A I understand that would be the website that this came
 14 from.
 15 Q So it is a website entitled alux.com?
 16 A That is my understanding.
 17 Q Did you go to alux.com to find a property to use to
 18 value Mr. Trump's triplex for the 2017 Statement of Financial
 19 Condition?
 20 A I think I did.
 21 Q And tell us what you did when you did that. In other
 22 words, did you follow a process? How did you identify this
 23 process as something that should be used?
 24 A I re -- I think I Google-searched recent sales and/or
 25 like penthouse sales in Manhattan.

P. BIRNEY - DIRECT (MR. HAREN) Page 1242

1 Q And you happened upon an article entitled, "Own the
 2 Most Expensive Penthouse in U.S. Now!"?
 3 A Yes.
 4 Q For this property to be used to value Mr. Trump's
 5 triplex for the 2017 Statement of Financial Condition, did you
 6 discuss it with anybody?
 7 A Yes.
 8 Q Who did you discuss it with?
 9 A Allen Weisselberg or Jeff McConney.
 10 Q Did either of them direct you to use this comparable as
 11 opposed to any others that you had identified?
 12 A I don't remember.
 13 Q In 2017, would you have chosen a comparable for Mr.
 14 Trump's triplex apartment without being told to do so by Jeff
 15 McConney or Allen Weisselberg?
 16 A No.
 17 MR. HAREN: Let's go to Plaintiff's Exhibit 843,
 18 please. Could we go down to row 1011.
 19 Q Mr. Birney, do you have an understanding of the
 20 information contained in columns B and C in row 1011?
 21 A Yes.
 22 Q And what is your understanding?
 23 A So description of the valuation for Mr. Trump's triplex
 24 in 2019.
 25 Q What does it indicate to you about what information was

P. BIRNEY - DIRECT (MR. HAREN) Page 1243

1 used in that valuation?
 2 A It indicates there was a comp used from 220 Central
 3 Park South that my understanding is that there was a \$10,348 per
 4 square-foot number on that 220 Central Park South property.
 5 Q And so the 10,348 per square-foot from 220 Central Park
 6 South was used to value Mr. Trump's triplex in the June 30, 2019
 7 Statement of Financial Condition?
 8 A I think so.
 9 MR. HAREN: Let's pull up Plaintiff's Exhibit 2530.
 10 Q Mr. Birney, do you recognize this document?
 11 A Not really. I recognize the first page.
 12 Q What is contained on the first page?
 13 A First page looks like the same thing as the last year,
 14 the square footage for Mr. Trump's triplex.
 15 Q It appears to be the same handwriting that was used in
 16 the 2017 version we looked at a few minutes ago?
 17 A Yes.
 18 Q Do you see on the second page there is an article from
 19 therealdeal.com?
 20 A Yes.
 21 Q Do you see at the top there is a date of September 25,
 22 2019?
 23 A Yes.
 24 Q Do you see there's also something at the top that says,
 25 "Ken Griffin, 220 Central Park South Priciest U.S. Home Sale."

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1 A Yes.

2 Q Do you see in the article there is a highlighted price

3 of where it says record shattering 238 million?

4 A Yes.

5 Q Do you see in the paragraph that follows, "A 23,000

6 square-foot quadruplex"?

7 A Yes.

8 Q Do you see that 23,000 square-foot is highlighted?

9 A Yes.

10 Q Do you see that below there is a strip of what I'll

11 refer to as adding machine math?

12 A Yes.

13 Q Do you have an understanding of what is computed by

14 that adding machine math?

15 A The price per square-foot for this unit.

16 Q What is the price per square-foot that's computed?

17 A \$10,347.82.

18 MR. HAREN: Can we go back to Plaintiff's

19 Exhibit 843.

20 Q Does that number match the 10,348 per square-foot

21 that's used in row 1011 of this spreadsheet?

22 A Yes.

23 Q Having now seen that information, do you recognize

24 Plaintiff's Exhibit 2530 as the backup or the valuation of Mr.

25 Trump's triplex in 2019?

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1 for which a choice of a price per square-foot that is

2 record-shattering could be relevant, and I would rather not

3 discuss that in front of the witness.

4 THE COURT: Objection overruled. It's relevant to

5 the whole process it seems to me evaluating these

6 properties.

7 (Continued on the next page.)

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P. BIRNEY - DIRECT (MR. HAREN) Page 1245

1 A Yes.

2 MR. HAREN: Your Honor, I move this document into

3 evidence.

4 THE COURT: Granted. It is in evidence.

5 (Whereupon, the Document was marked in evidence as

6 Plaintiff's Exhibit 2530.)

7 MR. KISE: Same objection, Your Honor, as to the

8 purpose that it is being moved into evidence for. Also, I

9 just have a general objection. You were talking before

10 about moving things along. What is the relevance of all of

11 this? I mean, I know we have a dispute over whether or not

12 the square footage was right or wrong, should have been

13 right or wrong, but this doesn't really go to that. This

14 just goes to the price per square-foot in 2019 -- after the

15 square footage number was corrected. So I'm just not sure

16 what relevance this exhibit has or the other one frankly.

17 THE COURT: Well, let's hear the explanation.

18 MR. HAREN: I would just say the price per

19 square-foot is another variable in the valuation and its

20 choice could be evidence to matters that are relevant to

21 issues being tried.

22 MR. KISE: What issue is being tried on that point,

23 as to that point?

24 MR. HAREN: There are additional elements of the

25 other counts that haven't been decided on summary judgment

P. Birney - Plaintiff - direct (Haren) Page 1247

1 Q Mr. Birney, do you have -- let me -- he already

2 testified to that. Excuse me one second.

3 (Whereupon, there is a pause in the proceedings.)

4 MR. HAREN: Just to clarify, Your Honor, I

5 believe I moved Exhibit 2530 into evidence, then the

6 objection was made that it's hearsay and I responded that

7 it's the backup of -- for this valuation in 2019 and it's

8 admissible for that purpose. I just wanted to clarify.

9 THE COURT: Yes.

10 Q All right. So Mr. Birney, do you see on the top of

11 page three of the exhibit -- excuse me -- yes, in the middle of

12 page three of the exhibit there is a headline that reads:

13 "Ken Griffen sets U.S. home record with \$238 million

14 buy at 220 CPS?"

15 A Yes.

16 Q Do you see that it says it's the most expensive home

17 ever sold in the U.S.?

18 A Yes.

19 Q So was an article in the Real Deal describing the most

20 expensive home ever sold in the United States the basis for the

21 price per square foot used to value Mr. Trump's triplex for the

22 2019 Statement of Financial Condition?

23 A Yes.

24 Q All right. Let's go back to Plaintiff's Exhibit 758.

25 I'd like to direct your attention to Rows 214 through 245.

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1 And just in general what's your understanding of the
 2 information contained in those rows and ending at Column H?
 3 A Which rows one more time?
 4 Q 214 to 245.
 5 A It's the valuation of the Mar-A-Lago club.
 6 Q And Row 215 says "value if sold to an individual." Do
 7 you see that?
 8 A Yes.
 9 Q What does that mean?
 10 MR. KISE: Objection. Other than what it says?
 11 Q Do you have an understanding of what that means other
 12 than what it says?
 13 A I don't know if -- I don't -- I don't think I -- I
 14 don't think I wrote that. I don't know if I have an
 15 understanding of it.
 16 Q Okay.
 17 THE COURT: Objection -- well, it's -- my usual or
 18 often response, let's see if he can answer it. He says he
 19 can't answer it, so.
 20 Q So Mr. Birney, do you see that there are items
 21 identified as comparable properties under Row 217?
 22 A Can you repeat the question, please?
 23 MR. HAREN: Could I have a read back?
 24 THE COURT: Okay. Read back, please.
 25 (Whereupon, the requested portion of the

P. Birney - Plaintiff - direct (Haren) Page 1249

1 proceedings was read back by the court reporter.)
 2 A Yes.
 3 Q And do you have an understanding of what the phrase
 4 "comparable properties" as used in Cell C 217 means?
 5 A Yes.
 6 Q And what's your understanding?
 7 A The properties that were used to obtain looks like a
 8 value per acre.
 9 Q But just in terms of the -- I understand that the
 10 phrase refers to the properties that follow it, right. In other
 11 words, there are properties listed under Row 217. Do you see
 12 that?
 13 A Yes.
 14 Q I just want to get an understanding of whether you
 15 understand the phrase "comparable properties" to mean anything
 16 other than those properties that are listed.
 17 Let me withdraw the question.
 18 Just the phrase "comparable properties" as used here,
 19 do you have an understanding of what it means?
 20 A My understanding is it means the properties that were
 21 used to value the value of Mar-A-Lago in 2017 and '16.
 22 Q Okay. Now, do you see where it says "89 Little Road,
 23 1695 Drive North Ocean Way and 540 South Ocean Boulevard?"
 24 A Yes.
 25 Q Are those all private residences?

P. Birney - Plaintiff - direct (Haren) Page 1250

1 A I think they are.
 2 Q And just speaking generally do you have an
 3 understanding that the properties identified as comparable
 4 properties in the valuations of the Mar-A-Lago Club from 2016 to
 5 2021 were private residences?
 6 A I think they were private residences.
 7 Q All right. Who had the authority, if you know, to
 8 approve or reject a particular sale as a comparable for
 9 Mar-A-Lago in the 2017 statement?
 10 A I don't -- I don't really remember, but it's -- Jeff
 11 McConney or Allen Weisselberg.
 12 Q And who had the authority to approve or reject a
 13 particular sale as a comparable for Mar-A-Lago under the 2016
 14 statement?
 15 A I don't remember 2016. I don't know if that -- those
 16 sales were already filled in or not by the time Jeff e-mailed
 17 me.
 18 Q Were you ever the person who had authority to approve
 19 or reject a particular sale as a comparable for Mar-A-Lago in
 20 any of Statements of Financial Condition that you worked on?
 21 A Can you please repeat the question?
 22 MR. HAREN: Could I have a read back, please?
 23 THE COURT: Please.
 24 (Whereupon, the requested portion of the
 25 proceedings was read back by the court reporter.)

P. Birney - Plaintiff - direct (Haren) Page 1251

1 A Ultimately, no.
 2 Q Now, can you just describe in general in this document
 3 how the value of Mar-A-Lago is calculated?
 4 A Yes.
 5 Q If you need us to move to particular cells, feel free
 6 to direct us.
 7 A Yes, there were three properties used where their price
 8 was divided by the acreage to get a value per acre. That value
 9 per acre was averaged it appears.
 10 Q And just so the record is clear, which cells are you
 11 referring to?
 12 A For the numbers D 219 down to E 233.
 13 Q Okay. Thank you.
 14 A From there the average value per acre was multiplied by
 15 the acreage of Mar-A-Lago of 18.81 to get a value, then there
 16 were certain things added and subtracted to that figure to get
 17 the ultimate value.
 18 Q And can you just direct us to where the average price
 19 per acre is multiplied by the acreage. Where does that happen?
 20 A So cell G 235 and cell H 235.
 21 Q And G is for 2017 and H is for 2016; is that right?
 22 A Yes.
 23 Q Okay. And the adjustments that you mentioned, where
 24 did those occur?
 25 A Cells G and H of -- I think that's 237 row,

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1 22.9 million and 22.5 million added for the construction of
 2 grand ballroom and beach cabanas adjusted for inflation. If I
 3 remember there is a calculation off to the -- it's either below
 4 or up above to the right for that, so it says "see below," so
 5 it's probably below.
 6 MR. HAREN: You can scroll down a little bit.
 7 Q So what you're describing is happening starting at
 8 Row 248; is that right?
 9 A Yes.
 10 Q Okay. And just so I understand the average value per
 11 acre and the multiplication to get essentially a value of the
 12 total acreage is done based on the private residences that are
 13 identified as comparables; is that right?
 14 A The private residences that are what?
 15 Q Identified as comparables?
 16 A Yes.
 17 Q Okay. And -- but then there is additional value added
 18 for construction of a grand ballroom and beach cabanas that are
 19 club facilities; is that right?
 20 A I don't know how to answer that.
 21 Q Is the grand ballroom used at the club?
 22 A At Mar-A-Lago, yes.
 23 Q And are the beach cabanas used at the club?
 24 A Yes.
 25 Q So there is -- some of the valuation is done based on

P. Birney - Plaintiff - direct (Haren) Page 1253

1 residential comparables and acres, but components of the club
 2 are added to it; is that right?
 3 A Yes.
 4 Q Okay. And is the method that you described in terms of
 5 the value per acre identified from the comparables and then the
 6 multiplication across the acreage of Mar-A-Lago, is that used on
 7 the statements from 2016 to 2021?
 8 A Can you repeat the question, please?
 9 MR. HAREN: Can I have a read back, please?
 10 THE COURT: Please.
 11 (Whereupon, the requested portion of the
 12 proceedings was read back by the court reporter.)
 13 A No. I believe it was used in 2016 through 2019 and
 14 then I didn't value it in 2020 and 2021. I think that was
 15 valued by Jody Whitsec (ph).
 16 Q Is the method of taking a price per acre from
 17 comparables and then multiplying it across the acreage of
 18 Mar-A-Lago, is that used in 2020 and 2021?
 19 A I don't remember.
 20 Q All right. Mr. Birney, let's look at Exhibit 1013.
 21 A Can we go back to clarify something?
 22 Q Sure.
 23 A Just can you pull the last one up?
 24 Q Sure. So for the record we're looking again at
 25 Plaintiff's Exhibit 758.

P. Birney - Plaintiff - direct (Haren) Page 1254

1 A Can you scroll up to the beginning of Mar-A-Lago? No.
 2 Sorry, just -- so as we were going through the valuation I
 3 remember why I have an understanding of why that first part was
 4 written because we added things back to the location that a
 5 private residence wouldn't have.
 6 Q Can you direct us to the particular cell that you're
 7 referring to?
 8 A Yes.
 9 Q So let's go down to Row 214 is where it starts.
 10 So which information are you referring to?
 11 A So you asked me if I had an understanding of value if
 12 sold to an individual.
 13 Q Sure.
 14 A I have an understanding after looking through the
 15 valuation. I believe they -- we valued it based on residential
 16 properties but then added things that weren't in private
 17 residences and then removed things that clubs had that private
 18 residences didn't have like the membership deposits refundable.
 19 I think it's just a clarifying sentence. Again, I don't think I
 20 wrote that, but that's the understanding I have of that now.
 21 Q And do you have an understanding of whether that phrase
 22 is contained in copies of the Jeff Supporting Data before you
 23 began to work on the Statement of Financial Condition?
 24 A I don't know. We can look if you want.
 25 Q But if it had been contained and it was just carried

P. Birney - Plaintiff - direct (Haren) Page 1255

1 forward would you have just carried it forward?
 2 A Yes. And it looks like the 2016 information was used
 3 in 2017, so that's a possibility.
 4 MR. HAREN: Okay. And before we move on to
 5 Exhibit 1013, can we call up Exhibit -- Plaintiff's
 6 Exhibit 857? And can you scroll down? Keep scrolling.
 7 Keep scrolling. And a little bit more, like three more
 8 rows.
 9 Q Okay. Mr. Birney, this is the 2020 Supporting Data for
 10 Mr. Trump's Statement of Financial Condition. Do you see that
 11 at the top?
 12 A Yes.
 13 Q And are there still private residences used as
 14 comparables to generate an average price per acre?
 15 A Can you scroll up just a few rows? Yes.
 16 Q And can we scroll down just a little bit more?
 17 And do you see in Rows 235 to 246 that the average
 18 price per acre is multiplied by the acreage?
 19 A Yes.
 20 MR. HAREN: Okay. Let's call up Plaintiff's
 21 Exhibit 1501.
 22 Q As we talked about earlier this is the Supporting Data
 23 spreadsheet for the 2021 Statement of Financial Condition.
 24 MR. HAREN: Could we scroll down to around the same
 25 place?

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1 Q Mr. Birney, do you see beginning in Row 201 it states
2 "the Mar-A-Lago club value if sold to an individual?"
3 A Yes.
4 Q And do you see --
5 MR. HAREN: Scroll down a little bit more.
6 Q Row 231 down to 248, are those private residence
7 comparables?
8 A Yes.
9 Q And in Rows 250 and 251 are they -- is the average
10 price per acre multiplied by acreage?
11 A Yes.
12 MR. HAREN: All right. So let's call up
13 Plaintiff's Exhibit 1013.
14 THE COURT: It's just about five-minute warning
15 time and I want to see if I can clarify something based on
16 something that someone said a little while ago.
17 Let me ask plaintiffs first. Do you have an
18 official position on the square footage of the triplex?
19 MR. WALLACE: An official position as to what it
20 was or -- I think we do. I think we believe it was
21 10996.39 square feet.
22 THE COURT: Okay. Defendant same question. Do you
23 have an official position on the square footage of the
24 triplex at the times in issue here?
25 MR. KISE: At the time at issue? You mean as of

P. Birney - Plaintiff - direct (Haren) Page 1257

1 today?
2 THE COURT: No. As of 2011 and 2021 say?
3 MR. KISE: Well, I mean, I think the record has
4 established that it's 10,996 square feet. The operative
5 question I think was when we knew that and when we fixed it.
6 THE COURT: I understand that.
7 MR. KISE: That's why I'm just not sure what Your
8 Honor's question about is our official position.
9 THE COURT: I can't think of a simpler way to put
10 it. I'm trying to narrow the issues. I thought you had
11 suggested earlier that there was some dispute about the
12 actual footage.
13 MR. KISE: I don't think there is a dispute about
14 the actual -- I don't want to speak for everyone at the
15 table. I don't think there is a dispute about the actual
16 square footage at this point.
17 THE COURT: Good. I wasn't trying to get to those
18 secondary tertiary issues.
19 MR. KISE: Okay.
20 THE COURT: Okay, five-minute warning.
21 MR. HAREN: Okay.
22 MR. KISE: By the way, I like the ten-minute
23 warning better because it gives you something to look
24 forward to.
25 THE COURT: I'll accommodate you.

P. Birney - Plaintiff - direct (Haren) Page 1258

1 Q Mr. Birney, we only have a short time left for the day.
2 You see at the top of this document it states "Deed of
3 Development Rights?"
4 A Yes.
5 Q Do you see a series of clauses beginning with the word
6 "whereas" on the first page?
7 A Yes.
8 Q And do you see on the second page it states, quote,
9 "the Club and Trump for good and valuable consideration, the
10 receipt and sufficiency of which is acknowledged by these
11 presents, do hereby transfer, grant, bargain, sell, alien,
12 remise, release, convey, and confirm unto the National Trust to
13 the extent that such rights have not already been transferred
14 through the Deed of Conservation and Preservation Easement, any
15 and all of their rights to develop the property for any usage
16 other than club usage?"
17 A Yes.
18 Q Were you ever shown this document by Jeff McConney
19 while you were working on the Statement of Financial Condition
20 for Mr. Trump?
21 A I don't think so.
22 Q Were you ever shown this document by Allen Weisselberg
23 while you were working on the Statement of Financial Condition
24 for Mr. Trump?
25 A I don't think so.

P. Birney - Plaintiff - direct (Haren) Page 1259

1 Q Do you recall when, if at all, you first saw this
2 document?
3 A Yes.
4 Q And when was that?
5 A In preparation for -- actually, in the -- in our
6 previous interviews with the AG's office.
7 Q And apart from this 2002 Deed of Development Rights,
8 did you ever become aware that a Deed of Conservation and
9 Preservation Easement existed on the Mar-A-Lago property?
10 A Was I ever made aware?
11 Q Yes.
12 A I don't believe I was.
13 Q Okay.
14 MR. HAREN: I think it's a good place to end for
15 the day. Is that okay? Your Honor, I move the Deed of
16 Development Rights into evidence.
17 THE COURT: It's in. Granted.
18 (Whereupon, the item previously referred to is
19 received and marked Plaintiff's Exhibit Number 1013 in
20 evidence.)
21 MR. KISE: I don't know that that's a complete
22 exhibit and what's the purpose it's being offered for?
23 MR. HAREN: I think it's identified as relevant to
24 the issues in the case and --
25 MR. KISE: Okay, but this witness has no

P. Birney - Plaintiff - direct (Haren) Page 1260

1 foundation. You just asked him whether he'd ever seen it
 2 before, that's all.
 3 THE COURT: Well, I think that's -- well, I don't
 4 want to say what the point is.
 5 By the way, Mr. Kise, just to clear up a
 6 misunderstanding between us, maybe what happened before was
 7 you said something about we have an issue with the square
 8 footage. I was taking that to mean how many square feet.
 9 You meant it more in terms of the use, the history, the
 10 knowledge, the notice, etc.
 11 MR. KISE: Understood.
 12 THE COURT: Yes. All right. So just this one
 13 page? I don't know what else.
 14 MR. HAREN: The document is a two-page or
 15 three-page document. It contains the first page of the
 16 deed, a signed page, page two, what appears to be a
 17 notarization on page three and then in Exhibit A describing
 18 the property. And I just note that this document was
 19 produced by the defendants in discovery in this case.
 20 THE COURT: If there is any objection to any or all
 21 of it, they're overruled. Clearly relevant.
 22 Okay. Tomorrow at ten o'clock as usual. See you
 23 then.
 24 MS. FAHERTY: Your Honor, can we have an admonition
 25 to the witness? He's an employee of the -- thank you, Your

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1 Honor.
 2 THE COURT: Please do not -- all right. I direct
 3 you not to speak to anybody about this case while you're
 4 still a witness and you still are a witness at least until
 5 tomorrow.
 6 THE WITNESS: Okay.
 7 (Whereupon, the witness is excused from the witness
 8 stand and the trial proceedings is adjourned to October 13,
 9 2023 at 10:00 a.m.)
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	accepted (1) 1211:7	1141:9;1150:15; 1165:1,24;1179:21,23;	1181:24;1184:22; 1185:6,17	1236:5
\$	access (1) 1187:25	1181:22;1235:2; 1238:12;1239:1;	advanced (1) 1136:4	agreement (13) 1113:5,11,14,20; 1114:1,3,5;1115:8;
\$0.30 (5) 1179:17,23,24; 1180:1,3	accommodate (2) 1192:22;1257:25	1259:5	advancing (1) 1136:12	1160:4;1187:24; 1193:25;1195:8;
\$0.70 (1) 1179:24	accompanied (1) 1190:3	Adam (1) 1230:7	adverse (1) 1194:22	1197:7
\$1 (1) 1138:4	accompany (1) 1199:8	add (2) 1140:25;1178:19	advised (1) 1185:22	AG's (1) 1259:6
\$1.9 (1) 1193:12	Accordingly (1) 1166:20	added (7) 1232:9;1251:16; 1252:1,17;1253:2;	advisors (1) 1153:1	aims (1) 1128:5
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Table with 5 columns containing legal terms and their corresponding page numbers. Terms include: paid, pantry, paragraph, parameters, parcel, pardon, Park, PART, partial, participated, participating, particular, parties, partnership, party, past, Patrick, pause, perform, performance, performed, performing, period, periods, permission, permitted, person, personal, Personally, perspective, ph, Phil, phone, photography, phrase, picking, place, Plaintiff, plaintiffs, Plaintiff's, play, played, Plaza, plea, pleading, please, possible, POST, potential, practice, precise, precisely, precluded, predicated, preparation, prepare, prepared.

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Table with 5 columns containing word lists and counts. Column 1: seventy-eight (1), several (2), severance (2), shall (1), share (3), sharing (1), shattering (1), sheet (7), shell (9), short (1), Shortly (1), show (7), showed (3), showing (1), shown (3), shows (2), side (4), sidebar (1), sign (3), signature (1), signed (9), significantly (1), silent (2), similar (6). Column 2: Similarly (1), simpler (1), single (1), sit (1), sitting (3), situation (1), six (4), size (1), sky (1), slightly (1), slip (1), slow (2), slowly (1), smaller (1), sneak (1), SOFC (1), sold (9), SOLOMON (26), somebody (4), someone (1), sometimes (1), soon (1), sorry (17). Column 3: Sounds (4), source (1), sources (1), South (5), Spa (1), speak (4), speaking (4), speaks (1), specific (7), specifically (4), speed (1), spell (1), spending (1), spoke (1), spoken (3), sporting (1), spreadsheet (47). Column 4: spreadsheets (1), SPRINGS (6), square (27), square-foot (15), stabilized (1), staff (1), stand (7), stands (3), start (9), started (2), starting (5), starts (3), STATE (7), Stated (6), statement (95). Column 5: statements (13), states (22), statute (11), stepdowns (1), Stephanie (2), stepping (1), steps (2), stickler (1).

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1244:5,8 231 (1) 1256:6 233 (1) 1251:12 235 (3) 1251:20,20;1255:17 237 (1) 1251:25 238 (1) 1244:3 24 (5) 1123:18;1178:2,8; 1188:10;1232:1 240 (1) 1109:10 245 (2) 1247:25;1248:4 246 (1) 1255:17 248 (2) 1252:8;1256:6 24th (1) 1196:4 25 (4) 1153:2;1180:24; 1216:13;1243:21 250 (4) 1125:23;1149:4; 1151:16;1256:9 251 (1) 1256:9 2530 (4) 1243:9;1244:24; 1245:6;1247:5 26th (2) 1141:1;1207:1 27 (3) 1207:10,12,13 274 (3) 1211:20,25;1212:6 28 (1) 1108:20.5 285 (1) 1143:6 28960 (1) 1147:10 29 (1) 1150:6 29.7 (3) 1128:16;1164:6,9 290 (4) 1122:2;1129:17; 1130:10;1163:24 291 (1) 1112:17 293 (1) 1111:5 294 (2) 1129:15;1130:12 2960 (2) 1147:1;1150:3 2969 (1)	1147:16 298 (1) 1139:24 3 3 (4) 1148:4;1153:20; 1235:21;1237:8 30 (14) 1122:15;1127:8; 1134:4;1156:3; 1179:18;1205:4; 1209:11,22;1213:25; 1215:8;1222:7; 1225:21;1227:24; 1243:6 30,000 (1) 1234:5 300 (1) 1152:3 302 (1) 1161:14 30th (4) 1191:19;1192:6,16; 1208:19 31,295 (1) 1149:11 3137 (1) 1158:3 32.7 (1) 1154:25 32302 (1) 1109:3.5 33,000 (1) 1237:18 330 (1) 1165:19 339 (1) 1116:11 34 (4) 1142:4;1145:3; 1151:4;1153:21 35 (4) 1125:4;1137:13; 1142:2;1218:21 36 (3) 1117:20,22;1118:6 366 (1) 1150:5 37 (5) 1108:1.5;1110:1; 1156:15;1196:20; 1232:1 4 40 (6) 1108:10;1114:20; 1124:21;1125:16; 1137:1;1138:3 401 (8) 1108:9.5;1112:19,	23;1113:21;1115:14; 1130:17;1152:7; 1153:12 4100.01 (1) 1225:25 42 (1) 1165:25 42nd (1) 1109:13 432 (5) 1234:14;1238:13; 1240:8,18,21 44.7 (2) 1117:20;1118:9 45 (5) 1117:24;1125:1; 1137:9;1144:21; 1153:23 452564/2022 (1) 1108:6 4600 (1) 1109:13 47 (2) 1220:2;1227:9 48 (3) 1111:10,10,13 48.8 (1) 1111:16 5 5.58 (1) 1162:2 5.7 (1) 1159:7 50 (4) 1111:23;1112:5; 1127:6;1134:3 500 (3) 1125:20;1164:11,12 500,000 (2) 1164:11,15 500,000,000 (1) 1164:14 51 (1) 1132:9 526 (1) 1109:7 540 (1) 1249:23 55 (3) 1118:4;1124:23; 1137:5 555 (1) 1178:8 6 60 (2) 1108:13;1109:13 625 (1) 1241:3 65 (2)	1124:21;1137:1 66 (1) 1228:21 66-68 (1) 1237:19 68 (1) 1223:23 680.6 (1) 1133:21 7 725 (2) 1109:15.5;1198:2 742 (2) 1213:22;1219:21 750 (1) 1109:3 756 (4) 1209:7,10;1214:16; 1236:4 758 (7) 1222:1,3;1233:21; 1238:12;1240:15; 1247:24;1253:25 767 (2) 1238:16;1240:20 774 (2) 1225:4,17 8 80 (1) 1132:12 843 (3) 1227:23;1242:17; 1244:19 85 (2) 1118:17;1132:6 857 (2) 1229:18;1255:6 86.49 (1) 1149:15 89 (1) 1249:22 9 9 (1) 1165:25 953 (2) 1188:9,10 969 (4) 1233:25;1234:2,18; 1238:12 971 (4) 1234:11,18;1238:13; 1240:15
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In The Matter Of:
NYS Attorney General v.
Donald J. Trump, et al.

Patrick Birney
October 13, 2023

Janelle C. London, RMR, CRR & Nicole Robinson, SCR

Page 1262

1 SUPREME COURT OF THE STATE OF NEW YORK
 2 COUNTY OF NEW YORK : CIVIL TERM : PART 37
 3 ----- X
 4 PEOPLE OF THE STATE OF NEW YORK, BY
 5 LETITIA JAMES, ATTORNEY GENERAL OF
 6 THE STATE OF NEW YORK,
 7
 8 Plaintiff,
 9
 10 Index No.
 11 -against- 452564/2022
 12 DONALD J. TRUMP; DONALD TRUMP, JR.; ERIC TRUMP;
 13 IVANKA TRUMP; ALLEN WEISSELBERG; JEFFREY MCCONNEY;
 14 THE DONALD J. TRUMP REVOCABLE TRUST; THE TRUMP
 15 ORGANIZATION, INC.; TRUMP ORGANIZATION, LLC;
 16 DJT HOLDINGS, LLC; DJT HOLDINGS MANAGING MEMBER;
 17 TRUMP ENDEAVOR 12, LLC; 401 NORTH WABASH VENTURE,
 18 LLC; TRUMP OLD POST OFFICE, LLC; 40 WALL STREET,
 19 LLC.; AND SEVEN SPRINGS, LLC,
 20
 21 Defendants. X
 22 60 Centre Street
 23 New York, New York 10013
 24 October 13, 2023
 25
 B E F O R E:
 HONORABLE ARTHUR F. ENGORON,
 Justice, Supreme Court
 A P P E A R A N C E S:
 OFFICE OF THE ATTORNEY GENERAL
 OF THE STATE OF NEW YORK - LETITIA JAMES
 Attorneys for Plaintiff
 28 Liberty Street
 New York, New York 10005
 BY: KEVIN WALLACE, ESQ.
 COLLEEN K. FAHERTY, ESQ.
 ANDREW AMER, ESQ.
 ERIC HAREN, ESQ.
 LOUIS M. SOLOMON, ESQ.
 (Appearances continued on the next page.)

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Proceedings

1 THE COURT OFFICER: All rise. Part 37 is now in
 2 session. The Honorable Judge Arthur Engoron presiding.
 3 Make sure all cell phones are on silent. Laptops and cell
 4 phones will be permitted, but only to members of the press.
 5 There is absolutely no recording or photography of any kind
 6 allowed in the courtroom. Now be seated and come to order.
 7 THE COURT: Tommy, do they pay you by the word
 8 also?
 9 I understand Counsel want to have a little
 10 discussion up here, what I call front bar?
 11 (Whereupon, there is an off-the-record discussion
 12 held.)
 13 THE COURT: On the record.
 14 Before we get back with the witnesses, we have some
 15 housekeeping to do. Maybe I'll ask plaintiff, just I'd like
 16 to go from left to right. They want to go first.
 17 MS. FAHERTY: Your Honor, just to clean up an issue
 18 that arose yesterday during one of Mr. Birney's testimony,
 19 there was an exhibit that was admitted into the record,
 20 specifically it was Plaintiff's PX 1167.
 21 Counsel stood up, raised the question because there
 22 appeared to be additional pages at the end of that
 23 particular exhibit. Full disclosure, I've had our
 24 technology group run down the issue and it appears when we
 25 received documents sent over to us in their original form

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1
 2 Attorneys for Defendants
 3 101 North Monroe Street - Suite 750
 4 Tallahassee, Florida 32302
 5 BY: CHRISTOPHER M. KISE, ESQ.
 6 LAZARO P. FIELDS, ESQ.
 7 JESUS M. SUAREZ, ESQ.
 8
 9 ROBERT & ROBERT, PLLC
 10 Attorneys for Defendant
 11 526 RXR Plaza
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 15 HABBA MADAIO & ASSOCIATES, LLP
 16 Attorneys for Defendants
 17 1430 US Highway - Suite 240
 18 Bedminster, New Jersey 07921
 19 BY: ALINA HABBA, ESQ.
 20
 21 MORIAN LAW, PLLC
 22 Attorneys for Defendants
 23 60 East 42nd Street - Suite 4600
 24 New York, New York 10165
 25 BY: ARMEN MORIAN, ESQ.
 Nicole C. Robinson, CSR
 Janelle C. London, RMR, CRR
 Senior Court Reporters

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Proceedings

1 there was additional metadata that added those papers onto
 2 it when we put everything in a material exhibit form. They
 3 were not apart of that exhibit, so we had separated the
 4 additional pages and the testimony received on the central
 5 portion of Plaintiff's Exhibit 1167, the Statement of
 6 Financial Condition is just the Statement of Financial
 7 Condition.
 8 So Counsel can inspect the exhibit. The additional
 9 pages are removed and we would just ask that the Court admit
 10 this clean version of Plaintiff's Exhibit 1167 as it's been
 11 corrected.
 12 THE COURT: Cleanliness is next to Godliness, so we
 13 definitely want a clean copy.
 14 MS. FAHERTY: Thank you, Your Honor.
 15 THE COURT: And defendants are fine with that?
 16 MR. KISE: Yes.
 17 MS. FAHERTY: Yes.
 18 THE COURT: All right. Anything else from the
 19 plaintiff on the housekeeping arena?
 20 MR. KISE: Thank you, Judge. Just briefly, the
 21 ruling yesterday on Ms. Mouradian's deposition excerpts, I
 22 just wanted to ask maybe what turns out to be a clarifying
 23 question and maybe not. Do you have it there, Your Honor?
 24 I mean, I have it.
 25 THE COURT: I'm somewhat familiar. I read it all.

Proceedings Page 1266

1 MR. KISE: Okay. So in the communication to the
2 Court originally there were plaintiff's objections of the
3 defendant's designations and then our objections to their
4 designations and what I'm speaking specifically about is the
5 objection -- plaintiff's objection to defendant's
6 designation of page 103, lines 12 to 18.
7 In the -- so there is two issues I'd like to bring
8 up. First of all, in the ruling, the ruling excludes ten
9 pages, not six lines.
10 THE COURT: That was a mistake.
11 MR. KISE: I thought so, but I'm like wait.
12 Okay, so that's one.
13 So it's any ruling would then be limited to these
14 six lines if I don't convince you to change your mind on the
15 six lines, which I might not.
16 THE COURT: Probably not.
17 MR. KISE: Okay. So on those six lines, I'm
18 referring to page 103, lines 12 to 18.
19 MS. GREENFIELD: I'm sorry, Counselor. Just to
20 clarify, I believe the ruling was that's admissible;
21 correct?
22 MR. KISE: No, it says "inadmissible."
23 MS. GREENFIELD: Okay. Hold on one second.
24 MR. KISE: I mean, if it's all admissible, I can
25 sit down. I think it is.

P. Birney - Plaintiff - direct (Haren) Page 1268

1 THE COURT: I thought so. We'll make sure we look
2 at it and confer with the People if we need to.
3 Ready for the witness? Let's call the witness
4 back.
5 THE COURT OFFICER: Witness entering.
6 (Whereupon, the witness enters the courtroom and
7 approaches the witness stand.)
8 THE COURT: I'll remind the witness, as I always
9 do, that he's still under oath.
10 And let's continue with the direct examination.
11 MR. HAREN: Thank you, Your Honor.
12 DIRECT EXAMINATION
13 BY MR. HAREN:
14 Q Good morning, Mr. Birney. Good morning.
15 A Morning.
16 MR. HAREN: Let's call up Plaintiff's Exhibit 3030.
17 Q Mr. Birney, do you recognize this document?
18 A Yes.
19 Q What do you recognize it to be?
20 A Newspaper article and a note.
21 Q Do you have an understanding of who the note is from?
22 A Yes.
23 Q And what is your understanding?
24 A The note is from Allen Weisselberg.
25 Q And do you see where the note states -- well, actually,

Proceedings Page 1267

1 MS. GREENFIELD: Give me one second.
2 MR. AMER: Your Honor, I'm wondering since this is
3 the first time we're hearing of this issue that maybe we can
4 confer and just understand what the issue is.
5 THE COURT: Sure. Why don't you do that. I assume
6 it would be very quick.
7 MR. AMER: I mean, not now so we don't hold up the
8 witness.
9 MR. KISE: Your Honor, this has been debated for,
10 like, a week and a half. It's not the first time they heard
11 the issue. They made the objection. It's a very simple
12 issue, about six lines.
13 MR. AMER: I think you're now saying there is a
14 ruling on something that is not consistent with what the
15 Court asked us to do and this is the first time I'm hearing
16 that.
17 MR. KISE: No, I think the judge said that was a
18 mistake.
19 THE COURT: You mean the ten pages?
20 MR. KISE: Yes, the ten pages.
21 THE COURT: Obviously that's unintentional.
22 MR. KISE: I'm not taking issue with that.
23 THE COURT: Mr. Kise, can we resolve this at the
24 next break?
25 MR. KISE: Sure.

P. Birney - Plaintiff - direct (Haren) Page 1269

1 can you read Mr. Weisselberg's note into the record? Just
2 because you're probably more familiar with his handwriting than
3 I am.
4 A Yes. "Patrick, hold for next year DJT FS," probably
5 meaning financial statement. "Let's see what it ends up selling
6 for. Allen."
7 Q Thank you.
8 And do you understand the "F/S" in the note to refer to
9 Mr. Trump's Statement of Financial Condition?
10 A Yes.
11 MR. HAREN: I'd like to move this document into
12 evidence.
13 MR. ROBERT: To the extent it's being introduced
14 just for notice of it and not the facts of what's contained
15 in the article. And furthermore, do we have a date that we
16 can associate with this? Because it looks like it's a
17 PostIt and an article with no date before we put it into
18 evidence.
19 THE COURT: Let's start with the date.
20 MR. HAREN: My understanding is that this is a 2018
21 news article. It doesn't say that here, but it will become
22 clear with the subsequent exhibit that's already been
23 admitted into evidence that it is included in the 2019
24 Mar-A-Lago valuation backup.
25 THE COURT: Considering that the note, I don't know

P. Birney - Plaintiff - direct (Haren) Page 1270

1 that the date particularly matters. We know who it's from
2 certainly.
3 MR. ROBERT: If he can connect it up in a little
4 while as to what the date is, I have no objection to giving
5 him the room to do that so long as we preserve the objection
6 as to the hearsay portion of the article. We're not
7 disputing this is Mr. Weisselberg's name -- signature on the
8 PostIt.
9 THE COURT: Yes. It's not coming in for the truth
10 of its contents. So to that extent, objection sustained.
11 MR. ROBERT: Thank you, sir.
12 Q So just looking at the language of the article,
13 Mr. Birney.
14 THE COURT: You want a clarification?
15 MR. SOLOMON: Yes. I do want a clarification
16 because I want -- the article is not being admitted for the
17 truth, but the PostIt is different. The PostIt has been
18 established is a note from Mr. Weisselberg to Patrick
19 directing him to do something.
20 MR. ROBERT: I'm not disputing that's
21 Mr. Weisselberg's note. I'm just saying I don't know what
22 year it's from or what backup this is supposed to be part
23 of. That's all.
24 THE COURT: Well, Mr. Solomon is correct and I
25 should have been more specific. I just meant the article

P. Birney - Plaintiff - direct (Haren) Page 1271

1 itself is not coming in for the truth. As for the note, I
2 think it comes in for various reasons.
3 MR. SOLOMON: Thank you, Your Honor.
4 THE COURT: Okay. Thank you.
5 Q Mr. Birney, what is the news clipping in this document
6 about?
7 A A property for sale.
8 Q And just focusing on the first paragraph of the
9 article, do you see where it states "Broadway producer and Palm
10 Beach socialite Terry Allen Kramer is listing La Follia, her
11 chateau-like Palm Beach compound for \$135 million?"
12 A Yes.
13 Q And so this is the potential sale that Mr. Weisselberg
14 directed you to hold for next year; is that right?
15 A If the sticky was on the newspaper article.
16 Q They were produced to us in this form together as one
17 document. Do you have a direction of keeping these two pieces
18 of information in your files and saving them for a subsequent
19 year?
20 A I probably kept it, yes.
21 MR. HAREN: Okay. Let's turn to the Plaintiff's
22 Exhibit 843, please. It's the 2019 Supporting Data.
23 And could we scroll to Rows 218? And scroll down
24 to 259. Scroll down a little bit more, please.
25 Q So Mr. Birney, can you describe in general terms the

P. Birney - Plaintiff - direct (Haren) Page 1272

1 valuation contained between Rows 218 and 259? What is it a
2 valuation of?
3 A It's a valuation of Mar-A-Lago.
4 Q Okay. And I just want to focus you on Rows 222 to
5 Row 245. There is a comparable property -- excuse me. 222 to
6 225. I misspoke.
7 There is a comparable property identified there called
8 60 Blossom Way. Do you see that?
9 A Yes.
10 Q And do you have an understanding of the computation
11 occurring in cells D 223 to D 225?
12 A Yes.
13 Q What's your understanding of that computation?
14 A It's the selling price divided by the number of acres
15 to get a value per acre.
16 Q And same question for the computation that occurs
17 between Rows 228 and 230 in Column D.
18 A Same answer.
19 Q So there is a price 78,291,000 divided by 2.61 acres to
20 yield \$29,996,552 per acre?
21 A Yes.
22 Q Do you have an understanding of how the price per acre
23 figures in column D in the portion of the spreadsheet that we're
24 looking at factor into the valuation of Mar-A-Lago in this year?
25 A Can you repeat the question?

P. Birney - Plaintiff - direct (Haren) Page 1273

1 Q I'll ask it in a more direct way.
2 Price per acre that's computed in Column D, that yields
3 a result in cell D 248; is that right?
4 A Yes, it appears to be an average value per acre.
5 Q And then that's multiplied by the acreage in Column G;
6 right?
7 A In Column G, yes. G 50 is a multiplication of the
8 acreage.
9 Q And the information?
10 THE COURT: Wait. Hold on one second. It's
11 difficult to hear you, especially out there. Either move
12 the mic up. And I think you tend to swallow your words a
13 little bit. Try to be a little slower, a little louder.
14 MR. HAREN: I will do my best.
15 THE COURT: That's better.
16 Q Mr. Birney, I just want to clarify one thing. The
17 value per acre in Cell D 230 comes from the property 1295 South
18 Ocean. Am I reading that correctly?
19 A That's what it looks like.
20 MR. HAREN: Okay. Let's call up Plaintiff's
21 Exhibit 3026.
22 Q Mr. Birney, do you recognize this document?
23 A I recognize it to be an e-mail.
24 Q Is it an e-mail from Allen Weisselberg to you on
25 September 10, 2019?

P. Birney - Plaintiff - direct (Haren) Page 1274

1 A Yes.

2 Q And in the e-mail does Mr. Weisselberg forward you a

3 news article pertaining to a \$99 million Florida property

4 transaction?

5 A Yes.

6 MR. HAREN: I'd like to move this document into

7 evidence.

8 MR. ROBERT: Same objection as to the hearsay in

9 the news article.

10 THE COURT: And the same ruling. The news article

11 is not coming in for the truth of its contents, but for

12 whatever notice it might provide or other information.

13 MR. ROBERT: Thank you.

14 (Whereupon, the item previously referred to is

15 received and marked Plaintiff's Exhibit Number 3026 in

16 evidence.)

17 Q And Mr. Birney, do you see what Mr. Weisselberg wrote

18 to you, quote, "For the SOFC?"

19 A Yes.

20 Q What -- did you have an understanding of what he meant

21 by that?

22 A Yes.

23 Q And what was your understanding?

24 A Let's look at this for the Statement of Financial

25 Condition.

P. Birney - Plaintiff - direct (Haren) Page 1275

1 MR. HAREN: All right. Let's call up Plaintiff's

2 Exhibit 1040, and this document is already in evidence.

3 Q Mr. Birney, this is a 20-page document, so I would

4 appreciate if you took a moment to look through it.

5 Have you had sufficient time to review the document?

6 A I'm through about half.

7 Q Okay.

8 A Okay.

9 Q Thank you.

10 MR. HAREN: Please turn to page four of the

11 exhibit.

12 Q Is this the same e-mail that we saw in Plaintiff's

13 Exhibit 3026?

14 A It looks like it.

15 Q And it contains a communication from Mr. Weisselberg to

16 you that states, quote, "For the SOFC."

17 Did you retain his e-mail and include it in the

18 document that is Plaintiff's Exhibit 1040?

19 A Can you repeat the question?

20 Q Did you retain Mr. Weisselberg's e-mail that states

21 "For the SOFC" and then include it in the document that is

22 Plaintiff's Exhibit 140 -- 1040?

23 A Is this -- is that what this means, Plaintiff's

24 Exhibit?

25 Q Yes, excuse me.

P. Birney - Plaintiff - direct (Haren) Page 1276

1 A Okay. I probably retained this.

2 Q So you followed the instruction that Mr. Weisselberg

3 gave you to keep that information for the SOFC?

4 A I don't know that he said keep it for the SOFC, I

5 think, but I kept it.

6 Q For the SOFC?

7 A For the SOFC, yes.

8 Q All right. Let's look at the second page of the

9 document. Do you see in the e-mail -- excuse me -- in the

10 document there is an e-mail from Mr. Weisselberg to you dated

11 September 11, 2019 that states, quote, "More info on the house

12 purchase in PB?"

13 A Yes.

14 Q What did you understand Mr. Weisselberg to mean by

15 that?

16 A He is providing me additional information on a Palm

17 Beach house purchase.

18 Q And then the first page of the document contains -- or

19 can you describe to me what is contained on the first page of

20 the document?

21 A Yes, it looks like a newspaper clipping that shows and

22 appears to be a transaction for 60 Blossom Way in Palm Beach.

23 There is a calculation on it that gives a price breaker,

24 probably similar to what we saw on the Supporting Data

25 spreadsheet if I had to guess.

P. Birney - Plaintiff - direct (Haren) Page 1277

1 Q Do you see that 60 Blossom Way 99.1 million and

2 3.5 acres are highlighted?

3 A Yes.

4 Q Did you highlight that text?

5 A Maybe.

6 Q Do you have an understanding of what the highlighting

7 indicates?

8 A Yes.

9 Q And what is your understanding?

10 A The information is highlighted that went in the

11 calculation on the adding machine tape in front of us.

12 Q And by "adding machine tape," are you referring to the

13 portion of the document in white that states "60 Blossom Way

14 price per acre?"

15 A Yes.

16 Q And is that your handwriting on the adding machine

17 tape?

18 A Yes.

19 Q Do you see on the document below the 60 Blossom Way

20 sale there is another transaction referenced?

21 A Yes.

22 Q And do you see that it states "1290 South Ocean

23 Boulevard, price 85 million" and then under "details" it states

24 "about eight gorgeous acres?"

25 A Yes.

P. Birney - Plaintiff - direct (Haren) Page 1278

1 Q Did Mr. Weisselberg ask you to incorporate a price per
2 acre from the 1290 South Ocean Boulevard transaction into the
3 2019 Mar-A-Lago valuation?
4 A I don't remember.
5 Q Do you have an understanding as to whether
6 Mr. Weisselberg sent you the news clipping that is on the first
7 page of this document?
8 A He may have.
9 Q Let's see if we could refresh your recollection and
10 have some of your prior testimony put up on the screen.
11 Page 421 at line 12.
12 MR. HAREN: Can you zoom out a little bit, please?
13 And can you scroll down a little bit more?
14 Q So Mr. Birney, do you see in -- we're looking at pages
15 421 to 422 of your prior testimony, and I ask you the following
16 question:
17 So is it your understanding whether Mr. Weisselberg
18 sent you the first photograph that we looked at or he sent you
19 this photograph that Mr. Weisselberg provided you with the comp
20 that you used at 60 Blossom Way and then you asked "Is the next
21 page an e-mail from -- usually I'll include where I got the
22 information?"
23 "QUESTION: We can scroll down to page four.
24 "ANSWER: Yes, so I probably got both of those from
25 Allen Weisselberg."

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1 Q It was produced as one document, yes?
2 A Okay. Then yes.
3 Q All right. Let's turn to page eight of the document,
4 please.
5 A Which page?
6 Q Page eight.
7 Transcript continues on following page....
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P. Birney - Plaintiff - direct (Haren) Page 1279

1 Does seeing that testimony refresh your
2 recollection as to where you obtained this information on
3 the document?
4 A Not really. I have no reason to believe my prior
5 testimony was inaccurate. I think I just said "probably got
6 them from Allen Weisselberg." What did I say before maybe?
7 Q I'm looking at page 422, eight to nine:
8 "Yes, I probably got both of those from Allen
9 Weisselberg."
10 It's fine we can just move on.
11 MR. HAREN: Could you turn to page 12 of the
12 document, please?
13 Q Mr. Birney, does page 12 of the document contain the
14 same news article and note, Plaintiff's Exhibit 3030?
15 A They appear to be the same.
16 Q So you did save Mr. Weisselberg's note and the news
17 clipping as his note indicated you should do; right?
18 A Probably.
19 Q Did you prepare the backup for the Mar-A-Lago valuation
20 in 2019?
21 A Yes.
22 Q And the note that Mr. Weisselberg sent you is contained
23 in the backup file, isn't it?
24 A Can you represent that this 20-page document is the --
25 is one PDF?

P. BIRNEY - DIRECT(MR. HAREN) Page 1281

1 Q Mr. Birney, do you see that a title on this page from a
2 news article states, "Former Broadway producer Terry Allen
3 Kramer's Estate Sells for the Record Breaking 105 Million in
4 Palm Beach"?
5 A Yes.
6 Q And do you see that above the paragraph and below the
7 photograph, there is handwriting that states, "1259 S. Ocean."
8 Do you see that?
9 A Yes.
10 Q What do you understand that handwriting to refer to?
11 A I understand that refers to the address at this
12 location.
13 Q And there's some adding machine math on the right side
14 of the page. Do you see what that computes?
15 A I believe it computes in value per acre for the sale.
16 It starts with 105 million which is indicated as the sale price
17 and it divides it by 4.72 and I just can't seem to find where
18 the 4.72, which I believe are acres, came from on this page.
19 Q Do you see that there's a note above the adding machine
20 math that states, "For valuation purposes, we are excluding the
21 pure vacant land (second parcel) that includes 2.1 acres because
22 no structures."
23 A Yes.
24 Q Did the substance of that note come from Mr.
25 Weisselberg?

P. BIRNEY - DIRECT(MR. HAREN) Page 1282

1 A Probably.

2 Q Let's see if we can refresh your recollection and pull

3 up page 428 of your prior testimony. Do you see page on 428,

4 lines three to six -- excuse me, three to seven.

5 "Does the note here that you read about for valuation

6 purposes for Statement of Financial Condition, does that reflect

7 an instruction you received from Allen Weisselberg?

8 "ANSWER: I believe so. Yes."

9 Does that refresh your recollection as to who the

10 substance of the note on page eight came from Mr.

11 Weisselberg?

12 A No, but I have no reason to doubt that it -- that it

13 did.

14 Q Okay. So fair to say that there is a news article that

15 describes this transaction at 1259 S. Ocean Boulevard as a

16 record-breaking 105 million sale and the price per acre was

17 derived by excluding portions of the acreage from the price per

18 acre?

19 A That's what the note says. I can't verify the math of

20 it right now.

21 Q Did Allen Weisselberg direct you to use the comparable

22 properties that were used to value Mar-A-Lago in the 2019

23 Statement of Financial Condition?

24 A Yes.

25 Q Did anyone at the Trump Organization between 2015 and

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1 2021 ever make you aware of any appraisal that appraised

2 rent-stabilized units at Trump Park Avenue?

3 A Can you please repeat the question?

4 MR. HAREN: Can I have a readback, please.

5 THE COURT: Please. Thank you.

6 (Whereupon, the requested portion of the record was

7 read back.)

8 A I don't think so.

9 Q Okay. Mr. Birney, let's move on to the topic of Mr.

10 Trump's partnerships with the Vornado Realty Trust. I would

11 like to pull up Plaintiff's Exhibit 856, 2020 Statement of

12 Financial Condition, and turn to page 20, please.

13 Sorry. Wrong page. Scroll up, please. There. One

14 more page.

15 Mr. Birney, do you see where it states that, "Mr. Trump

16 and Vornado Realty Trust are partners in two properties? I'll

17 just read from the document. It states, "In May 2007, Mr. Trump

18 and Vornado Realty Trust became partners in two properties." Do

19 you see that?

20 A Yes.

21 Q And do you see three paragraphs down where it states,

22 "Mr. Trump owns 30 percent of these properties as a limited

23 partner"?

24 A Yes.

25 Q I'd like to advise you that in this litigation,

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1 defendants do not dispute the following fact: "Mr. Trump's

2 limited partnership interests are held through a series of

3 entities named Hudson Waterfront Associates with substantially

4 similar terms."

5 And I would like to mark or pull up Plaintiff's

6 Exhibit 1213.

7 Mr. Birney, do you see on the first page of this

8 exhibit, there is an e-mail with the subject "RE: Vornado?"

9 A Yes.

10 Q Do you see that substance of the e-mail from Maria

11 Lagani to Ivanka Trump, Allen Weisselberg and Alan Garten

12 states, "Hi, Ivanka. Attached are the Decision on Motion, the

13 Appellate Decision and Agreement of Partnership - this is one of

14 six identical agreements." Do you see that?

15 A Yes.

16 Q Let's turn to page two of the document. It is a

17 106-page document entitled, "Agreement of Limited Partnership of

18 Hudson Waterfront Associates I, LP."

19 During your work at the Trump Organization, did anyone

20 ever show you any of the agreements governing Mr. Trump's

21 partnerships with the Vornado Realty Trust?

22 A I don't believe so.

23 Q During your work at the Trump Organization, were you

24 ever provided a summary of any partnership agreement governing

25 Mr. Trump's partnerships with Vornado Realty Trust?

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1 A I don't believe so.

2 Q Mr. Birney, do you generally recall testimony yesterday

3 regarding Mr. Trump's triplex apartment?

4 A Yes.

5 MR. HAREN: Let's call up Plaintiff's Exhibit 1196,

6 please. It is a native file and I'll state that the file

7 name is "1-jeffsupportingdata6.2017vpb10.05.17.xlsx."

8 What does that file name indicate based on your

9 file saving practices?

10 A Can you repeat the file name, please?

11 Q Sure. "1-jeffsupportingdata6.2017vpb10.05.17"?

12 A That's typically how I save documents. I'll save it in

13 the file name as of the date that I'm working on it. So I would

14 understand that to be the file that I worked on on October 5,

15 2017.

16 MR. HAREN: Can we scroll down to row 913, column G

17 and H. And just I neglected to say the magic words on

18 Exhibit 1213, so if we could move that into evidence.

19 THE COURT: Granted. It is in evidence.

20 (Whereupon, the Document was marked in evidence as

21 Plaintiff's Exhibit 1213.)

22 Q Mr. Birney, do you have --

23 MR. ROBERT: Objection. I just looked at the

24 screen. I thought he was trying to move this in. There is

25 no foundation as to 1213. The witness never saw this

P. BIRNEY - DIRECT(MR. HAREN) Page 1286

1 agreement before.

2 MR. HAREN: It is a document produced from Trump

3 Organization files with Mr. Trump's signature at the end of

4 the agreement. Those issues are already in the summary

5 judgment record as well.

6 MR. ROBERT: Not through this witness. I'm not

7 disagreeing this appears to be the agreement, but not

8 through this witness. He hasn't identified the document.

9 THE COURT: Well, I don't think you have to

10 introduce an exhibit through a particular witness. I think

11 you can just move that be admitted into evidence based on

12 what has happened in the past or what is obvious or known

13 about the exhibit.

14 MR. ROBERT: We're not disputing -- are you asking

15 any more questions of this witness of this document? I

16 guess that's my bigger issue since he doesn't know the

17 document.

18 MR. HAREN: I don't plan to ask him any more

19 questions about the agreement.

20 THE COURT: Withdrawn.

21 Q Mr. Birney, looking at the --

22 MR. AMER: Just for the record, it is admitted, right?

23 THE COURT: Yes, admitted. You people are so

24 careful.

25 MR. HAREN: We were already admonished about the

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1 magic words.

2 Q Looking at Exhibit 1196 that is on the screen, do you

3 see the information in row 913?

4 A Yes.

5 Q And what do you understand is contained in columns B

6 and C and G and H in that row?

7 A A description for the valuation of the Trump Tower

8 triplex for these two years that we're looking at.

9 Q So this is a draft of the supporting data for 2017 and

10 as of the date of this document, the 30,000 square-foot number

11 is still used, correct?

12 A Yes.

13 MR. HAREN: All right. Let's call up Plaintiff's

14 Exhibit 1198. This is another native file.

15 Q Sir, Mr. Birney, the file name on this document is

16 "1-sofcsupportingdata6.2017vpb10.06.17".

17 What does that file name indicate to you based on your

18 practices?

19 A It indicates that it is a draft from the next day.

20 Q And by the next day, you mean October 6, 2017?

21 A Yes.

22 Q Let's scroll down to rows 939 through 941, please.

23 MR. HAREN: Your Honor, I neglected to say the

24 magic words about Exhibit 1196, the native file just before

25 this one, so I move that into evidence.

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1 THE COURT: Granted. It is in evidence.

2 (Whereupon, the Document was marked in evidence as

3 Plaintiff's Exhibit 1196.)

4 MR. HAREN: Since this one is on the screen as

5 well, can I move this one into evidence, Exhibit 1198?

6 THE COURT: Granted. It is in evidence.

7 (Whereupon, the Document was marked in evidence as

8 Plaintiff's Exhibit 1198.)

9 Q So, Mr. Birney, looking at rows 939 through 942, can

10 you describe what is reflected there?

11 A Can you scroll up a couple of rows, please, so we can

12 get a year on these columns?

13 Q Sure. Just scroll up until we see what year column G

14 reflects.

15 A Okay. Thank you. So row 939 I think is the same thing

16 we just looked at, which indicates the valuation for 2016 for

17 the triplex apartment. And then 941 and 942 are new for 2017,

18 but indicate the triplex was valued based on a comp at 432 Park

19 for 10,996 square feet at \$10,625 per square-foot. D 941 is

20 probably just a calculation of those two, a multiplication of

21 those two figures. And then 942 line 942 indicates there is a

22 35 percent premium for ex-president's house. I would imagine D

23 942 is some sort of formula that multiplies D 941 times

24 35 percent.

25 Q And then going down to row 950, beginning at -- in

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1 column D, there's a question written there, "35 percent premium

2 ex-president, question mark, would give 27 million." Do you see

3 that?

4 A Yes.

5 Q What does that language with the yellow highlighter

6 that fills those cells indicate to you?

7 A Can you please scroll down just a couple of rows?

8 Thank you. That indicates an internal note that probably

9 multiplies rows -- sorry, G950, the sum of G950 all the way

10 down to G966 and multiplies that sum by 35 percent probably

11 equals 27 million.

12 Q And is the general idea that applying a 35 percent

13 ex-president premium to those property values would yield an

14 extra 27 million in value?

15 A If that's how I read it? If you want to pull up a

16 calculator, we can do that.

17 Q I just want to get your understanding. Is that your

18 understanding?

19 A That is my understanding.

20 Q Was applying a president premium to a series of assets

21 in the supporting data something you would have done on your own

22 without being directed to do so?

23 A No.

24 Q Who directed you?

25 A I don't really remember, but probably Allen

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1 Weisselberg.
 2 MR. HAREN: Let's pull up Plaintiff's Exhibit 1200.
 3 Q Mr. Birney, do you recognize this document as a draft
 4 supporting spreadsheet for the 2017 Statement of Financial
 5 Condition?
 6 A Yes.
 7 MR. HAREN: I move this document in evidence.
 8 THE COURT: Granted. It is in.
 9 (Whereupon, the Document was marked in evidence as
 10 Plaintiff's Exhibit 1200.)
 11 Q Mr. Birney, the file name is "1-sofcsupporting
 12 data6.2017vpb10.10.17." What does that file name indicate to
 13 you based on your practices?
 14 A It indicates that I saved this draft on October 10,
 15 2017.
 16 Q Okay. Thank you.
 17 Do you have an understanding of the information
 18 contained in column C and D, row 959?
 19 A Yes.
 20 Q What's your understanding?
 21 A 25 percent premium for presidential personal residence
 22 and D is probably a calculation. That's 25 percent of D958.
 23 Q And the result of the calculation is 29,209,161?
 24 A Yes.
 25 Q And can you describe what's happening in row 968?

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1 A Yes.
 2 Q Please do.
 3 A 15 percent premium for presidential property is applied
 4 to the figure in G967.
 5 Q What's the result of the calculation?
 6 A 1,759,500.
 7 Q Same question for row 970. If you can just describe
 8 what's happening and give the result of the calculation, that
 9 would be helpful.
 10 A 15 percent premium for presidential property was
 11 applied to the figure in G 969 resulting in a number of 500,250.
 12 Q Row 977?
 13 A 15 percent premium for presidential property applied to
 14 the figure in G976 resulting in 5,310,000.
 15 Q Row 982?
 16 A 15 percent premium for presidential property applied to
 17 the figure in G981 resulting in 2,250,000.
 18 Q And 986?
 19 A 15 percent premium for presidential property applied to
 20 the figure in G985 resulting in 133,125.
 21 Q 990?
 22 A 15 percent premium for presidential property applied to
 23 the figure in G989 resulting in 83,438.
 24 Q And then the last -- ^ I apologize for the 2 row 234.
 25 A 15 percent premium for presidential winter residence

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1 likely applied to the figure in G233 resulting in 86,514,586.
 2 Q And 311?
 3 A 15 percent premium for presidential summer residence
 4 likely applied to G310 resulting in 18,920,541.
 5 MR. HAREN: For the record, the amounts that Mr.
 6 Birney read as presidential premiums sum to \$144,680,601 and
 7 as in other instances, if the Court could take judicial of
 8 the math to a calculation.
 9 THE COURT: I'll accept --
 10 MR. ROBERT: I never speak about math numbers, Your
 11 Honor, so --
 12 THE COURT: If we were good at math, we would have
 13 been accountants.
 14 MR. ROBERT: Exactly.
 15 THE COURT: It's accepted subject to any objection
 16 of recalculation. I know the defendant's lawyers are just
 17 as careful as you are. So they're going to look, check it.
 18 MR. ROBERT: Thank you.
 19 Q Now, Mr. Birney if you look at the bottom of this
 20 exhibit down at cell M1004, do you have an understanding of what
 21 is -- actually, can you just describe row 1004 from column J
 22 over to column M?
 23 A It appears to be a subtotal of the assets in 2016 and
 24 then a difference calculation both in percentage and dollars.
 25 Q A difference between what and what?

P. BIRNEY - DIRECT(MR. HAREN) Page 1293

1 A Between 2017 and 2016.
 2 Q So the -- so I understand, the figure at M1004 of
 3 125,050,000 in parenthesis, does that mean according to this
 4 draft of the spreadsheet, the asset values were down by
 5 \$125,050,000 as compared to what was in the 2016 spreadsheet?
 6 A Yes.
 7 Q So removing 144 million plus in presidential premiums
 8 would make the number negative 269 million?
 9 A Yes.
 10 Q And then looking at cell M1014, can you describe can
 11 you describe the information in row 1014 between columns J and
 12 M?
 13 A Similar to the above, but this is for net worth
 14 comparing 2016 total to the taking the difference both in
 15 percentage and dollars from the 2017 figure.
 16 Q Just so I understand, cell M1014 where it says
 17 24,360,000, does that mean that comparing this draft of the
 18 supporting data spreadsheet for 2017 to the 2016 Statement of
 19 Financial Condition, the difference is that net worth is higher
 20 by 24,360,000?
 21 A Yes.
 22 Q So removing 144 million in presidential premiums would
 23 push that number into negative territory?
 24 A Yes.
 25 MR. HAREN: Let's go to Plaintiff's Exhibit 1212.

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1 Q Mr. Birney, do you recognize this document?
 2 A Yes.
 3 Q What do you recognize it to be?
 4 A A spreadsheet tracking changes made between at least
 5 two different versions of the supporting data spreadsheet.
 6 Q Did you prepare this document?
 7 A Yes.
 8 MR. HAREN: I move this document into evidence.
 9 THE COURT: Granted. It is in.
 10 (Whereupon, the Document was marked in evidence as
 11 Plaintiff's Exhibit 1212.)
 12 Q The cell where it states "Statement of Financial
 13 Condition changes," what does that refer to?
 14 A Changes to the Statement of Financial Condition.
 15 Q And where it says, "10.26.13," is that an indication
 16 that these are changes made as of the draft of that date?
 17 A It indicates that this version of this spreadsheet was
 18 on October 26, 2017.
 19 Q Did you typically keep documents entitled, "Statement
 20 of Financial Condition changes"?
 21 A There are probably multiple drafts of this.
 22 Q Did you have a practice of keeping documents with the
 23 title, "Statement of Financial Condition changes." That's my
 24 question.
 25 A I think so.

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1 A It's a -- it's a difference calculation both in
 2 percentage and dollars between I5 and K5. Sorry. I -- I4 and
 3 K4.
 4 Q Meaning the net worth as of the October 10, 2017 draft
 5 and the net worth from 2016?
 6 A Yes.
 7 Q Could you scroll down to row 39, please. Can you
 8 explain row 39 and how it relates to row 4?
 9 A Yes. Row 39 is the net worth from an October 26, 2017
 10 draft of supporting spreadsheet, so it is just a later draft.
 11 Q And is the -- is row 39 reflective of the information
 12 that's described between row 4 and row 39?
 13 A Can you please repeat the question?
 14 Q Sure. Let's do it a different way.
 15 MR. HAREN: Could we zoom out a little bit.
 16 Q So Mr. Birney, do you see that there is information in
 17 columns B and C such as row 20 and 21 where it states, "Trump
 18 Park Avenue reduction in PH 20 per contract with IT."
 19 Do you have an understanding of what that refers to?
 20 A Yes.
 21 Q And what does that refer to?
 22 A The value of penthouse 20 at 502 Park Avenue was
 23 reduced by 18.7 million because Ivanka Trump has a lease with a
 24 purchase option in that lease that was \$18.7 million less than
 25 the sponsor unit analysis report we received.

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1 Q And what was the purpose of the Statement of Financial
 2 Condition changes documents that you prepared?
 3 A The purpose was to summarize changes between drafts of
 4 the Statement of Financial Condition without having to scroll
 5 through a 30-page spreadsheet.
 6 Q So in other words, you could use the "Statement of
 7 Financial Condition changes" document to tell someone else what
 8 the changes were without walking them through the thousand-row
 9 spreadsheet?
 10 MR. ROBERT: Objection.
 11 THE COURT: Leading. Sustained.
 12 Q Can you provide your understanding, if you have one, of
 13 the information contained in cells I4 and K4?
 14 A My understanding?
 15 Q Yes.
 16 A My understanding are those are the net worth for the
 17 2017 net worth as of the draft for October 10, 2017 and that's
 18 probably the 2016 net worth like the final one.
 19 Q And when you said as of October 10th, is that a
 20 reference to cell B4?
 21 A Yes.
 22 Q Okay. And then can you describe what is contained in
 23 cells L4 and M4?
 24 A Yes.
 25 Q Please do.

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1 (Continued on the next page.)
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P. Birney - Plaintiff - direct (Haren) Page 1298

1 Q And does the fact that that information is contained in
2 Rows B and C and then there is a numerical difference in Column
3 E indicate that the change was made between October 10th and
4 October 26th?
5 A Yes.
6 Q So the items listed from Row 7 down to Row 36, those
7 are changes to the SOFC made between October 10th and
8 October 26th?
9 A Yes.
10 Q And so then going back to Row 39, can you describe --
11 well, is it fair that those numbers in Row 39 reflected the
12 product of the changes made between Rows 6 and 36?
13 A Yes.
14 Q All right. Do you have an understanding of the
15 information in Row 36?
16 A Yes.
17 Q What's your understanding?
18 A That 144.7 million was reduced from the Statement of
19 Financial Condition for the premium celebrity status.
20 Q And the number in Column E in Row 36 is 144,680,600?
21 A Yes.
22 Q The number that is \$1 off from the sum of the
23 presidential premiums in the earlier spreadsheet?
24 A I don't remember the sum that you stated before.
25 Q It was 144,680,601?

P. Birney - Plaintiff - direct (Haren) Page 1299

1 A Okay.
2 Q So did you have an understanding as of October 26, 2017
3 that the presidential premiums were to come out of the Statement
4 of Financial Condition for that year?
5 A Can you repeat the question, please?
6 MR. HAREN: Sure. Could I have a read back?
7 THE COURT: Please.
8 (Whereupon, the requested portion of the
9 proceedings was read back by the court reporter.)
10 A I had an understanding that they were taken out as of
11 October 26, 2017.
12 Q And then looking at Rows 23 and 24, do you see in Row B
13 it states, "1290 Avenue?"
14 A Yes.
15 Q What does that refer to?
16 A The commercial office building located at 1290 Avenue
17 of the Americas.
18 Q And that's part of the Vornado Partnership Interest
19 that we discussed earlier; right?
20 A Yes.
21 Q Do you have an understanding of the numerical figure in
22 Cell E 24?
23 A Yes.
24 Q And what is your understanding?
25 A My understanding is that is the increase in value that

P. Birney - Plaintiff - direct (Haren) Page 1300

1 was obtained by increasing the EBITDA by free rent and reduction
2 of the straight line rent.
3 Q So as of October 26, 2017, the value of a penthouse at
4 Trump Park Avenue was reduced, presidential premiums were
5 removed by 267.8 million, was added to the 1290 Avenue of the
6 Americas' valuation?
7 A Yes.
8 THE COURT: Five-minute warning.
9 Q Let's call up Plaintiff's Exhibit 3034.
10 MR. HAREN: Your Honor, this is actually a pretty
11 good time if you want to do it earlier.
12 THE COURT: Yes, sure. Within that five minutes
13 you have discretion.
14 I think we have a question or a comment here.
15 Allison?
16 MS. GREENFIELD: Okay. I just wanted to go back
17 and clarify on the deposition designations. You are
18 correct. There was a mistake in the court --
19 Mr. Kise, you are correct there is a mistake in the
20 court e-mail. So the only part of that designation that is
21 inadmissible is the part that plaintiff objected to which is
22 page 120, line 21 to page 122, line 22.
23 MR. KISE: No, 103. I have 103, lines 12 to 18.
24 MS. GREENFIELD: That's admissible. So if the
25 e-mail said otherwise --

P. Birney - Plaintiff - direct (Haren) Page 1301

1 MR. KISE: It is admissible?
2 MS. GREENFIELD: It is admissible. The only thing
3 inadmissible is 120, line 21 to 122, line 22.
4 MR. KISE: Hold on. I don't think I have that.
5 That may not be an issue at all. Let me just --
6 MS. GREENFIELD: Okay.
7 MR. KISE: But I'll come back to you if it is. So
8 then the ten pages is in and the 120 just make sure I have
9 it. Yes, okay. Understood. Thank you.
10 THE COURT: We went over those pretty carefully.
11 I'm careful, too, you see.
12 (Whereupon, there is a recess in the proceedings.)
13 THE COURT OFFICER: All rise. Part 37 is back in
14 session. Please be seated and come to order.
15 THE COURT: Mr. Kise?
16 MR. KISE: I just want to put on the record. So
17 just so I'm clear, so you're reversing the ruling from
18 yesterday that said that that testimony was admissible,
19 right? Because yesterday's ruling said pages 1, lines 25
20 through 136, line 23 was admissible. That would include
21 120, line 21 through 122, line 22, so.
22 MS. GREENFIELD: Yes, that's correct. That was a
23 mistake in the e-mail. So the ruling from -- the only thing
24 that's inadmissible out of everything that was submitted was
25 what was relayed right before the break. Everything else

P. Birney - Plaintiff - direct (Haren) Page 1302

1 that was submitted or designated is admissible with the
 2 exception of those lines I read right before the break and
 3 the things that were withdrawn I think there is still
 4 agreement there?
 5 THE COURT: I'll assume if they withdraw them you
 6 haven't said anything.
 7 MR. AMER: They're withdrawn.
 8 MR. KISE: But I don't -- I guess we'll have to
 9 come back to you. I haven't had a chance over the break to
 10 look at it. I don't see any distinction between the
 11 testimony that was excluded and the rest of the testimony
 12 and all of it relates to the same thing which is this
 13 witness's understanding of her own notes and just like we're
 14 doing with this witness here asking him question after
 15 question after question.
 16 In fact, it's a little different here because we're
 17 asking him questions that aren't in his notes. We're just
 18 asking him what's his understanding, so that testimony was
 19 designed to get at this witness's understanding of what she
 20 wrote in her own notes, but I can do this in a more detailed
 21 way if -- I don't want to take up the time while we have a
 22 witness.
 23 THE COURT: Right. So this is now a substantive
 24 disagreement, not a correction?
 25 MR. KISE: Yes, Your Honor. Because yesterday we

P. Birney - Plaintiff - direct (Haren) Page 1303

1 had just taken that ruling is including all of that, but I
 2 just don't see a distinction between -- I can come back to
 3 you on that.
 4 THE COURT: Okay. We'll address it.
 5 MR. KISE: Okay. Thank you.
 6 MR. SOLOMON: Your Honor?
 7 THE COURT: Yes, I remember looking at that
 8 carefully since that was the exception. There was a
 9 compound question or questions. There was no reason to
 10 believe that that particular witness would know the answer.
 11 These witnesses try to -- if you didn't object or I let it
 12 in anyway, there was a reason to believe that they wouldn't
 13 be able to answer.
 14 MR. KISE: No reason to believe that the witness
 15 wouldn't understand her own notes? The question relates to
 16 her own notes, so there is certainly a reason to believe
 17 that she would understand her own notes. We could ask her a
 18 question. If she says I don't know, then she says I don't
 19 know. But if we're asking her about what is in her own
 20 notes and the basis for what's in her own notes, then she
 21 can either say I don't know what I looked at or I don't know
 22 why I wrote that or I don't know or any other combination or
 23 she can explain it.
 24 THE COURT: I totally agree with everything you
 25 just said.

P. Birney - Plaintiff - direct (Haren) Page 1304

1 Now let's hear what the AG has to say.
 2 MR. SOLOMON: Your Honor, I'm not arguing the
 3 merits of this. The Court has already addressed that.
 4 THE COURT: Well, I addressed it, but not as a
 5 continuing objection, which we'll have to hash out.
 6 MR. SOLOMON: But one thing I did want to raise,
 7 Your Honor, is this may affect the ability to have the video
 8 properly edited for Monday.
 9 THE COURT: Yes, so we'll finish it today.
 10 MR. KISE: Either today or we can get it to you
 11 over the weekend.
 12 THE COURT: There is no reason not to do it today.
 13 MR. KISE: I just don't know if we have -- I'll
 14 have to go back and see if we have all the transcript
 15 materials.
 16 THE COURT: It can't be that complicated if it's
 17 the way you said, then --
 18 MR. KISE: It seems very simple to me. It's not.
 19 Apparently it is more complicated which is why we have to
 20 address it, but I certainly don't think in a -- particularly
 21 in a bench trial, issues relative to minor nits and
 22 questions, it's a bench trial. There is no risk of
 23 confusion of a jury. So you can certainly sort out what you
 24 think is relevant or not relevant, but to exclude it
 25 altogether when this witness isn't even available to us at

P. Birney - Plaintiff - direct (Haren) Page 1305

1 this point is a big step. That's why I'm making such an
 2 issue of it.
 3 MR. SOLOMON: Your Honor, Mr. Amer will deal with
 4 the merits of the issue.
 5 MR. AMER: Well, only to say I don't have the
 6 transcript in front of me.
 7 THE COURT: Is your microphone on?
 8 MR. AMER: I don't have the transcript in front of
 9 me, so if I could just have time to look at the transcript
 10 and address Mr. Kiser's comment maybe before we break at the
 11 end of the day.
 12 THE COURT: Or before or after lunch. I don't
 13 care. We're not coming back after lunch. Is today Friday
 14 or something?
 15 MR. KISE: I will point out that we're talking
 16 about what amounts to about 25 lines of testimony that are
 17 important to the presentation of our defense and so for that
 18 reason alone, I mean, I don't see -- there doesn't seem to
 19 be any critical issue with the testimony itself, so I would
 20 just on that basis alone to short circuit this and make it
 21 available for them to do the video, I would ask the Court to
 22 reconsider just on that basis. It's a bench trial.
 23 THE COURT: I am reconsidering and we'll address
 24 it, but last words quickly?
 25 MR. AMER: We'll look at the testimony and I'll get

P. Birney - Plaintiff - direct (Haren) Page 1306

1 back to you when we're done for the day with the substantive
2 response.
3 THE COURT: Okay. I'm sure with all this
4 brainpower here we can work it out somehow.
5 MR. KISE: Thank you.
6 THE COURT OFFICER: Ready for the witness, Judge?
7 THE COURT: Yes, thanks.
8 THE COURT OFFICER: Witness entering.
9 (Whereupon, the witness enters the courtroom and
10 approaches the witness stand.)
11 THE COURT: Okay, let's continue.
12 Q Welcome back, Mr. Birney. I'll do my best to keep my
13 voice up.
14 MR. HAREN: Could we look at Plaintiff's
15 Exhibit 3031, please?
16 Q Mr. Birney, do you see the document on the screen
17 entitled "Bloomberg Analysis 5.29.18?"
18 A Yes.
19 Q Did you prepare this document?
20 A Yes.
21 Q What does it appear to you to be?
22 A A spreadsheet comparing certain asset, classes,
23 requests, multiple years, and multiple reports.
24 Q And the first Bloomberg Analysis, what does that refer
25 to?

P. Birney - Plaintiff - direct (Haren) Page 1307

1 A Analysis of something related to Bloomberg.
2 Q Is there any information communicated from Bloomberg
3 that caused you to prepare this spreadsheet?
4 A Probably.
5 Q Let's see if we can refresh your recollection.
6 MR. HAREN: Can we pull up Plaintiff's
7 Exhibit 3034?
8 And before we do that, I'll move 3031 into
9 evidence.
10 THE COURT: Granted. It's in evidence.
11 (Whereupon, the item previously referred to is
12 received and marked Plaintiff's Exhibit Number 3031 in
13 evidence.)
14 Q Mr. Birney, do you see the document on the screen, an
15 e-mail from someone called Caleb Melby at Bloomberg?
16 A Yes.
17 Q And do you see that the e-mail is directed to
18 AWeisselberg@Trumporg.com?
19 A Yes.
20 Q Whose e-mail address is that?
21 A It's probably Allen Weisselberg's. I know his e-mail
22 address is Weisselberg@Trumporg.com. I don't know if that
23 matters.
24 Q Okay. And also on the "to" line is someone named
25 Amanda Miller. Do you see that?

P. Birney - Plaintiff - direct (Haren) Page 1308

1 A Yes.
2 Q Who is Ms. Miller around the time of this e-mail?
3 A Who?
4 Q Yes.
5 A Amanda was the communications person.
6 Q And also in the "to" line is Alan Garten; correct?
7 A Yes.
8 Q And he was the chief legal officer?
9 A I don't know what Allan's title was in 2018.
10 Q The date of the e-mail is May 29, 2018 and it states:
11 "It's that special time of year where we update the President's
12 net worth summary for the Bloomberg billionaires index. I've
13 been working on the update this year with Shahein cc'd."
14 And then what follows below the e-mail signature is a
15 chart of assets and valuations. Do you see that?
16 A Yes.
17 Q Does that refresh your recollection as to why you may
18 have been preparing a spreadsheet entitled "Bloomberg Analysis
19 5.29.18?"
20 A The timing makes sense.
21 Q Does it refresh your recollection?
22 A Not really, but I don't have a reason to doubt this
23 e-mail in that spreadsheet are connected.
24 MR. HAREN: Let's turn back to Exhibit 3031.
25 Q Did anyone direct you to prepare this document?

P. Birney - Plaintiff - direct (Haren) Page 1309

1 A Probably.
2 Q Did Allen Weisselberg direct you to prepare this
3 document?
4 A Probably.
5 Q Did Ms. Miller ask you to prepare any information in
6 response to the Bloomberg inquiry on May 29, 2018?
7 A I don't know.
8 MR. HAREN: All right. Let's move to Plaintiff's
9 Exhibit 3033.
10 Q Mr. Birney, do you recognize this document?
11 A I recognize it as an e-mail.
12 Q Is it a series of e-mails on which you are copied?
13 A Yes.
14 MR. HAREN: Move this document into evidence.
15 THE COURT: Granted. It's in.
16 (Whereupon, the item previously referred to is
17 received and marked Plaintiff's Exhibit Number 3033 in
18 evidence.)
19 Q If you could turn to page two and look in the middle of
20 the page. Do you see where Ms. Miller writes to Mr. Melby and
21 others "thanks Caleb -- hoping you can speak with Patrick on
22 background only and not for attribution." Do you see that?
23 A Yes.
24 Q And Mr. Melby follows further up on page two stating
25 "happy to talk to Patrick right now." Do you see that?

P. Birney - Plaintiff - direct (Haren) Page 1310

1 A Yes.

2 Q And then on page one of the exhibit, Ms. Miller writes

3 to Mr. Melby, "We will give you a ring in about ten minutes."

4 And Mr. Melby responds, "Let's do it." Do you see that?

5 A Yes.

6 Q And then at the very top of page one, Mr. Melby writes:

7 "Thanks again for the call. My editor is wondering when we'll

8 get comment." Do you see that?

9 A Yes.

10 Q Did you have a call with Ms. Miller and Mr. Melby on

11 the afternoon of May 30, 2018?

12 A I had a call with Ms. Miller and Bloomberg. I don't

13 know or remember the date. It probably was on May 30th, yes.

14 Q Can you describe your role in that call?

15 A Yes.

16 Q Please do.

17 A I think I just discussed Bloomberg's valuations and I

18 don't really remember the main points of the call. I think they

19 had something to do with they use of the citywide cap rate. I

20 remember that. Points from the spreadsheet that I prepared were

21 probably discussed.

22 MR. HAREN: All right. Let's move to Plaintiff's

23 Exhibit 3028.

24 Q Mr. Birney, do you see on this exhibit that the subject

25 is "Bloomberg 5.30.18?"

P. Birney - Plaintiff - direct (Haren) Page 1311

1 A Yes.

2 Q And there is a sent time of "May 30, 2018 at

3 2:38 p.m.?"

4 A Yes.

5 Q And in the "from" field there is a lot of what I'll

6 just describe as Internet gobbledygook, for lack of a better

7 description, but in the middle of all that it says, "P. Birney"

8 on the right side on the top line? Do you see that?

9 A Yes.

10 Q Did you prepare this document?

11 A It appears, yes.

12 MR. HAREN: I move this document into evidence.

13 THE COURT: Granted. It's in evidence.

14 (Whereupon, the item previously referred to is

15 received and marked Plaintiff's Exhibit Number 3028 in

16 evidence.)

17 MR. ROBERT: Just for the fact I guess it's a --

18 something that the witness attributes to himself because I

19 can't tell who it's sent to. It just says "from." So is

20 this an e-mail or it's just like a memo that was done?

21 MR. HAREN: If we can ask the witness?

22 MR. ROBERT: Okay.

23 Q Mr. Birney, you stated that you prepared this; correct?

24 A Yes.

25 Q What do you understand this document to contain?

P. Birney - Plaintiff - direct (Haren) Page 1312

1 A I understand it to contain talking points for the

2 Bloomberg call.

3 Q And do you sometimes prepare talking points in draft

4 form in Outlook and not send them in an e-mail?

5 A It's possible.

6 Q All right. Just directing your attention to some of

7 the information in the document.

8 Well, let me ask you first, did you work with anybody

9 else to prepare these talking points?

10 A Yes.

11 Q Who did you work with to prepare these talking points?

12 A Allen Weisselberg.

13 Q And where it states at the top of the Document 4.8

14 indicates, "A stabilized situation depending on cash flow,

15 upside, rent roll, credit tenants, RCA may be including

16 properties that are Class A but may include tenants that are of

17 lower credit." Do you see that?

18 A Yes.

19 Q What does 4.8 refer to there?

20 A Cap rate.

21 Q And did Mr. Weisselberg provide this portion of the

22 talking points document to you?

23 A Probably.

24 MR. HAREN: Let's move to Plaintiff's Exhibit 3027.

25 Excuse me, Your Honor.

P. Birney - Plaintiff - direct (Haren) Page 1313

1 (Whereupon, there is a pause in the proceedings.)

2 MR. HAREN: Your Honor, just so I can have clarity

3 is Exhibit 3028 in evidence now that the witness has

4 testified that he prepared it as a set of talking points?

5 MR. ROBERT: No problem with that.

6 THE COURT: It's in evidence.

7 MR. HAREN: Thank you.

8 (Whereupon, the item previously referred to is

9 received and marked Plaintiff's Exhibit Number 3027 in

10 evidence.)

11 Q Mr. Birney, Exhibit 3027. Do you recognize it?

12 A Yes.

13 Q What do you recognize it to be?

14 A An e-mail from Michael Papagianopoulos from Cushman &

15 Wakefield.

16 Q Is it to you?

17 A The e-mail is to me, cc's Jeff McConney and two other

18 people from Cushman & Wakefield.

19 MR. HAREN: I move this document into evidence.

20 THE COURT: Was that a motion to admit it into

21 evidence?

22 MR. HAREN: Yes.

23 THE COURT: Got to keep your voice up.

24 Granted. It's in evidence.

25 (Whereupon, the item previously referred to is

P. Birney - Plaintiff - direct (Haren) Page 1314

1 received and marked Plaintiff's Exhibit Number 3027 in
2 evidence.)
3 MR. HAREN: Thank you.
4 Q Mr. Birney, I'm looking at the middle of or the bottom
5 of page one. There is a request made to Mr. Papagianopoulos and
6 it states: "Can you please update the attached comps for
7 Manhattan Class A. Can you send this today." Do you see that?
8 A Yes.
9 Q Why did you make that request to Mr. Papagianopoulos?
10 A Probably because it had something to do with the
11 Bloomberg call. It was that same day.
12 Q And in the e-mail from you to Mr. Papagianopoulos at
13 12:46 p.m., you stated, "Also confirming our conversation that
14 1290 Avenue of Americas could probably be estimated at a mid
15 four cap rate at stabilization low four if there is upside."
16 Do you see that?
17 A Yes.
18 Q Did Mr. Weisselberg or Mr. McConney dictate that
19 language to you?
20 A I don't know.
21 Q Let's see if we can refresh your recollection.
22 MR. HAREN: Let's pull up on the screen some of
23 your prior testimony at page 385.
24 Q And looking at page 385, lines two through ten, you
25 were asked: "I guess I'm asking what does it mean to have a mid

Page 1316

1 "QUESTION: Did Allen Weisselberg dictate this
2 particular message for you?
3 "ANSWER: Maybe.
4 "QUESTION: Did anybody else possibly dictate this
5 message to you?
6 "ANSWER: Probably not. That was your testimony?
7 THE WITNESS: Yes.
8 Transcript continues on the following page....
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P. Birney - Plaintiff - direct (Haren) Page 1315

1 four cap rate at stabilization low four if there is upside?
2 "ANSWER: I'm obviously referring to mean four cap
3 rate meaning four mid or mid four percent cap rate. I don't
4 really know what at stabilization or upside really mean."
5 That's your testimony?
6 A Yes.
7 Q And then let's look at 394 beginning at 920:
8 "QUESTION: Did somebody dictate the language to
9 you to put in this e-mail?
10 "ANSWER: Possibly."
11 It continues, "is that part of your current
12 practice that somebody dictates e-mails for you to send out?
13 "ANSWER: Sometimes.
14 "QUESTION: Who dictates messages for you to send
15 out?
16 "ANSWER: Any of my bosses.
17 "QUESTION: So that would be specifically whom?
18 "ANSWER: I would say -- so Ron Leiberman, Allen
19 Weisselberg and Jeff McConney.
20 "QUESTION: And to your recollection, did Ron
21 Leiberman direct you to draft this particular message?
22 "ANSWER: No.
23 "QUESTION: Did Jeff McConney dictate this
24 particular message for you?
25 "ANSWER: Maybe.

P. BIRNEY - DIRECT (MR. HAREN) Page 1317

1 Q Does seeing that testimony refresh your recollection as
2 to whether anybody dictated to you the language in this e-mail
3 which states "1290 Ave of Americas could probably be estimated
4 at mid 4 cap rate at stabilization low 4 if there is upside"?
5 A I'm writing the e-mail to Michael from Cushman &
6 Wakefield saying, "Confirming our conversation," so I could have
7 written that down based on a phone call or it could have been
8 told to me by -- or dictated to me by Allen Weisselberg or Jeff
9 McConney.
10 Q By the time you sent the e-mail, you didn't know what
11 at stabilization or upside really meant?
12 A Correct.
13 Q Looking back at Exhibit 3027, the e-mail on May 30,
14 2018 at 12:46 p.m., you copied Jeff McConney on the e-mail. Why
15 was he copied on the e-mail? I'll ask it in a more specific
16 way.
17 Was Mr. McConney assisting you in gathering market
18 information to respond to the Bloomberg inquiry?
19 A Yes.
20 Q In Exhibit 3027, at the top of page one, there is a
21 response from Mr. Papagianopoulos that states, "While I cannot
22 opine on 1290 AOA, as I do not know the actual financials,
23 current market environment for class A MT properties is mid 4s",
24 that's the number four with an "S", "for stabilized and below
25 that for properties with upside." Do you see that?

P. BIRNEY - DIRECT (MR. HAREN) Page 1318

1 A Yes.

2 Q What do you understand MT to refer to there?

3 A I understand it to be midtown.

4 MR. HAREN: Let's move to Plaintiff's Exhibit 1159.

5 Q Mr. Birney, in Exhibit 1159, do you see on the first

6 page an e-mail from you to Mr. Papagianopoulos stating in part,

7 "I need both the midtown and downtown sales for an urgent

8 matter." Do you see that?

9 A Yes.

10 Q What was the urgent matter?

11 A I have to believe it was the Bloomberg article/phone

12 call.

13 MR. HAREN: I move this document into evidence.

14 THE COURT: Granted. It is in evidence.

15 (Whereupon, the Document was marked in evidence as

16 Plaintiff's Exhibit 1159.)

17 Q Mr. Birney, do you see on page two of the document, we

18 have the same two e-mails that indicate an exchange with Mr.

19 Papagianopoulos about a mid 4 cap rate at stabilization that we

20 looked at a minute ago?

21 A Yes.

22 Q And on page one of this exhibit, you forwarded the

23 e-mail chain to Allen Weisselberg. Do you see that?

24 A Yes.

25 MR. HAREN: Let's pull up the 2018 supporting data

P. BIRNEY - DIRECT (MR. HAREN) Page 1319

1 spreadsheet Plaintiff's Exhibit 774. Could we go to cells

2 C832 and 833.

3 Q So, Mr. Birney, does the information in cells C832 and

4 C833 pertain to the 2018 valuation of 1290 Avenue of the

5 Americas?

6 A Yes.

7 Q And do you see that it states, "06/30/2018-based on

8 information provided by Michael Papagianopoulos of Cushman &

9 Wakefield which reflects a cap rate for 2.67 percent for a

10 comparable office building"?

11 A Yes.

12 Q And that's the same Michael Papagianopoulos whose name

13 we saw from the e-mails from May 30, 2018?

14 A Yes.

15 MR. HAREN: Let's pull up the 2018 Statement of

16 Financial Condition, Plaintiff's Exhibit 773 and go to page 19,

17 please.

18 Q Mr. Birney, do you see the heading, "partnerships and

19 joint ventures"?

20 A Yes.

21 Q In the paragraph beginning with -- scroll down,

22 please. In the paragraph beginning with "the estimated current

23 value," do you see where it states, "This valuation was arrived

24 at by applying a capitalization rate to the stabilized net

25 operating income and taking into consideration any debt."

P. BIRNEY - DIRECT (MR. HAREN) Page 1320

1 A Yes.

2 Q And does it state the estimated current value of the

3 real property net of debt of 1,211,900,000 is based on an

4 evaluation made by the trustees in conjunction with their

5 associates and outside professionals?

6 A Yes.

7 Q Did Jeff McConney or Allen Weisselberg ever direct you

8 to use a capitalization rate in the mid 4 percent range in the

9 2018 valuation of 1290 Avenue of the Americas based on the

10 properties stabilized net operating income?

11 A Can you please repeat the question?

12 THE COURT: Read back, please.

13 (Whereupon, the requested portion of the record was

14 read back.)

15 THE COURT: That is a mouthful by the way. If you

16 can make the questions a little shorter and simpler and

17 maybe more direct.

18 A No.

19 Q If either of them had given you such a direction, would

20 you have followed it?

21 A Probably.

22 MR. HAREN: Let's pull up Plaintiff's Exhibit 781,

23 please.

24 Q Mr. Birney, do you recognize this document?

25 A Yes.

P. BIRNEY - DIRECT (MR. HAREN) Page 1321

1 Q What do you recognize it to be?

2 A I recognize it to be the backup to the 1290 Avenue of

3 the Americas valuation -- I can't really tell the year.

4 Q Do you see that it has in the left-hand column on the

5 first page actual fourth quarter 2017 results?

6 A Yes.

7 Q Does that indicate to you that it is the backup for the

8 2018 valuation?

9 A Probably, yes.

10 MR. HAREN: I move this document into evidence.

11 THE COURT: Granted. It is in evidence.

12 (Whereupon, the Document was marked in evidence as

13 Plaintiff's Exhibit 773.)

14 Q And Mr. Birney, when it says "1290" in handwriting at

15 the top of the first page, does that refer to 1290 Avenue of the

16 Americas?

17 A Yes.

18 Q All right. What do you understand to be shown on page

19 eight of this document?

20 A This is a list of recent sales at that time for midtown

21 Class A buildings.

22 Q Is it a portion of a generic report of sales from

23 Cushman & Wakefield?

24 A I can't tell who it's from.

25 Q But that appears to you to be a generic list of sales?

P. BIRNEY - DIRECT (MR. HAREN) Page 1322

1 A Yes.

2 Q All right. There is a sale that is highlighted 666

3 Fifth Avenue. Do you see that?

4 A Yes.

5 Q And is that your highlighting?

6 A Probably.

7 Q And what is indicated by the fact that 2.67 percent is

8 highlighted?

9 A That is the capitalization rate that was used.

10 Q Do you see in the entry next to transaction type it

11 states "contract."

12 A Yes.

13 Q You understand that -- do you understand that to mean

14 the transaction is not closed, but it is in contract?

15 A I do.

16 Q All right.

17 MR. HAREN: Could we scroll down, please, to the

18 paragraph below the numbers.

19 Q Do you see at the bottom of the paragraph it states,

20 "If the sale occurs, the property would be purchased on an

21 overall capitalization rate of 2.67 percent. The stabilized

22 capitalization rate is projected to increase to 4.45 percent in

23 year 3."

24 A Yes.

25 Q Were you ever directed to use the 4.45 percent rate

P. BIRNEY - DIRECT (MR. HAREN) Page 1323

1 rather than the 2.67 percent rate in valuing 1290 Avenue of the

2 Americas in 2018?

3 A No.

4 MR. HAREN: Let's move to Plaintiff's Exhibit 842,

5 the 2019 Statement of Financial Condition and turn to page

6 19.

7 Q Mr. Birney, do you see the heading "partnerships and

8 joint ventures"?

9 A Yes.

10 Q In the paragraph beginning with, "The estimated current

11 value," do you see that it states, "This valuation was arrived

12 at by applying a capitalization rate to the stabilized net

13 operating income and taking into consideration any debt"?

14 A Yes.

15 MR. HAREN: Let's move to the supporting data

16 Plaintiff's Exhibit 843 and turn to cells G834 to 835.

17 Q Mr. Birney, do you see in cell G835 there is a

18 reference to a 2.67 percent cap rate?

19 A Yes.

20 Q And then looking over at cells G or C863 to 864, do you

21 see that it states, "06/30/2019-1290 based on information

22 provided by Michael Papagianopoulos of Cushman & Wakefield which

23 reflects a cap rate of 2.67 percent for a comparable office

24 building." You see that?

25 A Yes.

P. BIRNEY - DIRECT (MR. HAREN) Page 1324

1 MR. HAREN: Let's move to Plaintiff's Exhibit 850.

2 Q Mr. Birney, do you recognize this document?

3 A Yes.

4 Q What do you recognize it to be?

5 A The backup to the 1290 Avenue of the Americas 2019

6 asset valuation.

7 MR. HAREN: I move this document into evidence.

8 THE COURT: Granted. It is in.

9 (Whereupon, the Document was marked in evidence as

10 Plaintiff's Exhibit 850.)

11 Q Mr. Birney, could you look at page five of the

12 document, please.

13 MR. HAREN: Could you zoom in for the entry for

14 sale number one with the highlighter.

15 Q Mr. Birney, you see where the 2.67 percent

16 capitalization rate is highlighted?

17 A Yes.

18 Q What is indicated by that?

19 A Capitalization rate of 2.67 was used.

20 Q And were you ever --

21 MR. HAREN: Scroll down, please, to the paragraph

22 below.

23 Q Do you see at the bottom of the paragraph, it states,

24 "The property was purchased based on an overall capitalization

25 rate of 2.67 percent which is projected to increase to

P. BIRNEY - DIRECT (MR. HAREN) Page 1325

1 4.45 percent upon stabilization in year 3?"

2 A Yes.

3 Q Were you ever directed to use the 4.45 percent number

4 instead of the 2.67 percent number?

5 A No.

6 MR. HAREN: Can we zoom out to see more of the

7 exhibit, please.

8 Q Do you see in pages five through seven of the exhibit

9 there are some entries identified by handwritten notes such as

10 east, west, south and too small?

11 A No.

12 Q So do you see on page five that there are notations in

13 handwriting that state east, west, east. Do you see those?

14 A Yes.

15 Q And then on page six, do you see that there are

16 additional notations such as south, east, west and too small?

17 A Yes.

18 Q Are those entries in your handwriting?

19 A Yes.

20 Q And what do those notations indicate?

21 A They indicate why these properties weren't used.

22 Q Whose decision was it not to use the properties

23 identified by those notations?

24 A Allen Weisselberg.

25 Q We're going to move on to Trump Tower and go back to

P. BIRNEY - DIRECT (MR. HAREN) Page 1326

1 the 2018 supporting data Exhibit 774. Let's look at rows 36 to
2 49, please.
3 Mr. Birney, just speaking generally, can you describe
4 the information in column C from rows 32 to 42?
5 A Columns B and C?
6 Q Yes. Sorry.
7 A Yes.
8 Q Please, go ahead.
9 A It's a calculation of the net operating income and the
10 different line items of description for that calculation.
11 Q And so there's an income number in row 32 and then
12 there are adjustments made below that; is that right?
13 A Yes.
14 Q And looking at cell H47, what's conveyed there?
15 A I couldn't really hear you.
16 Q H47.
17 THE COURT: You mean line 47, don't you?
18 MR. HAREN: Right, line 47, and the number that is
19 contained in cell H47.
20 A Sorry. I couldn't really hear the question. What's
21 the question?
22 Q What is conveyed there?
23 A Cap rate used in 2018 for Trump Tower of 2.86 percent.
24 Q And do you see the -- if you look at cell C81 to 83,
25 there's a notation that states, "06/30/2018 based on information

P. BIRNEY - DIRECT (MR. HAREN) Page 1327

1 provided by Michael Papagianopoulos of Cushman & Wakefield which
2 reflect cap rates for comparable office buildings of
3 2.67 percent and 3.05 percent for an average cap rate of
4 2.86 percent"?
5 A Yes.
6 MR. HAREN: Let's pull up Plaintiff's Exhibit 776,
7 please.
8 Q Mr. Birney, do you recognize this document?
9 A Yes.
10 Q What do you recognize it to be?
11 A The backup for the Trump Tower valuation in 2018.
12 MR. HAREN: I move this document into evidence.
13 THE COURT: All right. Granted. It is in
14 evidence.
15 (Whereupon, the Document was marked in evidence as
16 Plaintiff's Exhibit 776.)
17 Q Mr. Birney, on the first page, there is a figure of
18 \$1,009,488 on the line for "management fees." Do you see that?
19 A Yes.
20 Q What does it mean there that the figure is circled?
21 A Probably means it was removed in the
22 calculation -- oh, I'm sorry. The -- one second. Yes. It
23 was removed from the calculation.
24 Q So management fees were removed from expenses when
25 calculating net operating income?

P. BIRNEY - DIRECT (MR. HAREN) Page 1328

1 A Can you repeat the question?
2 Q So management fees were removed from expenses when
3 calculating net operating income?
4 A Yes.
5 Q And whose decision was it to remove management fees
6 from the expenses when calculating the net operating income of
7 Trump Tower?
8 A Either Jeff McConney or Allen Weisselberg.
9 Q If you take a look at page nine, do you see an e-mail
10 from Doug Larson at Newmark Knight Frank?
11 A Yes.
12 Q It is dated July 29, 2018 and the only person on the
13 "to" line is Doug Larson. Do you see that?
14 A I do.
15 Q So did you have an understanding of, I guess, e-mail
16 culture that when a person sends an e-mail to themselves and it
17 ends up as you can see from the next e-mail of Jeff McConney
18 that it was a broad e-mail blast?
19 A General understanding, yes.
20 Q All right. And then Mr. McConney forwards that e-mail
21 to you as you can see at the top of the page nine. Do you see
22 that?
23 A Yes.
24 Q He states in his e-mail to you, "Does this answer
25 number three on the Statement of Financial Condition needs

P. BIRNEY - DIRECT (MR. HAREN) Page 1329

1 list"?
2 Do you have an understanding of what "Statements of
3 Financial Condition needs list" refers to?
4 A Yes.
5 Q And what does it refer to?
6 A I think it refers to an e-mail that I sent this year
7 listing out the things that I needed in order to put together
8 the Statement of Financial Condition.
9 Q And Mr. McConney was assisting you for gathering things
10 for the Statement of Financial Condition needs list?
11 A Yes.
12 Q Turning to page seven of the document, do you see the
13 adding machine math in the middle of the page?
14 A Yes.
15 Q And what do you understand it to convey?
16 A An average cap rate from 666 Fifth Avenue and 693 Fifth
17 Avenue.
18 Q And looking at the entry on the page for 666 Fifth
19 Avenue, do you see at the bottom of the paragraph entry the same
20 reference to a stabilized capitalization rate of 4.45 percent
21 that we saw in the similar report in the backup for the 1290
22 valuation?
23 A Yes.
24 Q Were you ever directed to use the 4.45 percent number
25 rather than the 2.67 percent number in the 2018 Trump Tower

P. BIRNEY - DIRECT (MR. HAREN) Page 1330

1 valuation?
 2 A No.
 3 Q Let's move to Plaintiff's Exhibit 1100. So it is a
 4 long document. I can assure you we're going to go through only
 5 a very small amount of it.
 6 Mr. Birney, do you see at the top of the first page an
 7 e-mail from Jeff McConney to you stating, "Does this answer
 8 number three on the Statement of Financial Condition needs
 9 list"?
 10 A Yes.
 11 Q And do you see that the attachments to the e-mail
 12 include file names such as "nycofficeoverview.pdf,"
 13 "officebuildingsales.pdf," "officemarketoverview.xlsx" and then
 14 there are several others?
 15 A Yes.
 16 Q Do you recognize this e-mail that Mr. McConney sent to
 17 you?
 18 A I recognize it as an e-mail, yes.
 19 MR. HAREN: I move this document into evidence.
 20 THE COURT: Granted. It is in evidence.
 21 (Whereupon, the Document was marked in evidence as
 22 Plaintiff's Exhibit 1100.)
 23 Q I'd like to turn to page 39 of the exhibit. So in the
 24 packet of material that's contained in Exhibit 1100, you can see
 25 on this page sale number one, 666 Fifth Avenue. And then on

Page 1331

1 page 42 of the exhibit, sale number 14, 693 Fifth Avenue. And
 2 I'll, for the sake of time, just indicate to you that there are
 3 24 different sales reflected in this generic report and that
 4 many of them have capitalization rates higher than four percent.
 5 My question for you is just did you decide -- were you
 6 the person who decided not to use any properties other than 666
 7 Fifth Avenue and 693 Fifth Avenue as comparable to Trump Tower
 8 for the 2018 Statement of Financial Condition?
 9 A No.
 10 (Continued on the next page.)
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P. Birney - Plaintiff - direct (Haren) Page 1332

1 Q Let's move to the next year.
 2 The Supporting Data for 2019, Plaintiff's Exhibit 843,
 3 and specifically Rows 52 to 68.
 4 MR. HAREN: Zoom out so that more is visible.
 5 Q Mr. Birney, do you understand Rows 52 through 68 to
 6 contain the 2019 valuation of Trump Tower?
 7 A Can you scroll up just a few rows, please? Yes.
 8 Q And in Cell G 66, do you see there is a cap rate
 9 identified of 2.67 percent in that valuation?
 10 A Yes.
 11 Q And I'll just state -- well, let's move to Plaintiff's
 12 Exhibit 842 on page four -- page six.
 13 So, sir, you see on that page there is a description of
 14 Trump Tower that continues on to the following page? Do you see
 15 where it states, "Trump Tower continued the estimated current
 16 value of 806,700,000 is based on an valuation by the trustees in
 17 conjunction with their associates and outside professionals
 18 applying a capitalization rate to the stabilized net operating
 19 income?"
 20 A Yes.
 21 MR. HAREN: Let's move to Plaintiff's Exhibit 846.
 22 Q Mr. Birney, do you recognize this document?
 23 A Yes.
 24 Q What do you recognize it to be?
 25 A Backup to the Trump Tower valuation in 2019.

P. Birney - Plaintiff - direct (Haren) Page 1333

1 MR. HAREN: I move this document into evidence.
 2 THE COURT: Granted. It's in.
 3 (Whereupon, the item previously referred to is
 4 received and marked Plaintiff's Exhibit Number 846 in
 5 evidence.)
 6 Q Direct your attention just first to the first page. It
 7 states next to "\$1,061,233 paid to Trump." Do you see that?
 8 A Yes.
 9 Q And is that management fee number removed from the
 10 calculation of net operating income?
 11 A It's removed from the operating expenses.
 12 Q And the operating expenses are part of the calculation
 13 of that operating income; right?
 14 A Yes.
 15 MR. HAREN: Let's move to page seven of the
 16 exhibit.
 17 Q Do you see the highlighting on the entry for 666 Fifth
 18 Avenue?
 19 A Yes.
 20 Q And the capitalization rate of 2.67 percent is
 21 highlighted?
 22 A Yes.
 23 Q What does that indicate to you?
 24 A That the cap rate of 2.67 was used.
 25 Q Used in what?

P. Birney - Plaintiff - direct (Haren) Page 1334

1 A The valuation of Trump Tower.
 2 Q And do you see the note at the bottom of the paragraph
 3 that reads "the property was purchased based on an overall
 4 capitalization rate of 2.67 percent which is projected to
 5 increase to 4.5 percent upon stabilization in year three?"
 6 A Yes.
 7 Q Were you ever directed in connection with the valuation
 8 of Trump Tower in 2019 to use the 4.45 percent number reflected
 9 here?
 10 A No.
 11 MR. HAREN: Let's move to Plaintiff's Exhibit 1227.
 12 Q Mr. Birney, do you recognize this document?
 13 A Yes.
 14 Q What do you recognize it to be?
 15 A A draft of the 2019 Statement of Financial Condition
 16 Supporting Data spreadsheet.
 17 MR. HAREN: I move this document into evidence.
 18 THE COURT: Granted. It's in evidence.
 19 (Whereupon, the item previously referred to is
 20 received and marked Plaintiff's Exhibit Number 1227 in
 21 evidence.)
 22 Q The file name is "1-SOFC Supporting Data 6.2019 VPD
 23 072219.XLSX." What does that file name indicate to you based on
 24 your practices?
 25 A It indicates that this version was the draft as of

P. Birney - Plaintiff - direct (Haren) Page 1335

1 July 22, 2019.
 2 Q And I'd just like to direct you down to Row 65
 3 through 67.
 4 MR. HAREN: And can you scroll up a little bit to
 5 show the witness the property to which those entries
 6 pertain?
 7 Q So Mr. Birney, do you see in Row 30 there is an entry,
 8 "Trump Tower?"
 9 A Yes.
 10 MR. HAREN: Okay. Now could we scroll down,
 11 please, to Row 65? There it is.
 12 Q Mr. Birney, do you see in these entries there are two
 13 different valuations of Trump Tower that are computed?
 14 A Yes.
 15 Q And value one is 524 million and change?
 16 A Yes.
 17 Q And value two is 571 million and change?
 18 A Yes.
 19 Q And value one is based on a cap rate of 1.0 percent?
 20 A Yes.
 21 Q And value two is based on a cap rate of 3.67 percent?
 22 A Yes.
 23 Q And just looking down at Rows 84 through 90 and
 24 focusing first on Rows 84 to 86, do you see that the four
 25 percent number is based on an average of 4.65, 4.68 and 2.67?

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1 A Yes.
 2 Q And do you see that the 3.67 percent number in value
 3 two is based on an average of 4.68 and 2.67?
 4 A Yes.
 5 Q You recall that we saw in the 2019 Supporting Data that
 6 only 2.67 percent was used in the final valuation of Trump Tower
 7 in 2019?
 8 A I think so.
 9 Q Did you alone make the decision to use the 2.67 percent
 10 rate rather than the higher rates reflected in this exhibit?
 11 A No.
 12 Q Did any person direct you to use only the 2.67 percent
 13 rate from the 666 Fifth Avenue sale for the 2019 valuation of
 14 Trump Tower?
 15 A Yes.
 16 Q Who was that person?
 17 A Allen Weisselberg.
 18 Q Do you recall any conversation with Mr. Weisselberg in
 19 which he conveyed that instruction?
 20 A Yes.
 21 Q What do you recall about that conversation?
 22 A I recall that I discussed it with Allen Weisselberg. I
 23 think I took the position that -- I think he said just use
 24 2.67 percent and I said -- I'm -- like, I'm fine using that cap
 25 rate, but I'm worried that if we only use 2.67 if the building

P. Birney - Plaintiff - direct (Haren) Page 1337

1 was sold, like, next year we're going to have a -- next year
 2 there might not be a cap rate that is as low as 2.67, so there
 3 would be a difference between next year and this year.
 4 Q So you had a concern that the following year you might
 5 not still be able to support a cap rate as low as 2.67?
 6 MR. ROBERT: Objection.
 7 MR. HAREN: Your Honor, this witness is an employee
 8 of the defendants. He's identified with an adverse party.
 9 There is a little bit of leading under the rules. I'm just
 10 trying to clarify his answer.
 11 THE COURT: We haven't addressed the issue I don't
 12 think whether he's a hostile witness.
 13 MR. ROBERT: He is not a hostile witness. I think
 14 it's evidence in the testimony this afternoon and this
 15 morning.
 16 MR. HAREN: I would just say that under the rules
 17 leading is permitted for an adverse party regardless of
 18 whether he's hostile, but I was just trying to clarify his
 19 answer.
 20 THE COURT: That was the only thing I was thinking.
 21 You're just trying to clarify what he said. I'll overrule
 22 the objection on multiple grounds.
 23 Q Mr. Birney, could you explain --
 24 MR. HAREN: Actually, the objection was overruled,
 25 so could I have a read back, please?

P. Birney - Plaintiff - direct (Haren) Page 1338

1 THE COURT: Read, please.
 2 (Whereupon, the requested portion of the
 3 proceedings was read back by the court reporter.)
 4 A Yes.
 5 Q And you conveyed that concern to Mr. Weisselberg?
 6 A Yes.
 7 Q And he directed you nevertheless to use the
 8 2.67 percent rate?
 9 A Yes.
 10 Q Did that conversation occur -- where did that
 11 conversation occur?
 12 A In the restroom of Trump Tower.
 13 Q Thank you.
 14 MR. HAREN: Let's go back to Plaintiff's
 15 Exhibit 846 and turn to page seven.
 16 Q Do you see the handwriting under "Sale Number 11, 666
 17 Fifth Avenue?"
 18 A Yes.
 19 Q Is that your handwriting?
 20 A Yes.
 21 Q And it states under "666 Fifth Avenue," quote, "Only
 22 Plaza district sale in the last two years on Fifth Avenue
 23 (non-allocated)." Did I read that correctly?
 24 A Yes.
 25 Q Did you come up with the rules of this statement alone?

P. Birney - Plaintiff - direct (Haren) Page 1339

1 A No.
 2 Q Who was involved in coming up with the words of this
 3 statement?
 4 A Allen Weisselberg.
 5 Q And did Mr. Weisselberg come up with the phrase
 6 "nonallocated" used here?
 7 A Yes.
 8 Q All right. I'd like to direct your attention to
 9 page eight of the exhibit.
 10 And looking specifically at an entry for 711 Fifth
 11 Avenue in the far left side of this page, do you see an entry
 12 under the heading "contract" identified an address of 711 Fifth
 13 Avenue?
 14 A Yes.
 15 Q Does the entry identify a submarket near the top below
 16 the address?
 17 A Yes.
 18 Q What submarket does it identify?
 19 A Plaza district.
 20 Q Does the entry identify any allocation of a sales
 21 price?
 22 A I don't know.
 23 Q Feel free to look through it.
 24 A Can you scroll down, please?
 25 Q Do you see --

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1 A Sorry.
 2 Q -- an allocation identified?
 3 A I don't see anything that identifies an allocation.
 4 Q Does the entry identify a transaction dated April 2019?
 5 A Yes.
 6 Q And that was in the two years before June 2019; right?
 7 A Yes.
 8 Q And the Statement of Financial Condition in 2019 was
 9 finalized around October 31, 2019?
 10 A Probably.
 11 Q Does the entry identify an overall capitalization rate?
 12 A Yes.
 13 Q And what does it identify as the overall capitalization
 14 rate?
 15 A Looks like 5.36.
 16 Q And if you look at the bottom of the paragraph do you
 17 see that it states the adjusted capitalization rate for this
 18 asset equates to approximately 4.71 percent?
 19 A Yes.
 20 THE COURT: Five-minute warning. And how much
 21 longer with this witness?
 22 MR. HAREN: I think he's going to have a little bit
 23 of time on Monday, but I can kind of finish up in about two
 24 minutes.
 25 THE COURT: Okay. Mr. Birney, we'll be happy to

P. Birney - Plaintiff - direct (Haren) Page 1341

1 see you Monday, okay?
 2 MR. HAREN: I'd like to pull up Plaintiff's
 3 Exhibit 1722.
 4 Q Mr. Birney, do you see on the screen a document stating
 5 at the top "NYC Department of Finance, Office of the City
 6 Register?"
 7 A Yes.
 8 Q Do you see that it has a document ID and this is in the
 9 middle toward the top on the left of "2019082900604001?"
 10 A Yes.
 11 Q And there is a document date identified of August 22,
 12 2019?
 13 A Yes.
 14 Q And under the heading "property data" there is an
 15 address 711 Fifth Avenue?
 16 A Yes.
 17 Q And do you see that on the bottom of page two there is
 18 a -- in all caps and bold, "recorded or filed in the Office of
 19 the City Register of the City of New York, recorded/filed
 20 09-03-2019?"
 21 A Yes.
 22 MR. HAREN: I move this document into evidence as a
 23 public record of the transaction at 711 Fifth Avenue.
 24 THE COURT: Granted. It's in evidence.
 25 (Whereupon, the item previously referred to is

P. Birney - Plaintiff - direct (Haren) Page 1342

1 received and marked Plaintiff's Exhibit Number 1722 in
2 evidence.)
3 MR. HAREN: And I could be done for the day.
4 THE COURT: Okay.
5 MR. ROBERT: Just object to the last document as to
6 relevance, Your Honor.
7 THE COURT: Subject to connection?
8 MR. HAREN: It reflects the fact that the actual
9 sale of 711 Fifth Avenue occurred at the end of August of
10 2019 despite the representation and the backup about the
11 last sale in the last two years in the Plaza district. I
12 think its relevance is pretty clear.
13 THE COURT: It seems to me that it's relevant on
14 that basis.
15 Okay. Counselors, don't leave.
16 MR. AMER: Your Honor, we did have the issue of the
17 objection.
18 THE COURT: Yes, but let the witness go.
19 See you Monday, ten o'clock. Thank you.
20 MR. AMER: And can we get an admonition to the
21 witness again?
22 THE COURT: Mr. Birney, I hereby admonish you not
23 to discuss the case with anybody, any aspect of the case
24 with anybody, okay?
25 THE WITNESS: Okay.

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1 within which this conversation is taking place.
2 You're looking -- Mr. Amer is asking you about one
3 particular question, but you have to look back at the
4 testimony, so I know that context is very difficult. We
5 don't have a lot of witness. It's much easier when you have
6 a lot of witnesses and you are following the testimony, but
7 the questioning relates to her annual reviews. Those annual
8 reviews are documents that I believe were shown to
9 Mr. Weisselberg and what they are is -- and I can direct you
10 to testimony that says this. You don't have to take my
11 word, but essentially what these annual reviews are are
12 these are Ms. Mouradian's notes that she takes in realtime
13 and she converts it into an annual review and she says that
14 essentially on page 123, line 17 to 22.
15 So the questions all relate to what she wrote. So
16 the issue that is the subject of these particular questions
17 is the data set that are used for valuations.
18 She acknowledges previously on page 117, lines 15
19 -- line 15 through 118, line two, that there are two sets of
20 data that go into this and this, by the way, is reflected --
21 I don't have the exhibit to pull up, but this is reflected
22 in these exhibits. There is cap rates and there is what's
23 called NOI, net operating income, right. And I think they
24 went over that fully with Mr. Weisselberg.
25 So the questions that you're looking at, this one

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1 THE COURT: Thank you.
2 (Whereupon, the witness is excused from the witness
3 stand.)
4 THE COURT: We'll address the objection. We're
5 pulling it up and look at it, see if it says what some
6 people say it says.
7 MR. AMER: Your Honor, if it's helpful, we can put
8 it up on the screen.
9 THE COURT: That would be great.
10 MR. AMER: And is it okay if I present an argument
11 on why this should be inadmissible?
12 THE COURT: Page 129, 21 right through 122,
13 line 22.
14 MR. AMER: We'll put up the third page after we --
15 Your Honor, the first question on page 120 starting at
16 line 21 about how would Cushman or Newmark know something
17 clearly lacks foundation, calls for speculation. This
18 witness is not an employee of either Cushman or Newmark, so
19 that question should not be allowed and the answer is
20 inadmissible.
21 THE COURT: Well, let's do one at a time.
22 Mr. Kise?
23 MR. KISE: Well, Judge, I mean, I don't know that
24 we can go one by one because his point here demonstrates the
25 problem. It's like you have to understand the context

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1 in particular, is part of the sequence who provided the
2 data. So if you look at page 118, line three and you start
3 following until you get here, that's what all these
4 questions relate.
5 So okay, where did you get the data? So we're just
6 asking her in her notes -- she understands there is three
7 data sets, where would this data come from. And so the
8 question that is presented that Mr. Amer has identified here
9 is about who would be in a better position and this is all
10 -- by the way, this is all based on her understanding. I
11 mean, she doesn't know. I think the answer to this question
12 is she says I don't know.
13 Transcript continues on the following page....

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1 MR. KISE: So this is all based on her
2 understanding. We're asking her about her notes. We're
3 asking her to explain her understanding of what's in her
4 notes and asking her what is the source of the data, the cap
5 rates and the NOI. If she doesn't know, then she can simply
6 say -- which I think she does repeatedly in this context.
7 She says, "I don't know." But I don't see that that's a
8 basis for it to be inadmissible.
9 We're not asking her as an expert. We're not
10 asking her as an employee of Newmark. She was already
11 familiar with those two entities because she was asked about
12 them. Cushman & Wakefield, this is page 118, lines 20
13 through 24:
14 "You mentioned that in your annual review -- you
15 mentioned in your annual reviews companies such as Cushman &
16 Wakefield and Newmark and counsel", meaning Mr. Amer, "I
17 believe has asked you about those as they were appraisal
18 firms. Is that your understanding of what they were?"
19 And this is now page 119:
20 "ANSWER: That's my understanding."
21 So then we start asking about questions about where
22 would this data come from and that operating income and the
23 cap rates and the question particularly relates to -- in a
24 series of questions relate again to her understanding of who
25 would have that data. And so this begins on page 120, line

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1 21 and then continues over to page 122 where we get to the
2 operative question after --
3 MR. AMER: I thought we were taking these one at a
4 time.
5 MR. KISE: There is no way to take them one at a
6 time.
7 THE COURT: He wants to take them holistically.
8 MR. KISE: It is not really possible because if you
9 take them one at a time, you're taking them in the abstract.
10 THE COURT: Keep going.
11 MR. KISE: Thank you, Your Honor. So on page 142,
12 line two, at the top, the question is asked, "Would it be
13 consistent with your understanding" as follows. And this
14 relates to who was providing the cap rates and who was
15 providing the net operating income. So all this series of
16 back and forth is designed to get at is where did -- what's
17 her understanding of where the information came from, which
18 is perfectly legitimate.
19 We're not asking her -- we don't need a foundation
20 to ask her about her own notes. You don't need a foundation
21 about why she put something in her notes. The foundation is
22 there. It is her notes and what is her understanding. So
23 it goes to her state of mind. We're not asking her and I
24 don't think the question calls for an answer about what
25 Newmark or Cushman & Wakefield actually did. She doesn't

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1 have to be an employee and if she doesn't know, just as
2 we've done many times in this courtroom, if she doesn't
3 know, then she --
4 THE COURT: She can say she doesn't know. We have
5 like negative three minutes. Let me just try this approach,
6 okay. We've got a three-month trial. We have thousands,
7 tens of thousands, hundreds -- millions of pages of
8 documents. Is one side or the other willing to just say
9 "big deal"?
10 MR. AMER: So, Your Honor, I think this is
11 important because they're trying to suggest that Ms.
12 Mouradian misunderstood something she was told despite the
13 fact that she took very careful notes. They could ask her
14 about what her notes say and what the basis was for the
15 information in her notes, but to start asking her how would
16 Cushman or Newmark know things is inappropriate.
17 The next question, "Would you agree with me that
18 the Trump Organization would be in the best position to know
19 how much income they're generating from a particular
20 property," there's no foundation for her to know that. How
21 does she know if Vornado General Partnership has better or
22 worse information?
23 THE COURT: Hold on one second.
24 MR. AMER: This is important and I think the Court
25 correctly ruled that this is inadmissible.

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1 MR. KISE: What Mr. Amer is trying to do is make
2 your decision for you. You are the one that's going to
3 decide whether she knew or not. We're entitled to present
4 our evidence as to what was in her mind and present it to
5 you and you look -- you take the evidence in and make a
6 decision as to whether or not it's acceptable or not.
7 What they want you to do is just exclude it
8 altogether and you never get to hear it and this is not a
9 witness now who is capable of being called live, so that we
10 can clarify things, so we can adjust our questions and
11 answers like we've done with many witnesses in court. So
12 there's really no basis to exclude it. There's no jury and
13 you're perfectly capable of weighing the questions and the
14 answers.
15 THE COURT: Okay. Thank you. Give me one minute
16 or less.
17 (Whereupon, there was a pause in the proceedings.)
18 THE COURT: Basically for the reasons that Mr. Kise
19 has argued, I'm going to let it in. There is no jury here.
20 I'll decide ultimately what's going on here anyway. So not
21 to denigrate Mr. Amer's argument, but it is in.
22 MR. AMER: Your Honor, we need two minutes at the
23 side-bar on a scheduling issue that came up within the last
24 45 minutes.
25 THE COURT: Hurry up.

1 (Whereupon, an off-the-record sidebar discussion
2 was held.)

3 (Whereupon the trial was adjourned to October 16,
4 2023, at 10:00 a.m.)

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NYSCEF DOC NO 1637
 NYS Attorney General v.
 Donald J. Trump, et al.

RECEIVED NYSCEF: 11/15/2023
 Patrick Birney
 October 13, 2023

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Patrick Birney
October 13, 2023

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In The Matter Of:
PEOPLE OF THE STATE OF NEW YORK v.
DONALD J. TRUMP, et al

PATRICK BIRNEY, MARK HAWTHORN, DONNA KIDDER
October 16, 2023

NICOLE C. ROBINSON

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PATRICK BIRNEY, MARK HAWTHORN, DONNA KIDDER October 16, 2023

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1 SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF NEW YORK : CIVIL TERM : PART 37
 2 ----- X
 3 PEOPLE OF THE STATE OF NEW YORK, BY
 LETITIA JAMES, ATTORNEY GENERAL OF
 THE STATE OF NEW YORK,
 4
 Plaintiff,
 5
 Index No.
 6 -against- 452564/2022
 7 DONALD J. TRUMP; DONALD TRUMP, JR.; ERIC TRUMP;
 IVANKA TRUMP; ALLEN WEISSELBERG; JEFFREY MCCONNEY;
 8 THE DONALD J. TRUMP REVOCABLE TRUST; THE TRUMP
 ORGANIZATION, INC.; TRUMP ORGANIZATION, LLC;
 9 DJT HOLDINGS, LLC; DJT HOLDINGS MANAGING MEMBER;
 TRUMP ENDEAVOR 12, LLC; 401 NORTH WABASH VENTURE,
 10 LLC; TRUMP OLD POST OFFICE, LLC; 40 WALL STREET,
 LLC.; AND SEVEN SPRINGS, LLC,
 11
 Defendants. ----- X
 12 Supreme Courthouse
 13 60 Centre Street
 New York, New York
 14 October 16, 2023
 B E F O R E:
 15 HONORABLE ARTHUR F. ENGORON,
 16 Justice, Supreme Court
 17
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 24 (Appearances continued on the next page.)
 25

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P. BIRNEY - DIRECT (MR. HAREN)

1 THE OFFICER: All rise. Part 37 is now in session.
 2 The Honorable Arthur Engoron presiding. Make sure all
 3 cellphones are on silent. Laptops and cellphones will be
 4 permitted, but only to members of the press. There's
 5 absolutely no recording or photography of any kind allowed
 6 in the courtroom. Now, be seated and come to order.
 7 THE COURT: Thank you, Tommy.
 8 And to the press and everyone else, the schedule
 9 for the rest of this week is somewhat up in the air as you
 10 may know. I expect to know more if not by lunchtime, more
 11 likely towards the end of the day and I will update
 12 everybody as best I can. So, okay, witness. You know there
 13 is that saying about arguing against the empty chair. Well,
 14 we have a literal as well as a figurative empty chair there.
 15 MR. KISE: Won't be tomorrow.
 16 THE COURT: So I hear.
 17 THE OFFICER: Witness entering.
 18 THE COURT: I will remind the witness as I always
 19 do that you are still under oath.
 20 Let's continue with the direct examination of Mr.
 21 Birney.
 22 P A T R I C K B I R N E Y, a witness called by the Plaintiff,
 23 after having been previously sworn by the Clerk of the Court,
 24 took the witness stand and testified as follows: .
 25 DIRECT EXAMINATION

Page 1352

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 25 Senior Court Reporters

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P. BIRNEY - DIRECT (MR. HAREN)

1 BY MR. HAREN: (CONT'D)
 2 Q Good morning, Mr. Birney. Thank you for being here for
 3 a third trial day in a row. Let's talk about the fixed assets
 4 approach used to value golf clubs on Mr. Trumps Statement of
 5 Financial Condition.
 6 I would like to pull up Plaintiff's Exhibit 742. This
 7 is the 2016 statements supporting data. Can we scroll down to
 8 row 263, please.
 9 Mr. Birney, do you have an understanding of the
 10 information contained in row 263 from column C to column H?
 11 A Yes.
 12 Q What's your understanding?
 13 A It shows the value of the fixed assets on the balance
 14 sheet of Trump National Golf Club Florida as of June 30, 2015
 15 and June 30, 2016.
 16 Q Let's go down to row 280. Same question for that row.
 17 A Yes. It shows the value of fixed assets on the balance
 18 sheet of Trump National Golf Club Briarcliff Manor as of June
 19 30, 2015 and June 30, 2016.
 20 Q Same question for row 304.
 21 A Shows the value of fixed assets for Trump National Golf
 22 Club bed minister's of June 30, 2015 and June 30, 2016.
 23 Q And then do you have an understanding of the
 24 information contained in rows 320 to 321 in column H? Excuse
 25 me. 319 and 320?

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1 A Yes.

2 Q What's your understanding?

3 A It shows the value of the fixed assets on the balance

4 sheet of Trump National Golf Club Colts Neck as of June 30, 2015

5 and June 30, 2016. The 2016 number was increased by 15 percent

6 premium for a fully operational branded facility.

7 Q And let's scroll down to row 339. Same question for

8 rows 339 to 340.

9 A Yes. It shows the value of fixed assets on the balance

10 sheet for Trump National Golf Club Washington, D.C. as of

11 June 30, 2015 and June 30, 2016. The 2016 figure was increased

12 by 15 percent for a premium for fully operational branded

13 facility.

14 Q And --

15 THE COURT: And I'll ask both the interrogator and

16 interrogatee to talk louder. The interrogator just

17 basically has to keep his voice up because his microphone is

18 where it is. The witness -- it's a skill you have to learn

19 how to talk into the mic while reading something, but you

20 have to talk into the mic, so it is heard. Thank you.

21 THE WITNESS: Okay.

22 Q Same question for rows 362 to 363.

23 A Yes. It shows the value of fixed assets on balance

24 sheet of Trump National Golf Club Philadelphia for June 30, 2015

25 and June 30, 2016. The 2016 value is increased by 15 percent

P. BIRNEY - DIRECT (MR. HAREN) Page 1356

1 for a premium for fully operational branded facility.

2 MR. HAREN: Just have a few more of those and I'll

3 try to do them all for a series of years, Your Honor, just

4 to move a little bit more quickly.

5 THE COURT: Great.

6 Q Same question for rows 382 to 383.

7 A The rows show the value of the fixed assets for Trump

8 National Golf Club Hudson Valley as of June 30, 2015 and as of

9 June 30, 2016. There was a 15 percent premium added to the 2016

10 figure for a fully operational branded facility.

11 MR. HAREN: And could we scroll down to row 403,

12 please.

13 Q Mr. Birney, we're looking at the entry for Trump

14 National Golf Club LA. Do you see the information in row 403

15 down to 405 in column H?

16 A Yes.

17 Q And what is your understanding of that information?

18 A My understanding is that shows the value of the fixed

19 assets as of June 30, 2016 and there's a -- for Trump National

20 Golf Club Los Angeles and there is a 15 percent premium added

21 for fully operational branded facility.

22 MR. HAREN: Let's move down to row 442.

23 Q And what is your understanding of the information in

24 rows 441 to 442 in column H?

25 A It shows the value of the fixed assets for Trump

P. BIRNEY - DIRECT (MR. HAREN) Page 1357

1 National Golf Club Charlotte as of June 30, 2016 and a

2 15 percent premium is added for a fully operational branded

3 facility.

4 MR. HAREN: So could we go down to row 462, please.

5 Q Same question for rows 462 to 463.

6 A This shows the value of the fixed assets for Trump

7 National Golf Club Jupiter as of 201 -- as of June 30, 2015 and

8 June 30, 2016. 15 percent premium was added on to the 2016

9 number for fully operational branded facility.

10 Q So the general approach that we have gone through in

11 this spreadsheet, the value of fixed assets in some cases with a

12 15 percent premium, was that a applied to Trump Organization

13 golf clubs for the Statement of Financial Condition from 2016 to

14 2020?

15 A It was applied to some of the Trump Organization golf

16 clubs in 2016 and I'm pretty sure it was in '17 through '20.

17 MR. HAREN: Okay. Let's pull up on the screen the

18 2020 supporting data. Just show one example.

19 Q So Mr. Birney, we're looking at Plaintiff's Exhibit 857

20 and you can see on the screen there is in row 367 to 369 in

21 column H that reflects the same basic approach we just discussed

22 in 2015 -- or 2016?

23 A Yes.

24 Q So there was a -- I'm just trying to establish that

25 there was a general consistency from 2016 to 2020 in terms of

P. BIRNEY - DIRECT (MR. HAREN) Page 1358

1 using the fixed assets and in some instances adding a premium.

2 Is that fair to say?

3 A Yes.

4 Q All right. Do the methods of valuing golf courses on

5 Mr. Trump's Statement of Financial Condition change in 2021?

6 A Yes.

7 Q Tell us what you recall about that change.

8 A There was a phone call with a golf course company

9 called Marcus & Millichap where we asked them how they value

10 golf courses and they gave us two different methods depending on

11 how much money the golf course was making. The first method was

12 for a golf course that consistently makes money. They used a

13 multiple of eight to ten times EBITDA for that golf course and

14 for golf courses that do not consistently make money, they used

15 a -- I think it was two to three times gross revenue

16 multiplier.

17 Q When you say consistently make money, what do you mean

18 by that?

19 A The net income of the golf course positive or negative.

20 Q If it makes money, the negative becomes a positive?

21 A Yes.

22 Q Who was on the call that you just described with the

23 golf course company?

24 A I was on the call, Larry Glick was on the call. I

25 can't remember the Marcus & Millichap person's name. That's who

P. BIRNEY - DIRECT (MR. HAREN) Page 1359

1 I am sure of right now.

2 Q Okay. Let's see if we can refresh your recollection

3 and pull up your prior testimony beginning at page 865. So, Mr.

4 Birney, beginning at line 11, and this is your testimony:

5 "So then there was a call in 2021 with Marcus &

6 Millichap. Present on our side that I can remember was

7 myself, Ray Flores, Allen Weisselberg, maybe Larry Glick

8 where we asked them how they value golf courses."

9 Do you see that?

10 A Yes.

11 Q Does that refresh your recollection as to who was on

12 the call you described with Marcus & Millichap?

13 A Yes.

14 Q So who was on the call with Marcus & Millichap?

15 A Myself, Ray Flores, Allen Weisselberg, the Marcus &

16 Millichap person and Larry Glick.

17 Q And if I were to say the name Steve Ekovich, would that

18 refresh your recollection as to the name of the Marcus &

19 Millichap person?

20 A Yes.

21 Q And what is your recollection of the name of the Marcus

22 & Millichap person?

23 A Steve Ekovich.

24 Q Thank you.

25 MR. HAREN: Let's go to the to 21 supporting data

P. BIRNEY - DIRECT (MR. HAREN) Page 1360

1 spreadsheet, Plaintiff's Exhibit 1501. Could we scroll down

2 to cell C323, please.

3 Q Mr. Birney, do you see in cell C323 where it states,

4 "6/30/21-upon the advice and guidance of Marcus & Millichap,

5 golf course industry experts, a normal golf course with a

6 negative EBITDA trades at two-three times gross revenue"?

7 A Yes.

8 Q Based on your description of the call a minute ago, did

9 the information from this cell come from Marcus & Millichap?

10 A In that sentence, yes.

11 Q Thank you.

12 Do you have an understanding of cells G311 to 313?

13 A Yes.

14 Q What's your understanding?

15 A It shows a valuation for Trump National Golf Club

16 Briarcliff with a gross revenue from July of 2020 through June

17 of '21 of \$7.3 million using a three times multiplier.

18 Q Do you have an understanding of cell G309?

19 A Yes.

20 Q What is your understanding?

21 A That is the value of the net fixed assets per Trump

22 National Golf Club Briarcliff was of June 30, 2021.

23 Q What is your understanding of cell G315?

24 A It's the average of the gross revenue multiplier and

25 the net fixed assets.

P. BIRNEY - DIRECT (MR. HAREN) Page 1361

1 Q So just so I understand correctly, the \$21.9 million

2 valuation was computed by doing a gross revenue multiplier, but

3 the result was then averaged with the \$46 million fixed asset

4 number?

5 A Yes.

6 Q Back to the description of the fixed assets in cell

7 C309, you see it says, "value of net fixed assets"?

8 A Yes.

9 Q In cell H308 for the prior year, it says, "value of

10 fixed assets." Do you have an understanding of the difference

11 between value of fixed assets in 2020 and value of net fixed

12 assets in 2021?

13 A Yes.

14 Q What is the difference?

15 A The difference is depreciation being removed.

16 Q I'm sorry. What was that?

17 A Depreciation being removed from the fixed assets.

18 Q Okay. Thank you. There is some descriptions in this

19 sheet of net fixed assets and net book value.

20 Would your answer be the same for those figures?

21 A Can you repeat the question, please?

22 Q There are other descriptions in this sheet of the

23 phrase net fixed assets or net book value, and I just want to

24 know if your understanding of the word "net" in those instances

25 is the same?

P. BIRNEY - DIRECT (MR. HAREN) Page 1362

1 A Can you show me an example?

2 Q Sure.

3 MR. HAREN: Just Ctrl-F for the word "net," "net

4 fixed."

5 Q So here is an example, cell C417, the phrase "value of

6 net fixed assets is used." But in cell C413, there is a

7 reference to value of fixed assets is used in the prior year.

8 I'm just trying to gain an understanding of the difference

9 between fixed assets and net fixed assets.

10 A The depreciation is removed from fixed assets to get to

11 net fixed assets.

12 Q Okay.

13 MR. HAREN: Search for the phrase, "net book

14 value," please.

15 Q Mr. Birney, this cell C640.

16 MR. HAREN: In cell C, if you can scroll up, so the

17 witness can see what property this pertains to.

18 Q So we have cell C, B and C608 says, "Trump Turnberry."

19 Do you see that?

20 A Yes.

21 Q And if we scroll down to cell C640, it states -- I'll

22 just read the end of the sentence. "So we used net book value."

23 Do you see that?

24 A Yes.

25 Q Do you have an understanding of the phrase "net book

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1 value"?

2 A Yes.

3 Q And what is your understanding?

4 A My understanding based on this example is it means the

5 same thing as net fixed assets.

6 Q In other words, what is netted out is depreciation?

7 A That is my understanding.

8 MR. HAREN: Let's go to cell C357, please.

9 Q Do you have an understanding of the information

10 contained in cell G356? Do you want us to scroll up?

11 A Yes, please.

12 MR. HAREN: Could you scroll up, please, to where

13 the property begins.

14 Q So Mr. Birney, you can see cell B and C, row 343 says,

15 "Trump National Golf Club-Bedminster."

16 So having seen that, do you have an understanding of

17 the information in cell G356?

18 A Yes.

19 Q What is your understanding?

20 A My understanding is cell G356 shows the value of Trump

21 National Golf Club Bedminster in June 30, 2021.

22 Q And that value is about \$80 million down from the prior

23 year; is that right?

24 A Yes.

25 Q How was the 2021 value computed?

P. BIRNEY - DIRECT (MR. HAREN) Page 1365

1 EBITDA?"

2 A It means that Turnberry has not consistently had a

3 positive EBITDA.

4 Q And just for a layperson who doesn't fully understand

5 the term "EBITDA," can you explain that?

6 A Sure. It means Earnings Before Interest Taxes

7 Depreciation and Amortization. So it is similar to net income

8 before all those things.

9 Q Is it a way of conveying that the property or at least

10 in this cell the property has not consistently had positive net

11 income?

12 A I would have to see the financials to confirm that.

13 Q So your understanding of the word "EBITDA" is earnings

14 before the other thing I said earlier, the acronym?

15 A Yes.

16 Q Did you ever do a calculation of a Turnberry valuation

17 for 2021 using a gross income multiplier?

18 A I don't remember.

19 Q Did you ever discuss with anybody whether to use a

20 gross income multiplier to value Turnberry in 2021?

21 A Yes.

22 Q Tell us the substance of the discussion.

23 A I think I discussed with Ray Flores the question,

24 probably Alan Garten.

25 Q Without getting into the substance of any legal advice,

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1 A The EBITDA was used from July 2020 through June 2021

2 including capital leases and was multiplied by ten. Then the

3 receivables from members for food, dues, et cetera, and the

4 receivables from members for refundable and/or non-refundable

5 deposits were added to that figure.

6 Q And in cell C357, it states, "6/30/21-upon the advice

7 and guidance of Marcus & Millichap, golf course industry

8 experts, a normal golf course with a consistently positive

9 EBITDA trades at six to eight times, but the last few purchases

10 have been 9 to 10 times." Do you see that?

11 A Yes.

12 Q And in the valuation that we saw at cell G356, the ten

13 times number was used; is that right?

14 A I believe so.

15 Q And that's the highest number that was reflected in the

16 advice provided by Marcus & Millichap?

17 A Yes.

18 Q Mr. Birney, take a look at cell C640. We looked at

19 this a minute ago just to gain and understanding of the phrase

20 "net book value," but I want to focus you on the other part of

21 the note that reads, "6/30/21-location has not had" -- "has not

22 consistently had a positive EBITDA and resorts are not usually

23 valued on gross revenue multipliers, so we used net book value."

24 What does it mean that this property "has not had

25 consistent" -- excuse me, "has not consistently had a positive

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1 can you describe whether any calculation of valuation based on

2 gross revenue was discussed in that conversation?

3 A I really don't remember.

4 MR. HAREN: All right. Let's just pull up on the

5 screen Plaintiff's Exhibit 2270.

6 Q I just want to see if that refreshes your recollection.

7 MR. HAREN: I assure the Court we will not be going

8 through this entire document.

9 Q Mr. Birney, do you recognize this document?

10 A Yes.

11 Q What do you recognize it to be?

12 A The income statement for Trump Turnberry.

13 MR. HAREN: I would like to move this document into

14 evidence.

15 THE COURT: Granted. It is in evidence.

16 (Whereupon, the Document was marked in evidence as

17 Plaintiff's Exhibit 2270.)

18 Q Mr. Birney, do you see on the first page there is a

19 line about ten lines down that says "total revenues"?

20 A Yes.

21 Q Do you have an understanding of the figure in that line

22 in the column that is entitled, "Y-T-D actual"?

23 A Yes.

24 Q What's your understanding?

25 A That is the year-to-date actual total revenue for Trump

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1 Turnberry through December 2020.
 2 Q The number is 6.6 million and change?
 3 A Yes.
 4 Q And then the next column over, what's your
 5 understanding of the 21.6 million that's reflected there?
 6 A That is the total budgeted revenue for 2020.
 7 Q Presumably, it is a COVID year, so the revenue brought
 8 in was a lot less than the revenue expected. Is that fair?
 9 A Yes.
 10 Q All right. And where it says in the next column over
 11 to the right "Y-T-D last year," in the context of this
 12 statement, does that refer to 2019?
 13 A Yes.
 14 Q So what is your understanding of the figure in the
 15 total revenues line in that column?
 16 A The figure is the 2019 revenue.
 17 Q So the budgeted total revenue for 2020 was 21.6. The
 18 actual revenue for 2019 was 19.5; is that fair?
 19 A Can you repeat the question?
 20 MR. HAREN: Sure. Could I have a readback, please?
 21 THE COURT: Please.
 22 (Whereupon, the requested portion of the record was
 23 read back.)
 24 A Yes.
 25 Q Did you ever look at these total revenue figures in the

Page 1368

1 context of deciding whether to use a gross revenue multiplier to
 2 value Trump Turnberry for the 2021 Statement of Financial
 3 Condition?
 4 A I don't remember. It's possible.
 5 (Continued on the next page.)
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P. Birney - Plaintiff - direct (Haren) Page 1369

1 MR. HAREN: Okay. Let's go back to Exhibit 1501
 2 and could we go to Row 646, please?
 3 Q Mr. Birney, what is your understanding of the
 4 information contained in Column G Row 646 to 648?
 5 A It shows the gross revenue from July of 2020 through
 6 June of 2021 for Trump International Golf Club Scotland using a
 7 three times multiplier.
 8 Q So the result of a -- of a gross revenue multiplier
 9 method was 4.42 million?
 10 A Yes.
 11 Q And what's your understanding of Cell G 644?
 12 A The value of the net fixed assets as of June 30, 2021
 13 for Trump International Golf Club Scotland.
 14 Q And the number is 32 million and change?
 15 A Yes.
 16 Q And what's your understanding of Row 650 in Column H?
 17 A It's the average of those two figures, the gross
 18 revenue multiplier and the net fixed assets.
 19 Q So the gross revenue produced again at 4.42 million but
 20 it was averaged with 32 million in net fixed assets to produce
 21 the value?
 22 A Yes.
 23 MR. HAREN: Let's pull up Plaintiff's Exhibit 1356.
 24 Q Mr. Birney, do you recognize this document?
 25 A Yes.

P. Birney - Plaintiff - direct (Haren) Page 1370

1 Q What do you recognize it to be?
 2 A A spreadsheet that I created.
 3 Q Can you describe for the Court the contents between
 4 Column B and Column O?
 5 A Sure. It lists the financial results for each golf
 6 club for various periods ultimately using the last 12 months
 7 since June of 2021. Asset T 12 it means the past 12 months. It
 8 shows increases over the last two years and then it shows what
 9 multiplier may be used in Columns N and O.
 10 Q So the figure in Columns N are those calculated values?
 11 A Yes.
 12 Q And are they based on the method that's then listed in
 13 Column O in the same row? Let me see if I can do it in a less
 14 generic way. So Column O Row 6 states: "10 X EBITDA." Do you
 15 see that?
 16 A Yes.
 17 Q Is that the method that's used to compute the numbers
 18 that is in the same row in Column N?
 19 A Yes.
 20 Q And so just so that we can understand the nature of the
 21 document is that true all the way down in those columns to the
 22 bottom of the sheet? In other words, there is a method listed
 23 in Column O and then there is a number computed based on that
 24 number in Column N?
 25 A That appears to be with -- what's on the screen right

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1 now.

2 Q And what circumstances led you to create this

3 spreadsheet?

4 A The call with Marcus & Millichap.

5 Q So can you just tell us the call happened and then what

6 were the steps that you took to prepare this spreadsheet?

7 A I gathered the income statements and balance sheets for

8 the golf clubs for these periods and put them into the

9 spreadsheet.

10 MR. HAREN: I'd like to move this document into

11 evidence.

12 THE COURT: Granted. It's in.

13 (Whereupon, the item previously referred to is

14 received and marked Plaintiff's Exhibit Number 1501 in

15 evidence.)

16 Q I want to focus your attention on Columns Q through U.

17 Do you have an understanding of the phrase "net book value" in

18 Q3?

19 A Yes.

20 Q And what is your understanding?

21 A That is the net fixed assets on the balance sheet.

22 Q And by "net" you mean taking out depreciation as you

23 said earlier?

24 A I believe so.

25 Q And then in Column S it says "gross book value" in Cell

P. Birney - Plaintiff - direct (Haren) Page 1373

1 the various multipliers; right?

2 A Yes.

3 Q And so comparing Cell N 48 to U 48, you can see the

4 difference of about \$230 million give or take between using a

5 gross book value with 15 percent and using revenue multipliers.

6 Is that fair?

7 A Revenue and EBITDA multipliers, yes.

8 MR. HAREN: All right. Let's go to Plaintiff's

9 Exhibit 344, please.

10 Q Mr. Birney, do you recognize this document?

11 A Yes.

12 Q What do you recognize it to be?

13 A An e-mail from myself to Caitlin Carey and Jeff

14 McConney.

15 MR. HAREN: I move this document into evidence.

16 THE COURT: Granted. It's in.

17 (Whereupon, the item previously referred to is

18 received and marked Plaintiff's Exhibit Number 344 in

19 evidence.)

20 Q Just want to direct you to page two. Do you have an

21 understanding of who Caitlin Carey is?

22 A Yes.

23 Q And what's your understanding of who she is?

24 A She works -- or she worked at the time of this e-mail

25 at Deutsche Bank.

P. Birney - Plaintiff - direct (Haren) Page 1372

1 S3. Do you have an understanding of what that refers to?

2 A Yes.

3 Q And what's your understanding?

4 A The total fixed assets for that period.

5 Q And why is it gross as opposed to net?

6 A Because it does not include depreciation.

7 Q And do you have an understanding of Cell U 3?

8 A Yes.

9 Q And what is your understanding?

10 A That is the method that was used in the past, however

11 many years using the total fixed assets with a 15 percent

12 premium added onto the light blue cells.

13 Q And because it says "gross book value," does that mean

14 depreciation was not removed or the 15 percent was added?

15 A Yes.

16 MR. HAREN: I'd like to scroll down a little bit

17 more, please. And I think you'll have to spread Column Q

18 out and Column S out to see the numbers on the bottom.

19 Q So Mr. Birney, we're looking at Row 48 Columns N

20 through U. I just want to see if I understand these figures

21 correct. So figure in Column U 48, that's a total of what the

22 gross book value with 15 percent method yields?

23 A Yes, it says some of the cells above in that column.

24 Q And just to get a comparison between U 48 and N 48, I

25 think you'll remember that N 48 is the number computed based on

P. Birney - Plaintiff - direct (Haren) Page 1374

1 Q And do you see in her e-mail of November 10, 2017 to

2 Jeff McConney copying you, she writes: "Hi, Jeff. I have a

3 somewhat of an annoying but necessary request. We received the

4 covenant package while you were out, thank you Patrick, and the

5 guarantor certificate only references endeavor. Since he also

6 provides a guaranty for OPO as well, we would need a compliance

7 certificate referencing this separate facility. Since covenants

8 are the same for both loans we can combine for next year but for

9 2017, can you provide the separate form. We just want to make

10 sure all the Is and Ts are dotted and crossed. Thank you."

11 And you'll see following that e-mail there is a

12 response from Mr. McConney that says: "Hi, Caitlin. No

13 problem. Can I get it to you next week? Jeff."

14 And following those exchanges there is an e-mail on the

15 first page from you to Caitlin Carey, copies Jeff McConney

16 stating: "Caitlin, as discussed, see attached compliance

17 certificate for Trump Old Post Office LLC. Let us know if you

18 need anything further. Thank you. Pat."

19 And the attachment to the e-mail begins on page four of

20 the exhibit and it pertains among other things to -- and this is

21 in the middle of the page, guarantor's Statement of Financial

22 Condition as of June 30, 2017. It's item number one in the

23 first bullet. And then on page five of the document there is a

24 signature that says underneath the signature line, "Donald J.

25 Trump by Donald J. Trump, Jr. as attorney in fact." Do you see

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1 that?

2 A Yes.

3 Q Do you have an understanding of how Donald J. Trump,

4 Jr. came to sign this document?

5 A Not really.

6 Q Did you do anything to get his signature?

7 A I don't remember.

8 Q And the provision of a signed compliance certificate

9 pertaining to Mr. Trump's Statement of Financial Condition is

10 that something you could have sent to a bank without having your

11 action approved by someone else?

12 A No.

13 Q Whose approval would you have required to take that

14 step?

15 A Based on this example probably Jeff McConney.

16 MR. HAREN: Let's pull up Plaintiff's Exhibit 1450.

17 Q Mr. Birney, do you see on the first page the document

18 states: "It is a development appraisal with a date of July 14,

19 2017?"

20 A Yes.

21 Q And it states "Ryden," R-y-d-e-n on the bottom left

22 side. Do you have an understanding of what Ryden is?

23 A I think they're a company based in Scotland. I don't

24 really know too much about what they do.

25 Q Do you see on page two of the document -- and this is

P. Birney - Plaintiff - direct (Haren) Page 1376

1 in Item 1.4, second sentence, it states: "As agreed with Sarah

2 Malone of Trump International, we have prepared appraisals that

3 reflect a development scenario."

4 A Yes.

5 Q Do you have an understanding of who Sarah Malone is?

6 A Yes.

7 Q Who is Sarah Malone?

8 A The general manager of Trump International Golf Club

9 Scotland.

10 Q Is that the property located in Aberdeen?

11 A Yes.

12 Q Have you worked with Ms. Malone before?

13 A Yes.

14 Q Tell us about your work with Ms. Malone.

15 A She's the GM of one of our golf clubs, so I've done a

16 lot of work with Sarah Malone.

17 Q In her capacity as general manager of the Trump

18 International Golf Club Scotland?

19 A Yes.

20 MR. HAREN: I move this document into evidence.

21 THE COURT: Granted. It's in.

22 (Whereupon, the item previously referred to is

23 received and marked Plaintiff's Exhibit Number 1450 in

24 evidence.)

25 Q Were you ever provided a copy of the Ryden Development

P. Birney - Plaintiff - direct (Haren) Page 1377

1 Appraisal that's Plaintiff's Exhibit 1450 when you were working

2 on Mr. Trump's Statements of Financial Condition?

3 A I don't think so.

4 MR. HAREN: Let's pull up Plaintiff's Exhibit 1317.

5 Q Mr. Birney, do you see that the document on the first

6 page is entitled, "Planning Statement for Trump International

7 Golf Links Scotland?"

8 A Yes.

9 Q And do you see that it states below that "in respect of

10 development comprising up to 550 dwellings (up to 500

11 residential units and a minimum of 50 leisure/resort units?"

12 A Yes.

13 Q And do you see that it is dated 24 July 2018?

14 A Yes.

15 Q As they like to write dates across the pond.

16 Take a look at page three of the exhibit, Paragraph 2.1

17 where it states: "The development is the next phase of the

18 continued investment in and development of the Trump Estate. It

19 represents a revisal to the phasing originally proposed in terms

20 of the OPP which is no longer economically viable." Do you see

21 that?

22 A Yes.

23 Q And on page five of the exhibit in Paragraph 3.3, it

24 states: "The description of the development is now as follows:

25 550 dwellings (up to 500 residential units and a minimum of 50

P. Birney - Plaintiff - direct (Haren) Page 1378

1 leisure/resort units." Do you see that?

2 A Yes.

3 Q Were you ever provided a copy of this document when

4 working on Mr. Trump's Statement of Financial Condition?

5 A I don't think so.

6 MR. HAREN: I'll move this document into evidence,

7 Your Honor.

8 THE COURT: Granted. It's in.

9 (Whereupon, the item previously referred to is

10 received and marked Plaintiff's Exhibit Number 1317 in

11 evidence.)

12 MR. HAREN: Let's go to Plaintiff's Exhibit 1319.

13 Q Mr. Birney, do you see that the document has a heading

14 entitled "Aberdeenshire Council?"

15 A Yes.

16 Q Do you see that it states on page two, item four

17 "Planning application-APP/2018/1814-erection of 550 dwelling

18 houses (up to 500 residential units and a minimum of 50

19 leisure/resort units." Do you see that?

20 A Yes.

21 Q And then on page five of the document at the top it

22 states: "The development hereby granted shall be begun before

23 the expiration of 15 years from the final approval of the

24 matters specified in conditions or in the case of approval on

25 different dates. The final approval of the last such matters to

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1 be approved," and then the word "Conditions" in bold follows.
 2 Do you see that?
 3 A Yes.
 4 Q I'd like to direct you to page six where it states:
 5 "And this is Condition Number 03, the total number of houses
 6 hereby granted shall not exceed 550 units. No more than 500 of
 7 the 550 units" -- excuse me -- "550 houses hereby granted shall
 8 be sold as private houses." Do you see that?
 9 A Yes.
 10 Q And Condition Number 04 begins with the following:
 11 "The golf villas and leisure/resort units hereby
 12 approved shall be occupied on a holiday letting or a fractional
 13 ownership basis only and for no other purposes whatsoever,
 14 including use as permanent residential units without the prior
 15 express grant of planning permission by the Planning Authority."
 16 Do you see that?
 17 A Yes.
 18 Q Were you ever provided with this document when you were
 19 working on Mr. Trump's Statements of Financial Condition?
 20 A I don't think so.
 21 MR. HAREN: Let's go to Plaintiff's Exhibit 1157
 22 and 1157 -- excuse me.
 23 I'd like to move Plaintiff's Exhibit 1319 into
 24 evidence.
 25 THE COURT: Granted. It's in.

P. Birney - Plaintiff - direct (Haren) Page 1380

1 (Whereupon, the item previously referred to is
 2 received and marked Plaintiff's Exhibit Number 1319 in
 3 evidence.)
 4 Q Mr. Birney, Plaintiff's Exhibit 1157 is an e-mail
 5 that's on the screen and it states an e-mail to you, to Donna
 6 Kidder copying Jeff McConney and Allen Weisselberg. And in the
 7 e-mail you wrote: "Donna, see attached 2015 Trump Organization
 8 cash flow shell." Do you see that?
 9 A Yes.
 10 Q Can you describe just in general terms the nature of
 11 the preparation of the shell spreadsheet that's attached and
 12 described in your e-mail?
 13 A I think it's a big spreadsheet. Can we see the
 14 spreadsheet?
 15 MR. HAREN: Sure. Let's pull up the native file.
 16 This is PX 1157 native.
 17 Q Mr. Birney, you can see a title that says "Trump
 18 Organization Corporate Cash Flow 2015" and then it has a date of
 19 02.01.16, the same date as the e-mail you sent? Do you see
 20 that?
 21 A Yes.
 22 Q And what did you mean when you used the word "shell" in
 23 the e-mail?
 24 A That it's a spreadsheet that's built out but without
 25 any numbers in it.

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1 Q Okay. Let's go back to the spreadsheet. So can you
 2 just give us your understanding of the information contained in
 3 Column B?
 4 A Which column?
 5 Q B?
 6 A My understanding is those are business segments of the
 7 Trump Organization.
 8 Q So these are segments or assets to which numbers will
 9 later be inserted into the spreadsheet. Is that fair?
 10 A Yes.
 11 Q Did you prepare this document with Allen Weisselberg?
 12 A Can you scroll down, please, to the bottom? Yes.
 13 Q There is a note at the bottom identified with the
 14 letter B. Does that relate to any of the assets that are listed
 15 above in Column B?
 16 A Can you scroll up, please? Yes.
 17 Q Which assets does it relate to?
 18 A 1290 Avenue of the Americas and 555 California Street.
 19 Q And as for the substance of Note B, did Mr. Weisselberg
 20 instruct you to include that information in the spreadsheet?
 21 A I think so.
 22 MR. HAREN: Let's go to Plaintiff's Exhibit 1293
 23 and 1293 native already in evidence.
 24 Q Mr. Birney, you see in your e-mail of February 25, 2016
 25 to Allen Weisselberg copying Jeff McConney you stated: "Allen,

P. Birney - Plaintiff - direct (Haren) Page 1382

1 see attached. I put three copies for the kids in their folders
 2 on your chair. You and Jeff have copies on your desks. I'll
 3 call you tomorrow."
 4 A Yes.
 5 Q Do you -- taking a look at the attachments, the file
 6 names, what do you recognize those to indicate? Just the file
 7 names back on the e-mail? Do you have an understanding of
 8 "cover memo 2.24.16.docx?"
 9 A Yes.
 10 Q And what's your understanding?
 11 A It's a separate document that was attached as a cover
 12 memo of the operating financial summary.
 13 Q And did you prepare the cover memo to the operating
 14 financial summary?
 15 A Probably.
 16 Q Why were you sending this e-mail to Mr. Weisselberg?
 17 A I don't remember.
 18 Q Did you and he work on preparing the corporate cash
 19 flow spreadsheet together?
 20 A Yes.
 21 Q Did you have an understanding when you were preparing
 22 the spreadsheet that it would be provided -- let me go back.
 23 Do you have an understanding of the phrase "the kids"
 24 as used in this e-mail?
 25 A Yes.

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1 Q And what do you understand that to refer to?

2 A The Trump kids, the Trump children.

3 Q Can you give us their names?

4 A Yes, Don, Jr., Eric and Ivanka.

5 Q And when you were preparing the spreadsheet that we saw

6 that started as a shell on February 1st did you have an

7 understanding that it would be provided to Donald Trump, Jr.,

8 Eric Trump and Ivanka Trump?

9 A Can you ask the question, please, again?

10 THE COURT: Read back, please.

11 (Whereupon, the requested portion of the

12 proceedings was read back by the court reporter.)

13 A I mean, I probably did because of this e-mail.

14 Q Okay. Why did you send this e-mail to Jeff McConney?

15 A I don't remember.

16 Q What was Mr. McConney's involvement in developing the

17 corporate cash flow spreadsheet?

18 A Can you toggle back to the spreadsheet, please?

19 MR. HAREN: Sure. Let's pull up Exhibit 1293

20 native.

21 A Jeff provided me information on this spreadsheet.

22 Q Do you have a recollection of what information he

23 provided you?

24 A Yes, I believe he provided me the corporate payroll and

25 overhead information.

Page 1384

1 Transcript continues on the following page....

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1 Q Just speaking generally, what was the origin of the

2 project that began with the February 1st shell and either that

3 was ongoing with Exhibit 1239 that was on the screen now?

4 A I don't remember.

5 Q You don't have any recollection of being instructed in

6 or around February 1st of 2016, we should get this corporation

7 cash flow shell together and we should fill it in with

8 information? Do you have a recollection of that generally?

9 A I was probably asked to do it. I may have brought it

10 up. I really don't remember.

11 Q Let's -- looking at the spreadsheet, looking at cell

12 J21, can you tell us what that indicates?

13 A Yes.

14 Q And what does it indicate?

15 A The adjusted net cash flow before distributions for the

16 clubs in 2015.

17 Q When you say "the clubs," what are you referring to?

18 A The golf clubs, Mar-A-Lago, Trump Briarcliff Manor

19 Development.

20 Q And so just all of those properties, according to this

21 spreadsheet, had an adjusted net cash flow before distributions

22 of 5.6 million; is that right?

23 A According to this spreadsheet, yes.

24 Q Looking at J31, what does that cell indicate?

25 A The adjusted net cash flow before distributions for the

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1 commercial properties in 2015.

2 Q What do you mean by "commercial properties?"

3 A Trump Tower, 40 Wall and Niketown.

4 Q What is the figure that's in the adjusted net cash flow

5 before distributions column for those assets?

6 A 2.2 million.

7 THE COURT: Five-minute warning.

8 Q Cell J91, just want to get your understanding looking

9 in column B, starting at row 86, there is an item entitled

10 "Trump Corporation." Do you see that?

11 A Yes.

12 Q And then below Trump Corporation, there are a series of

13 unallocated costs. Do you see that?

14 A Yes.

15 Q Do you have an understanding of cell B87?

16 A Which cell? Sorry.

17 Q B87.

18 A Yes.

19 Q And what's your understanding?

20 A It is the unallocated corporation payroll for property

21 development.

22 Q Is that B87 or B88?

23 A I'm sorry. That was B88. B87 is unallocated corporate

24 payroll general or generic.

25 Q And cell B88?

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1 A One more time.

2 Q Cell B88, what's your understanding?

3 A Unallocated corporate payroll for property development.

4 Q And B89?

5 A Unallocated net medical benefits.

6 Q B90?

7 A Unallocated corporate expenses.

8 Q In cell J91, those expenses total to 12.6 million. Is

9 that what the document indicates?

10 A Yes.

11 Q Are any of -- when it says "unallocated," does that

12 mean that these expenses are not allocated to the assets listed

13 higher up in the spreadsheet?

14 A Can you, please, scroll up slowly? Higher, please.

15 Yes. I think it means it doesn't include any corporate

16 payroll or overhead that's already listed in the rows within the

17 business segments.

18 MR. HAREN: Okay. Let's go back to the e-mail,

19 Exhibit 1293, and scroll down page two or three where the

20 attachment is.

21 Q So Mr. Birney, this is the other attachment, the cover

22 memorandum. Do you recognize that?

23 A Yes.

24 Q Did you prepare this document?

25 A Yes.

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1 Q It states in the first line, "As per your request," and

2 you see that the memorandum is from Allen Weisselberg to Don,

3 Jr. Ivanka and Eric.

4 Do you have an understanding of what "as per your

5 request" as it is used in this document means?

6 A My understanding is they requested to see the financial

7 performance based on this memo.

8 Q And by they, do you mean the people in the "to" ine in

9 the memo?

10 A It's possible. I mean, it's probable.

11 Q You prepared the memorandum, right?

12 A Yes.

13 Q Did you have an understanding when you prepared it of

14 who it was for?

15 A Yes.

16 Q What was your understanding?

17 A It was for Don, Jr., Ivanka and Eric.

18 Q It states at the bottom of the memo --

19 THE COURT: One minute.

20 Q "After reviewing the enclosed, let's get together to

21 discuss at your convenience."

22 Are you aware of any discussion among Allen

23 Weisselberg, Donald Trump, Jr., Ivanka Trump and Eric Trump

24 regarding this memorandum?

25 A Any discussion after this memo was sent?

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1 Q Either one, before or after. Let's start with before.

2 A I don't know. I -- I don't remember any of these

3 meetings. I may have been invited. I may not have been

4 invited.

5 Q Do you have a recollection sitting here today as to

6 whether this memorandum or the native spreadsheet Exhibit 1293

7 were discussed in the meeting with Allen Weisselberg, Donald

8 Trump, Jr., Eric Trump and Ivanka Trump?

9 A I don't remember any meetings.

10 MR. HAREN: Okay.

11 THE COURT: Okay. Let's take a 10-minute break. I

12 will see you back here in 15 minutes.

13 (Witness exits the stand.)

14 (Whereupon, a recess was taken.)

15 THE COURT OFFICER: All rise. Part 37 is back in

16 session. Please be seated and come to order.

17 THE COURT: The witness, please.

18 THE COURT OFFICER: Witness entering.

19 (Witness resumes the stand.)

20 THE COURT: Let's continue.

21 Q Mr. Birney we are going to switch topics to did there

22 come a point in 2021 when you participated in a virtual meeting

23 about the 2021 Statement of Financial Condition?

24 A Yes.

25 Q Did that meeting occur over a service called Google

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1 Meet?

2 A Probably.

3 Q Can you describe what Google Meet is?

4 A Google Meet is a video call service through Google.

5 Q In a Google Meeting, you can speak to people about

6 video and share documents; is that right?

7 A Yes.

8 Q The meeting that I asked you about, how many

9 participants were in the meeting?

10 A I worked remote for 2021, so there were a lot of these

11 calls. So can we be more specific about which meeting you're

12 referring to?

13 Q Sure. Specifically a meeting over Google Meet about

14 the 2021 Statement of Financial Condition.

15 A There were multiple meetings in 2021 as I was remote.

16 Q Were there any meetings about the 2021 Statement of

17 Financial Condition in which Donald Trump, Jr. and Eric Trump

18 participated?

19 A Yes.

20 Q So about -- speaking about that meeting, how many

21 other participants were there other than those two people?

22 A Myself, Alan Garten, Ray Flores, Jeff McConney.

23 Q Allen Weisselberg was not in the meeting?

24 A I don't think Allen Weisselberg was in that meeting.

25 Q Approximately when did this Google Meeting occur?

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1 A Probably in October of 2021.

2 Q During the Google Meeting that we are talking about

3 now, did you share any information with the other participants?

4 A Yes.

5 Q What did you share?

6 A I shared documents on the screen.

7 Q And what were those documents?

8 A I believe I toggled between a few documents during the

9 call. One I think was a Statement of Financial Condition

10 summary. One was the supporting data spreadsheet. And we may

11 have seen the Word document which would have been the -- a

12 draft of the final Statement of Financial Condition.

13 Q You mentioned a Statement of Financial Condition

14 summary. What did you mean by that?

15 A I think I put together a one-pager, like a one-page

16 spreadsheet that showed the 2020 Statement of Financial

17 Condition versus the 2021 Statement of Financial Condition with

18 some sort of a difference in probably dollars and percentage

19 between the two.

20 Q Can you describe visually how the spreadsheet looked?

21 A From what I remember, it was a fairly simple one-page

22 spreadsheet with asset or asset classes on the left column and

23 2020 or 2021 on the next column, and then the other year on the

24 column after that and then a difference column.

25 Q Did the spreadsheet have a title?

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1 A Yeah, I'm sure it had a title.

2 Q Would the title have included the phrase SOFC?

3 A I don't -- probably.

4 Q I'm only asking these questions because I'm not aware

5 that we have a copy of this particular summary, so I'm trying to

6 get an understanding of how it appears or what words are used in

7 it.

8 Would the phrase "Statement of Financial Condition" or

9 "SOFC" likely appear in the summary spreadsheet you're

10 describing?

11 A Likely.

12 Q Focusing back on this Google Meeting, were any

13 valuation methodologies discussed on the call?

14 MR. ROBERT: Objection.

15 THE COURT: What are the grounds?

16 MR. ROBERT: This is a meeting with Alan Garten who

17 is general counsel of the Trump Organization, so whatever

18 discussions they had at this meeting is subject to Trump

19 Organization privilege as well as my client's privilege.

20 MR. HAREN: I would state Mr. Birney has already

21 testified about this in his transcript. This issue has been

22 out in the public for many, many months.

23 MR. ROBERT: Yes. So Mr. Birney testified for a

24 period of five days before the Attorney General in the

25 examination under oath stage and the issues that Mr. Haren

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1 is about to get into didn't happen on the first two days and

2 it was only the first two days that the Trump Organization

3 was allowed to have counsel in the room. Mr. Garten was in

4 the room as well as the attorney for the Trump Organization.

5 On the subsequent three days, it is my

6 understanding the Attorney General specifically prohibited

7 the Trump Organization from having an attorney there. So to

8 the extent Mr. Birney did testify about it at that point, we

9 were not in the room to be able to object to it that this

10 was a privileged conversation. That's why we are now making

11 the objection that it is privileged.

12 MR. HAREN: The Court ruled in September of 2020

13 this is about documents in the possession of Morgan Lewis &

14 Bockius that all documents related to preliminary valuations

15 of the Seven Springs easement as documents related to a

16 preliminary valuation are of a business and not legal

17 nature. The question posed to Mr. Birney during his

18 examinations, which I will just say again, you have had

19 transcripts of for ten months and have been out in the

20 public pertain to valuation and valuation discussions, not

21 legal advice.

22 MR. ROBERT: Those documents, as far as I know, are

23 not the public domain. And to your point, Mr. Haren, if

24 you're talking about a court ruling in September of 2020, my

25 notes show that the three days of the examinations when this

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1 issued came up were in 2022. So whatever ruling the Court

2 had then may have been documents maybe appropriate to Ms.

3 Dillon's testimony. Right now, we are talking about what

4 Mr. Birney knows, what took place in that conversation. I

5 think you've established in that Google Meeting virtually

6 that there were people in the room including my clients and

7 the general counsel. So our view is that meeting is

8 absolutely privileged.

9 MR. HAREN: So I direct you to plaintiff's

10 statement of undisputed facts, Exhibit 138, NYSCEF 946

11 containing Mr. Birney's testimony from pages 1183 through

12 1197 currently sitting on the docket of the court, discussed

13 at summary judgment. It is part of the record. It is in

14 public with no objection from your clients discussing the

15 content of this meeting.

16 MR. ROBERT: Right now for the first time, you're

17 asking a witness under oath to discuss the substance and

18 consents of the meeting. To the extent whatever is out

19 there is out there, but right now, this is the first

20 opportunity we have to object to this fact, that this was a

21 privileged meeting.

22 MR. HAREN: You had the opportunity to make that

23 objection since you received the transcripts of

24 investigative testimony back in 2022 and you could have made

25 the same objection in the summary judgment papers.

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1 MR. ROBERT: I am not aware of a procedure
 2 whereby something that happened in the past, we are under an
 3 obligation until you have a witness on the stand that you
 4 are now inquiring about the substance of that conversation.
 5 As I said, the Court had, as far as I understand, extensive
 6 briefing during the special proceeding. Obviously, Mr. Kise
 7 and I were not part of that, but in my reading of it,
 8 Your Honor made certain with third parties and whatnot.
 9 Notwithstanding any of that, Mr. Birney's testimony, as far
 10 I understand, was not part of what this Court's ruling was.
 11 MR. HAREN: I will just say in line with the
 12 Court's prior rulings, that valuation is of a business and
 13 not a legal nature, I plan to keep my questions specifically
 14 to the issue of valuation and Mr. Birney's prior testimony,
 15 which in any event is admissible as an admission of a party
 16 because he is a Trump Organization employee.
 17 MR. ROBERT: But you can't have an admission of a
 18 party when there is a conversation with counsel for the
 19 party while there's already an investigation that's
 20 underway. I don't remember the date that you started your
 21 investigation, but clearly, these meetings in March of 2022
 22 is when it's, as far as I know, very active especially in
 23 this court with regard to enforcement of subpoenas and your
 24 investigatory practice. So there is no question that during
 25 this time, whatever conversations happened with counsel for

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1 ruling which related to communications that took place, I
 2 believe, with Ms. Dillon in the 2015, 2016, 2017 time
 3 period. Historical conversations, I will call it. That's a
 4 very different thing than a conversation during the course
 5 of an ongoing Attorney General investigation where a lawyer
 6 is present and the subject matter of the investigation is
 7 the subject matter of what they're talking about. So it's
 8 no longer strictly business.
 9 I mean, now you're talking about conversations that
 10 are taking place while there is an active investigation
 11 about that very subject. That's very different than the
 12 Court's prior rulings because the Court's prior rulings
 13 again related to historic conversations before that predate
 14 as far as I know even any investigation. So now you've
 15 got -- and there are no third parties involved in this
 16 particular conversation.
 17 This isn't a situation where you have outside
 18 counsel or outside parties. This is all self-contained
 19 within the corporation. They're discussing the Statement of
 20 Financial Condition. Those very Statements of Financial
 21 Condition including the 2021 statement are the subject of
 22 the Attorney General's investigation and now case. So I
 23 think to say that there's been any waiver or that these
 24 would not be privileged in some way because they relate in
 25 part to business doesn't take into account the context of

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1 the Trump Organization is a privilege of the Trump
 2 Organization.
 3 THE COURT: All right. Give me a moment.
 4 MR. ROBERT: Yes, sir.
 5 (Whereupon, there was a pause in the proceedings.)
 6 THE COURT: I'm not going to try to untangle the
 7 whole history of what was waived or not. However, the fact
 8 that there was a lawyer in the room doesn't mean that there
 9 was any attorney-client information being passed back and
 10 forth. The client asking or the attorney responding, this
 11 was all business. And my next point, basically, this is
 12 all -- this was all business related and that's what the
 13 earlier rulings were.
 14 I understand that counsel -- current counsel for
 15 defendants weren't there, but when I looked at this
 16 extensively and finally, I don't know what the questions
 17 are. Nobody knows what the questions are except the
 18 questioner, so I'll overrule -- there is a general
 19 objection because a lawyer was in the room is the
 20 attorney-client privilege, but if there is a specific
 21 question that addresses legal advice, we can revisit it as
 22 opposed to business advice.
 23 Mr. Kise.
 24 MR. KISE: Yes, Your Honor. Thank you. So I think
 25 we have to draw a significant distinction between the prior

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1 the conversations because these are no longer -- at this
 2 point, they're no longer business conversations. At this
 3 point, these are corporate employees and officers with the
 4 general counsel of the corporation discussing
 5 actively -- discussing a subject that is actively under
 6 Attorney General investigation.
 7 And so I don't see how the privilege -- the
 8 privilege would be at its peak under those circumstances
 9 respectfully, Judge, because that's where the privilege
 10 would apply the most is when the corporation is discussing
 11 internally the very subject matter that is at the core of
 12 the investigation.
 13 THE COURT: Cliff, have you been teaching New York
 14 law to Cliff here?
 15 MR. ROBERT: He's doing great.
 16 THE COURT: He's pretty good at that. I think
 17 that's a wonderful distinction. However, just the fact that
 18 a lawyer is present in the room we don't know that he said
 19 anything or that they asked him anything. Overruled without
 20 prejudice based on the particular testimony we hear.
 21 MR. WALLACE: Your Honor, I apologize for
 22 interrupting my colleague, but I guess this raises one issue
 23 which Mr. Haren mentioned during the exam which is we don't
 24 have any documents or the underlying documents presented
 25 during this meeting. If those were withheld because of

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1 privilege, but haven't been logged, we would appreciate
 2 identification of those documents that were withheld during
 3 this period for privilege if there are -- if that is the
 4 reason we don't have some of these materials and we're happy
 5 to put in a letter, so that it is reflected; but I think we
 6 would like to make that request.

7 THE COURT: Exactly. You'll have to really specify
 8 where we are in this. I just want to also return to what
 9 Mr. Kise said. I specifically said I'm not claiming -- I'm
 10 not ruling based on waiver because that would take a lot of
 11 unpacking at this point. So objection is overruled. You
 12 are not prejudiced based on the specific testimony and let's
 13 continue.

14 Q Did you answer the question were any valuation
 15 methodologies discussed on the call?

16 THE COURT: Repeat that louder.

17 Q Were any valuation methodologies discussed in the
 18 Google Meeting?

19 THE COURT: Please answer.

20 A Yes.

21 Q Which valuation methodologies were discussed during the
 22 Google Meeting that we are discussing now?

23 A The golf course valuations.

24 Q And specific, did you discuss any information learned
 25 from Marcus & Millichap during the Google Meeting?

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1 A Yes.

2 Q Did you convey any information about the impact of that
 3 advice on the golf course valuations in the 2021 Statement of
 4 Financial Condition?

5 A Yes.

6 Q What did you convey about that? Keep your answer
 7 specifically to valuation.

8 A I believe I said the only thing that really changed
 9 from last year was the golf courses. The reason we changed the
 10 golf course valuations is because we had a call with Marcus &
 11 Millichap and they advised similar to what I testified
 12 previously that they -- they value golf courses using eight to
 13 ten time EBITDA or two to three time revenue multiplier.

14 Q And you would agree it was a fairly significant change
 15 in valuation method from how the golf courses had been valued in
 16 the previous years?

17 A It was different.

18 Q Did you want to make Eric Trump and Donald Trump, Jr.
 19 aware of the change?

20 MR. KISE: Your Honor, objection. So I'm not
 21 exactly sure where's he going with this, but I also want to
 22 put another objection on the record. To the extent the
 23 question is calling for evidence of subsequent remedial
 24 measures, changes that were made during the course of time
 25 that relate to perhaps a reaction to the investigation, we

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1 would object to its introduction.

2 The New York Evidence guide which is only in line,
 3 you apparently don't have that statute, but provides at
 4 Section 4.19 that evidence measures taken after an event,
 5 that if taken before the event would have made injury or
 6 damage less likely to result in civil proceedings is not
 7 admissible when offered to prove culpable conduct in
 8 connection with the event. So I realize that this comes up
 9 as in most experiences -- this issues comes up with respect
 10 to negligence cases --

11 THE COURT: Exactly.

12 MR. KISE: -- whatnot, but based on the plain
 13 language of 4.19, it is not limited to that. The only case
 14 so far that I can find, I know you're not going to like
 15 this, but the only case so far that I can find that makes
 16 this point is the Domino's case where the court there
 17 pointed out that the notion that a company would react to a
 18 government investigation in which it clearly was a target by
 19 taking such steps meaning -- I am skipping the long form --
 20 taking steps, meaning remedial steps is hardly surprising.
 21 Indeed, to the extent they might be considered "subsequent
 22 remedial measures," which should be encouraged rather than
 23 discouraged, their admissibility is doubtful.

24 So based on the plain language of 4.19, anything
 25 that relates to any kind of subsequent remedial measure that

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1 was taken during the course of the investigation, we think
 2 is inadmissible for that reason, that it is evidence that's
 3 consequent to remedial measure.

4 The other thing I will point out --

5 MR. HAREN: Am I able to respond to the first point
 6 before you go to the second point?

7 MR. KISE: It is all connected.

8 THE COURT: Let Chris continue.

9 MR. KISE: I want to make sure the record is clear
 10 that the objection on privilege is a continuing objection,
 11 not that we have to object on each question.

12 THE COURT: Yes, that's understood. Let me also go
 13 back to that. I used to -- in another case, I've done a
 14 lot of research on the attorney-client privilege and the one
 15 thing that's very clear is you can't take a non-privileged
 16 document, give it to an attorney and say now it is
 17 privilege, which seems to me somewhat similar. You can't
 18 put an attorney in the room. There is a meeting about
 19 accounting matters, valuation matters. I don't know what
 20 Mr. Garten's knowledge of accounting and valuations is, but
 21 just the fact that he is there, I'm just adding that I'm not
 22 arguing your point.

23 First, threshold question. Does anyone know if the
 24 subsequent remedial measure rule applies in non-jury cases?

25 MR. KISE: I have never heard of a non-jury

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1 exception to it.
 2 THE COURT: Nor have I, but I'm just wondering.
 3 MR. KISE: I have never heard of a non-jury
 4 exception.
 5 MR. HAREN: Certainly, at lunchtime, research
 6 topic.
 7 THE COURT: Let's hear the general response to the
 8 subsequent remedial measure objection.
 9 MR. HAREN: Sure. So I'm not asking the question
 10 for the purpose of showing a subsequent remedial measure
 11 that was or wasn't taken. There is an issue in this case as
 12 who as the top executives of the Trump Organization from
 13 2017 to 2021 had authority to take certain steps. And I'm
 14 asking the question to establish the role of certain people
 15 in approving a change in valuation methodology during the
 16 relevant period. That is the reason for the question, not
 17 to establish or use any remedial measure that was taken to
 18 show culpability.
 19 MR. KISE: So to the extent it is not designed to
 20 show culpable, than obviously the objection wouldn't apply;
 21 but I stopped because I wasn't sure of that. So if that's
 22 the representation that they're not seeking to introduce
 23 this, that's fine.
 24 With respect to the privilege, one more thing,
 25 though, and that is the change in methodology. What hasn't

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1 MR. HAREN: If we could pull up Exhibit 1501.
 2 You can look at any of the cells about the golf
 3 course memberships of 2021 and it will say on the advice and
 4 guidance -- they don't say "upon the advice of counsel."
 5 THE COURT: Why don't we go directly to the
 6 question that Mr. Kise raises. Well, first of all, did
 7 Mr. Garten participate at all in this meeting at which he
 8 was present? Did he say anything, did he answer any
 9 questions, did he have input into this discussion?
 10 Yes, that's a question to the witness. Sorry for
 11 stealing your thunder here.
 12 THE WITNESS: It was a conference call. I'm sure
 13 he said something.
 14 THE COURT: I don't think that will do it.
 15 Objection overruled.
 16 MR. HAREN: Could we have a read back of my
 17 question before the long interlude?
 18 THE COURT: Yes, please read back.
 19 (Whereupon, the requested portion of the
 20 proceedings was read back by the court reporter.)
 21 Q And that before golf course methodology?
 22 A I believe the purpose of the call was to update them on
 23 the status of the current year's Statement of Financial
 24 Condition, so I said that I can't really answer if I wanted to
 25 say that.

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1 been established is whether or not that change in
 2 methodology came about as a result of the question by
 3 counsel or a recommendation by counsel. That's the danger
 4 of getting into all of this, is that there should be some
 5 recommendation by counsel that hey, you guys should do "X"
 6 or you guys should do "Y."
 7 This is why we think that these conversations are
 8 inherently privileged and Your Honor is right, not simply
 9 because an attorney is in the room. It is not converting an
 10 otherwise non-privileged conversation, but to the extent
 11 that these changes are discussed in the context of an
 12 ongoing investigation and methodologies are changed as a
 13 result of advice from counsel, and I don't know that this
 14 witness or any other witness is necessarily equipped to draw
 15 those fine distinction, which is why we are raising.
 16 (Continued on the next page.)
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P. Birney - Plaintiff - direct (Haren) Page 1406

1 Q So would it refresh your recollection if we pulled up
 2 some of your prior testimony, pages 1194 to 1195?
 3 A Sure.
 4 Q Starting at line 17:
 5 "QUESTION: So I'm trying to understand, the change
 6 is discussed about golf club valuation method. You
 7 described it as a consensus decision among you, Mr. Garten
 8 and Mr. Flores; correct?
 9 "ANSWER: Yes.
 10 "QUESTION: Does that decision need to be approved
 11 by someone else at the company who is superior to the three
 12 of you after it's made in your group consensus?
 13 "ANSWER: I don't know if there was an official
 14 approval. I think that's why it brought up the change in
 15 methodology in that call with Don and Eric."
 16 And I just said "okay" and you continued your
 17 answer: "So that they were at least aware."
 18 Does that refresh your recollection as to whether
 19 you wanted to advise Donald Trump, Jr. and Eric Trump about
 20 the change in golf course methodology that occurred in 2021?
 21 A I discussed it. I don't know if I wanted to discuss
 22 it. Can you ask the question in a different way maybe?
 23 Q Sure. We can look at your testimony. It says "I think
 24 that's why it brought up the change in methodology in that call
 25 with Don and Eric so that they were at least aware."

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1 Why did you want to make them at least aware of that
 2 change?
 3 A Because it was a, as you put it, significant change to
 4 the year before.
 5 MR. HAREN: All right. Let's pull up Plaintiff's
 6 Exhibit 1086.
 7 Q Mr. Birney, do you recognize this document?
 8 A Yes.
 9 Q What do you recognize it to be?
 10 A An e-mail from myself to Jeff McConney on October 23,
 11 2017.
 12 Q And do you have an understanding as to what the
 13 attachments are?
 14 A Yes.
 15 Q And what's your understanding?
 16 A The drafts of the spreadsheets that are used for the
 17 annual Statement of Financial Condition in 2017.
 18 MR. HAREN: Okay. Let's -- I'd like to move this
 19 document into evidence.
 20 THE COURT: Granted. It's in.
 21 (Whereupon, the item previously referred to is
 22 received and marked Plaintiff's Exhibit Number 1086 in
 23 evidence.)
 24 MR. HAREN: Let's put on the screen Plaintiff's
 25 Exhibit 1086_native01.

P. Birney - Plaintiff - direct (Haren) Page 1408

1 Q Mr. Birney, this is an attachment to the e-mail we were
 2 just looking at. Do you recognize it?
 3 A Yes.
 4 Q What do you recognize it to be?
 5 A This was attached to this e-mail?
 6 Q Yes.
 7 A This is the October 10, 2017 draft of the Supporting
 8 Data spreadsheet.
 9 MR. HAREN: I'll move the native document on the
 10 screen into evidence.
 11 THE COURT: Granted. It's in.
 12 (Whereupon, the item previously referred to is
 13 received and marked Plaintiff's Exhibit Number 1086_native01
 14 in evidence.)
 15 MR. HAREN: Can we scroll down to Row 1004, please?
 16 Q Mr. Birney, the information contained in Row 1004 from
 17 Column J to Column M, we talked about this in a different
 18 spreadsheet, but just to get your understanding again does that
 19 information track asset values between the -- this draft and the
 20 prior year?
 21 A Yes.
 22 Q Did you have a practice of maintaining a cell to track
 23 overall asset value changes?
 24 A Multiple cells, yes.
 25 Q And by "multiple cells" are you referring to the items

P. Birney - Plaintiff - direct (Haren) Page 1409

1 in Row 1004 right there from J to M?
 2 A There is a whole formula in -- there is a lot of
 3 numbers in Column K and a lot of numbers in Column O that track
 4 differences.
 5 Q But in terms of the overall total, did you have a
 6 practice of maintaining a cell to track the overall total of
 7 asset values from one year to the next?
 8 A I think so.
 9 Q Did you have an understanding when you were working at
 10 the Trump Organization that you might be asked how asset values
 11 were shaping up as compared to the prior year?
 12 A Yes.
 13 Q Did Mr. Weisselberg generally ask you about asset
 14 values from one year to the next?
 15 A Yes.
 16 Q Did he ever tell you that Mr. Trump wanted his net
 17 worth on the Statement of Financial Condition to go up?
 18 A Can you repeat the question, please?
 19 Q Did Allen Weisselberg ever tell you that Mr. Trump
 20 wanted his net worth on the Statement of Financial Condition to
 21 go up?
 22 A Yes.
 23 Q Where did that occur, your conversation with
 24 Mr. Weisselberg?
 25 A I think that happened in Allen's office, Allen

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1 Weisselberg's office.
 2 Q And approximately when did that occur?
 3 A Between 2017 and 2019.
 4 Q Okay.
 5 MR. HAREN: Your Honor, I have no further questions
 6 for this witness.
 7 MR. KISE: Just on that, I just want to be sure the
 8 record is clear if that question-and-answer series is being
 9 offered to establish what Mr. Weisselberg told Mr. Birney,
 10 that's one thing, but not for the truth of the matter. In
 11 other words --
 12 THE COURT: I think that's right.
 13 Would the Attorney General agree?
 14 MR. HAREN: I think there are a number many reasons
 15 why that statement is admissible. It's admissible to prove
 16 Mr. Weisselberg's state of mind or the admission by
 17 Mr. Weisselberg was a Trump Organization agent. It's
 18 admissible to show the existence of a conspiracy. We can
 19 argue admissibility later, but it's certainly admissible for
 20 a number of reasons.
 21 THE COURT: Yes, but the question is is it
 22 admissible to show the truth of the statement.
 23 MR. KISE: Right. I don't think it's admissible to
 24 show the truth of the -- that would be the truth of the
 25 statement itself. The fact that Mr. Weisselberg told

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1 Mr. Birney that and whatever Mr. Birney's state of mind
 2 resulting from that, that's fine. But to establish the
 3 underlying truth of the matter therein that there is some
 4 underlying conspiracy, I don't see how that would be
 5 admissible for that purpose.
 6 MR. WALLACE: Just to clarify is it -- the question
 7 is from Trump to Weisselberg. That's hearsay. Weisselberg
 8 to Birney for all the reasons Mr. Haren explained is
 9 admissible.
 10 THE COURT: I think we all agree.
 11 MR. KISE: For all the reasons except proof of a
 12 conspiracy, the fact that Mr. Weisselberg said anything to
 13 Mr. Birney, Mr. Birney is not a coconspirator, he's not
 14 alleged to be a coconspirator. So whatever Mr. Weisselberg
 15 may have told Mr. Birney isn't evidence of any conspiracy.
 16 It doesn't form any evidence of an agreement or
 17 conspiratorial conduct. In order for it to be evidence of a
 18 conspiracy, you would then have to go to the truth of the
 19 matter. In other words, is it true what Mr. Trump told
 20 Mr. Weisselberg about increasing the statement. Exactly
 21 what Mr. Wallace just said they weren't admitting it for.
 22 MR. HAREN: I would just state there is case law,
 23 including People versus Caban, 5 NY3d 143. "The acceptance
 24 of an invitation to take an act can be a verbal act that is
 25 an element of a conspiracy."

P. Birney - Plaintiff - direct (Haren) Page 1412

1 There is case law about statements like this that
 2 indicate they tend to show the existence of an agreement and
 3 they can be admitted for that purpose. So we're happy to
 4 put in a letter on that if there is some need to further
 5 specify the purpose for which the statement can be used, but
 6 there is -- I don't think there is any doubt that the
 7 evidence itself is admissible for the reasons Mr. Wallace
 8 mentioned.
 9 MR. KISE: I think we might because again the case
 10 law I believe Mr. Haren is referring to are case law about
 11 statements between coconspirators, not between some alleged
 12 conspirator and some third party about what some other
 13 alleged co-conspirator said. That's the heart of hearsay.
 14 So while statements between coconspirators might be admitted
 15 for that purpose for demonstrating an agreement, the having
 16 -- they're mixing concepts which is not infrequent. They're
 17 mixing hearsay and they're mixing, you know, the center, but
 18 we can brief all this. We don't have to spend all day --
 19 THE COURT: Okay. By tomorrow, two-page minimum?
 20 MR. KISE: We would need to see -- yes, yes. We
 21 need to see what their case law is, but yes.
 22 THE COURT: Okay.
 23 MR. HAREN: Thank you, Your Honor.
 24 THE COURT: All right. Will there be any cross
 25 examination of this witness at this time?

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1 MR. KISE: No, not at this time.
 2 THE COURT: Plaintiff, would you like to call your
 3 next witness?
 4 MR. AMER: Yes, Your Honor. The People call Mark
 5 Hawthorn.
 6 (Whereupon, the witness enters the courtroom and
 7 approaches the witness stand.)
 8 THE COURT OFFICER: Please raise your right hand.
 9 Do you solemnly swear or affirm that any testimony you give
 10 will be the truth, the whole truth and nothing but the
 11 truth?
 12 M A R K H A W T H O R N, called by and on
 13 behalf of the People, having been first duly sworn, was examined
 14 and testified as follows:
 15 THE WITNESS: Yes.
 16 THE COURT OFFICER: Please have a seat.
 17 State your full name and either business or home
 18 address for the record.
 19 THE WITNESS: My name is Mark Hawthorn. My
 20 business address is 725 Fifth Avenue, New York.
 21 THE COURT: And please speak right into the
 22 microphone, directly like this, loudly, clearly, slowly.
 23 DIRECT EXAMINATION
 24 BY MR. AMER:
 25 Q Good afternoon, Mr. Hawthorn. It's good to see you

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1 again. Just for the record, my name is Andrew Amer on behalf of
 2 the People. Are currently employed?
 3 A Yes.
 4 Q And where are you employed?
 5 A The Trump Organization.
 6 Q And what is your current title?
 7 A Chief operating officer of Trump Hotels.
 8 Q We'll circle back to your employment responsibilities
 9 in a minute, but can you summarize for us your educational
 10 background after high school?
 11 A After high school I attended the University of Florida.
 12 I studied accounting, got a bachelor's and a master's degree in
 13 accounting, graduated in the year 2000.
 14 Q And since graduating have you received any professional
 15 certifications or licenses?
 16 A Yes, the CPA license in the state of Florida.
 17 Q And what did you have to do generally speaking to
 18 obtain your CPA license?
 19 A You need to meet the required school credits to sit for
 20 the CPA exam and then you have to sit for the CPA exam to be
 21 awarded the license and you have to upkeep your license by
 22 taking continuing professional education.
 23 Q Can you describe for us your employment history after
 24 graduating from University of Florida with your bachelor's and
 25 master's degrees in accounting?

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1 A Yes. After graduating, I was employed in the public
2 accounting industry. So first, for Arthur Anderson from 2000 to
3 2002 then at Ernst & Young, 2002 to 2004.
4 Q And what type of work generally speaking did you do
5 when you were employed by those accounting firms?
6 A I did audit engagements on behalf of the accounting
7 firm, for both public and private companies.
8 Q And when you say "private companies," is that similar
9 to the Trump Organization?
10 A It would be a company that doesn't have public stock or
11 public debt versus an SEC registrant being a public company.
12 Q Just to circle back to my question, that's similar to
13 the Trump Organization; correct?
14 A Correct, the Trump Organization does not have stock or
15 public debt.
16 Q And where did you next go after your employment with
17 those two accounting firms?
18 A Then I worked in an industry at a organization called
19 Kerzner International. I joined there in 2004 as a financial
20 reporting manager. That's a hospitality firm that owned and
21 operated luxury resorts. I continued to work there until 2016
22 in various levels of responsibility in finance and accounting
23 and treasury.
24 Q Did you do audit work there as well?
25 A I did not. I was a client -- I was the actual client.

M. Hawthorn - Plaintiff - direct (Amer) Page 1416

1 I worked with the auditors of the company, but I was a
2 representative the company, so I wasn't necessarily auditing. I
3 was preparing the information.
4 Q And just so I understand you were preparing information
5 that you were providing to the outside accounting firm who was
6 the auditor; is that right?
7 A That's correct.
8 Q And what did you understand your responsibility to be
9 in terms of providing information to the outside accounting
10 firm?
11 A To be responsible, diligent, provide truthful
12 information that's accurate.
13 Q Can you -- and then am I correct you went to the Trump
14 Organization in 2016?
15 A In February of 2016, I was hired as the chief
16 accounting officer of Trump Hotels and I've remained in
17 employment there with varying degrees of promotion, currently in
18 my role as chief operating officer of Trump Hotels.
19 Q Why don't we go through the various titles that you
20 have held at the Trump Organization. You mentioned chief
21 accounting officer, which is the -- that's the position you
22 started at?
23 A Correct.
24 Q And who did you report to in that position?
25 A I reported to a gentleman named Eric Danzinger who at

M. Hawthorn - Plaintiff - direct (Amer) Page 1417

1 the time was the CEO of Trump Hotels.
2 Q And what was your next position after chief accounting
3 officer?
4 A I really just continued in that role. In that role I
5 was the highest financial responsibility person in the hotel
6 division, so simply in I believe January of 2020, my title was
7 just updated to chief financial officer, although my duties were
8 pretty much similar, still reporting to the CEO.
9 And then the CEO departed the company in May of 2022
10 and I was promoted again to chief operating officer overseeing
11 the operations aspects of the hotel division.
12 Q Has anybody assumed Mr. Danzinger's position as CEO of
13 the hotel's division?
14 A No. There is no CEO, but effectively I now oversee the
15 hotel brand operations.
16 Q So are you the most senior executive person within the
17 hotel's division of the Trump Organization?
18 A Yes.
19 Q And can you just explain to us how the hotel's division
20 fits within the overall corporate structure of the Trump
21 Organization?
22 A Everything related to the hotel properties that we own
23 and/or manage. So the organization as you may be familiar owns
24 commercial real estate, operates golf courses and has other
25 holdings, so the hotel division operates specifically to the

M. Hawthorn - Plaintiff - direct (Amer) Page 1418

1 owned and managed hotels in the hotel portfolio.
2 Q Are there other divisions that are at the same level as
3 the hotel division that deal with the other aspects of the
4 business that you've just mentioned?
5 A I would say, you know, there is the golf -- private
6 golf club and public golf clubs, which is part of hospitality.
7 Then you have real estate realty division. Those are the two
8 that come to mind that I might interact with the most.
9 Q For a golf course that also has a hotel, how does that
10 fit in?
11 A It's both -- right. It's a golf resort, let's say. So
12 we have several properties that have overnight accommodation,
13 right, for a hotel where guests can stay. Then those hotels may
14 also have golf courses situated on them. So the consolidated
15 reporting would be under the hotel division auspices, but I
16 would work with individuals in the golf division as well.
17 Q Now, in terms of going further up the chain where does
18 the hotel division report into?
19 A So currently I report to Eric Trump.
20 Q And what is Mr. Trump's position?
21 A I believe he's EVP of the Trump Organization.
22 Q And just for the record, executive vice president?
23 A Yes, I believe that's right.
24 Q And who has been the direct report to the head of the
25 hotel's division since you joined in 2016 through today?

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1 A So if I understand your question correctly, so the CEO
 2 of Trump hotels, my former boss, Mr. Danzinger, reported to Eric
 3 Trump prior to his departing and now that I'm in that effective
 4 role, I report to him.

5 Q So just to summarize for the entire time that you've
 6 been with the Trump Organization the hotel's division has
 7 reported directly into Eric Trump; is that right?

8 A I think that's fair.

9 Q You spoke about the accounting function within the
 10 hotel division. How does that relate to the accounting function
 11 over which Mr. Weisselberg presided as chief financial officer
 12 while he was at the company?

13 A So in my role I would oversee the accounting and
 14 finance for the hotel properties and I would provide information
 15 as requested from time to time from, let's say, the corporate
 16 accounting function, which was led by Mr. Weisselberg at that
 17 time when he was employed there.

18 Q And you are getting directly to my inquiry. There is a
 19 separate corporate accounting group that's separate and apart
 20 from the hotel's division. That was the group that
 21 Mr. Weisselberg was the head of while he was at the company; is
 22 that right?

23 A Yes.

24 Q And who did you interact with in corporate accounting?

25 A From time to time Mr. Weisselberg, Jeff McConney, Donna

M. Hawthorn - Plaintiff - direct (Amer) Page 1420

1 Kidder. Those are probably the three individuals most
 2 interacted with.

3 Q And by the way, where is your office located in
 4 relation to the corporate accounting group?

5 A Different floor. So I'm on the 25th floor in Trump
 6 Tower; that group is on the 26th floor.

7 Q And can you just describe to us what your working
 8 relationship was with Mr. Weisselberg during the period of time
 9 that you both overlapped at the company?

10 A More like a helpful business partner. If information
 11 was required, I would provide information.

12 Q Was there any direct or dotted line reporting
 13 relationship between you and Mr. Weisselberg?

14 A I was -- perceived him to be more senior than me, so if
 15 there is an aspect he required my help, I would certainly
 16 provide him information, but my direct report was to
 17 Mr. Danzinger.

18 Q And can you also describe your working relationship
 19 with Mr. McConney during the period of time that you overlapped
 20 with him?

21 A Similar to as I described.

22 Q Did you work at all with Patrick Birney?

23 A Yes.

24 Q And what was your working relationship with Mr. Birney
 25 during that period of time since you started at the company in

M. Hawthorn - Plaintiff - direct (Amer) Page 1421

1 2016?

2 A Similar interactions. If there was information that in
 3 his role he required from the hotel division, then it would be
 4 my responsibility to provide that information.

5 Q And you mentioned that you currently report in to Eric
 6 Trump; correct?

7 A Yes.

8 Q And have you reported directly into Mr. Eric Trump
 9 since you -- since Mr. Danzinger left?

10 A Correct, since May, I guess, March of 2022.

11 Q And during the time that you've been employed with the
 12 Trump Organization since 2016, what has been your understanding
 13 of Eric Trump's role at the company?

14 A He is, you know, the leader of the company along with
 15 his brother Don, Jr.. I would say Eric is mostly involved in
 16 the operations whereas Don oversees development.

17 Q In connection with operations would you consider Eric
 18 Trump to be the chief decisionmaker at the company?

19 A Yes.

20 Q Mr. Hawthorn, you testified that you are a certified
 21 public accountant; correct?

22 A Yes.

23 Q Are you familiar with generally accepted accounting
 24 principles in the United States commonly referred to as GAAP?

25 A Yes.

M. Hawthorn - Plaintiff - direct (Amer) Page 1422

1 Q And were you required to become familiar with GAAP for
 2 purposes of obtaining your CPA license?

3 A Yes.

4 Q And do you continue to keep up with developments
 5 concerning GAAP as part of your continuing education that you
 6 testified to as a requirement for maintaining your CPA license?

7 A Yes.

8 Q What is your understanding of what GAAP is broadly
 9 speaking?

10 A GAAP is a set of principles that oversees the
 11 accounting function, the books and records of how they're kept
 12 at a company that follows GAAP. So GAAP is an accrual basis
 13 method of accounting that is widely recognized and followed for
 14 private and public companies that are required to report under
 15 GAAP.

16 Q Are you familiar with something known as a compilation
 17 engagement?

18 A Yes.

19 Q What is your understanding of a compilation engagement?

20 A Generally speaking a compilation engagement is an
 21 engagement where an accounting or audit firm would engage --
 22 would be engaged by a company to put together a financial
 23 statement and it would be the lowest level of assurance as
 24 opposed to an audit.

25 Q When you say "lowest level of assurance" and you

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1 mentioned "audit," are there other types of engagements that
 2 would come between an audit and a compilation in terms of level
 3 of assurance?
 4 A The three I'm most familiar with would be compilation,
 5 agreed-upon procedures and an audit.
 6 Q And what do you mean when you say "lowest level of
 7 assurance?" What does that mean?
 8 MR. KISE: Your Honor, objection. Has this witness
 9 been called as an expert? I'm not sure what relevance this
 10 has. He's here as a fact witness and I've given Mr. Amer
 11 some latitude, but he's asking what appears to be expert
 12 testimony about GAAP.
 13 MR. AMER: This is about his professional
 14 experience in connection with what he will soon testify is
 15 his involvement in the Statements of Financial Condition.
 16 MR. KISE: Subject to that connection.
 17 THE COURT: Objection sustained. I agree. I have
 18 a somewhat strict view of fact witnesses; what did you see,
 19 what did you hear, what did you do, and this seems to be to
 20 be asking more for expert testimony and you said you're
 21 about to get to what he does, so let's get to what he does.
 22 Q Since joining Trump Hotels have you had any
 23 responsibility for compilation engagements?
 24 A Yes.
 25 Q Which Trump entities have you worked on compilations

M. HAWTHORN - DIRECT (MR. AMER) Page 1425

1 Q And do you have an understanding as to why these two
 2 entities had to prepare compilations?
 3 A They were required under property loans for those
 4 properties, so that they would have to be submitted to the
 5 lender.
 6 Q And can you generally describe your role in connection
 7 with working on these compilation engagements for the Trump
 8 Organization?
 9 A Sure. I had responsibility of oversight of those
 10 reports.
 11 Q And what does that entail, oversight?
 12 A So if I may explain in appropriate context, so each
 13 property has its own financial controller. It maintains its own
 14 general ledger, data. So those properties would report
 15 those -- the general ledger data in their financial statements
 16 that I would review and oversee, and I would work with the
 17 accounting firm to get them the information they require in
 18 order to prepare the compilation report.
 19 Q And did you have an understanding as to what your
 20 obligation was as the client in providing information to Mazars
 21 and Whitley Penn as the outside accounting firm?
 22 A Yes.
 23 Q And what was your understanding?
 24 A I provided the general ledger and oversaw that the
 25 report was provided to them was from our system and was what

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1 for?
 2 A 401 North Wabash Venture LLC, which is commonly known
 3 as the Trump Chicago property, Trump Endeavor 12. That's the
 4 legal entity of the ownership of Trump International Doral.
 5 Q And which accounting firms have you worked with on
 6 those compilation engagements for the Trump Organization?
 7 A I've worked with Mazars and I've worked with Whitley
 8 Penn.
 9 Q And at Mazars who was the engagement partner you worked
 10 with on those compilations?
 11 A That was Donald Bender.
 12 Transcript continues on the following page....
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M. HAWTHORN - DIRECT (MR. AMER) Page 1426

1 they needed to prepare the statement.
 2 Q Did you have any understanding as to whether you had an
 3 obligation to provide truthful and accurate information to
 4 Mazars and Whitley Penn?
 5 A I certainly did.
 6 Q What was your understanding?
 7 A To provide such information that was truthful and
 8 accurate.
 9 Q We have been talking about compilations that you worked
 10 on with Mazars and Whitley Penn for Doral and Chicago.
 11 Did you become aware at some point in time that there
 12 was a compilation prepared for Donald J. Trump that was his
 13 personal Statement of Financial Condition.
 14 A I would say in 2021.
 15 Q In 2021, you did become aware of such a document,
 16 correct?
 17 A Yes.
 18 Q What were the circumstances under which you first
 19 became aware that there was a Donald J. Trump personal Statement
 20 of Financial Condition?
 21 A I was aware of it through the media reports of it at
 22 that time and this ongoing litigation. My personal involvement
 23 with it was very limited. In addition to the compilation
 24 reports that we discussed, I was also tasked with overseeing
 25 audits of other entities that required financial audits. So

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1 there's entities that we have in our ownership that the company
 2 has in its ownership in Scotland. So we have -- there is a
 3 Hotel Trump Turnberry. There's also Trump Aberdeen.
 4 In working with the outside accounting firm for those
 5 audits, there was a situation that that they had required
 6 additional information about the parent company and led me to
 7 seek out some information from that statement to help them for
 8 that specific purpose.
 9 MR. AMER: I would like to go ahead and mark as
 10 Exhibit 1380 Plaintiff's 1380, a series of e-mails.
 11 Q Mr. Hawthorn, you'll see this consists of some e-mails
 12 back and forth and then on page nine of this exhibit, there is a
 13 memo from you to Barry Masson and Fiona Kenneth.
 14 Do you recognize this as a memo that you prepared and
 15 sent to them?
 16 A Yes.
 17 Q Do you recognize the e-mails that are at the front of
 18 this exhibit as being e-mail exchanges between you, them and an
 19 individual known as Camron Harris at Whitley Penn?
 20 A Yes.
 21 MR. AMER: Your Honor, I ask that this be admitted
 22 into evidence.
 23 THE COURT: Granted. It is in evidence.
 24 (Whereupon, the Document was marked in evidence as
 25 Plaintiff's Exhibit 1380.)

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1 Q The subject of the e-mails is audit update. What is
 2 that?
 3 A That is, as I was describing previously, the audits
 4 of the legal entity SLC Turnberry Limited and Trump
 5 International Golf Links Scotland Limited which is commonly
 6 known as Trump Aberdeen.
 7 Q And just to clarify, is this audit update one of the
 8 ways in which you first learn that there was a Donald J. Trump
 9 personal financial statement?
 10 A It was probably around that time in addition to the
 11 media scrutiny of it.
 12 Q Can you just explain for us who the two recipients of
 13 the top e-mail and also your memo are, Barry Masson and Fiona
 14 Kenneth?
 15 A Those are the respective audit partners from the firm
 16 Johnston Carmichael. So in the context of this audit is
 17 Johnston Carmichael was working through the audits of the two
 18 entities I described in Scotland and they were requiring some
 19 additional information for their audit procedures.
 20 Q Why were you the individual who was tasked with
 21 addressing their issues?
 22 A Because those fall into the hotel division and so as I
 23 described earlier, my oversight of audits and compilation work
 24 in the hotel division dealt to me.
 25 Q Had you done this type of audit update with them in

M. HAWTHORN - DIRECT (MR. AMER) Page 1429

1 prior years?
 2 A This year was a year where they had indicated they
 3 needed more information because their audit procedures had
 4 become more rigorous and they had standards that had changed
 5 since a previous year. And effectively, what they were doing is
 6 for the narrow approach of testing the financial viability of
 7 those Scotland entities, they had asked for information about
 8 the parent company and the parent company's financial
 9 wherewithal in the event that these Scotland entities needed
 10 financial support.
 11 In the past, this audit evidence was satisfied by some
 12 internal communication and letters effectively from the company
 13 vouching that we have the ability and the intents to hold this
 14 asset, to fund this asset if necessary. That in the past
 15 satisfied their requirement. In this particular year, they kept
 16 asking for more information and more documented information
 17 about the financial wherewithal of the parent company.
 18 Q And just so I understand what you're explaining, that
 19 was due to a rule change in Scotland?
 20 A That's what they explained to me. Not a rule change in
 21 Scotland, but they described it. It was probably some e-mails
 22 about it, about their auditing standards being more rigorous in
 23 the U.K.
 24 Q Let me ask you to turn to page four of this exhibit.
 25 Just focus on Ms. Kenneth's e-mail to you and just read some

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1 portions of it and I'll ask you some questions. The paragraph
 2 that begins "while we have received, she writes, "While we have
 3 received stress tested forecasts for each of the entities, we
 4 have not yet received any information from you in relation to
 5 going concern points four to six of my e-mail of August 6th."
 6 So let me just stop there and say, what was your
 7 understanding of the going concern points that she is referring
 8 to?
 9 A There was probably a separate attachment or another
 10 e-mail of the information that she required for her audit
 11 testing. I don't recall off the top of my head, but effectively
 12 in what they were trying to again accomplish is provide some
 13 evidence or comfort for the reader of those financials that --
 14 that those entities have financial backing from a parent in the
 15 event they may need it.
 16 Q She goes on to say, "Obtaining evidence of both
 17 intention and ability to support is critical to us being able to
 18 provide an unmodified audit opinion."
 19 Is unmodified audit opinion the same as we refer here
 20 to an unqualified audit opinion?
 21 A I believe so, yes.
 22 Q She then says, "In relation to this, it might help us
 23 if we are able to understand more about where the funds that
 24 would be used to support the U.K. businesses would be coming
 25 from." Is that what you refer to as needing more information

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1 about the parent?
 2 A Correct.
 3 Q And by the way, if we go to page -- we will come back
 4 to this, but if we go to page six, you see the bottom paragraph,
 5 she has a heading that says "going concern." Is that your
 6 understanding of what she was referring to by going concern?
 7 A I'm just reading through it. Yes, so similar to in the
 8 U.S., an entity to be a going concern that the financial
 9 statement and the opinion associated with it determines that
 10 there is another evidence that the entity will exist beyond
 11 12 months. You think about the context of the time of this ask,
 12 this is the 2020 audit. If you recall, 2020 was a year when the
 13 world shut down to travel and tourism because of the COVID
 14 pandemic, so the financial statements on their own for these
 15 entities were not as robust as in past years because people
 16 couldn't travel to the resorts and the resort couldn't operate.
 17 So if someone is looking at this financial statement in
 18 the U.K. in a vacuum, without any other information, they might
 19 say to themselves this entity is not having a great financial
 20 year. It might be not a going concern because it may not have
 21 enough of revenue to generate it for the next 12 months. The
 22 case that the auditor is looking for is trying to understand
 23 okay, if this entity can't exist over the next 12 months, if it
 24 doesn't have enough revenue, is there support available from its
 25 parent company to sustain it. So that's the nature and the

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1 are providing certain financial information of ownership to
 2 demonstrate the financial viability and ability to fund the
 3 operations of the Scotland entities, if required," correct?
 4 A Yes.
 5 Q Again, which golf courses does this relate to?
 6 A So SLC Turnberry Limited is Trump Turnberry and
 7 Ayrshire, Scotland. West coast of Scotland is Turnberry. East
 8 Coast of Northern Scotland is Aberdeen, which is the other
 9 entity Trump International Golf Link Scotland Limited.
 10 Q And you go on to say the ultimate ownership of the
 11 Scotland entities is the Donald J. Trump Revocable Trust dated
 12 April 7, 2014, the trust has ownership of significant cash and
 13 cash equivalents, real estate, management and license agreements
 14 and other assets (the group assets) as well as accounts payable
 15 and long-term loan obligations the (group liabilities), the
 16 long-term loans are collateralized and serviced from cash flows
 17 generated by the underlying real estate assets."
 18 So were you familiar with the revocable trust as of the
 19 date of this memo?
 20 A Yes. The ownership entity of the ultimate parent of
 21 the Scotland entities.
 22 Q Was that something you were aware of beginning with
 23 your employment with the Trump Organization soon thereafter in
 24 2016?
 25 A Probably as soon as I encountered a question where in

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1 purpose of this line of questioning.
 2 Q Let's go back to page four. I just want to focus you
 3 again on the same paragraph we were looking at. The last
 4 sentence of that paragraph states, "In the absence of obtaining
 5 a set of "group accounts for the Trump Organization," we do need
 6 to find other means of corroborating the position."
 7 What did you understand Ms. Kenneth to mean when she
 8 refers to corroborating the position?
 9 A So they're trying to satisfy their audit requirement if
 10 a probably other clients that they have have a parent company
 11 that has publicly traded financial statement, audited financial
 12 statements, holding company financial statements, those would be
 13 readily available and exist that a company to provide. In the
 14 case of the Trump Organization, it has no requirement to do
 15 "group accounts" or a roll-up set of historic financial
 16 statements because there's never been a need to do so. So for
 17 her to corroborate that information, she needed additional
 18 information which is why I wrote this memo and provided the
 19 exhibits to satisfy her requirements.
 20 Q Let's go ahead and look at your memo which
 21 is -- starts at page nine of the exhibit, and you write in the
 22 first paragraph, "In connection with the audits of golf
 23 recreation, Scotland Limited SLC, Turnberry Limited and Trump
 24 International Golf Links Scotland Limited, which you define as
 25 the Scotland entities, for the year ended December 31, 2020, we

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1 operations, one of the hotels needed to report who their owner
 2 was, so I learned over time what the org chart looked like and
 3 ultimately that the trust was the ultimate owning parent entity
 4 of the various hotels that I worked on.
 5 THE COURT: Five-minute warning.
 6 Q You go on to say, "The trust does not prepare a
 7 consolidated financial statement on a regular basis. However, a
 8 recent accounting compilation as of June 30, 2021 prepared by
 9 the trusts accounting firm Whitley Penn provides for the
 10 following at their estimated current values."
 11 First of all, where did you get the information about
 12 the trust not preparing a consolidated financial statement, but
 13 having a compilation as of June 30, 2021?
 14 A Right. So this is when I became aware of the Statement
 15 of Financial Condition being the most available type of document
 16 that is like a group consolidated financial statement. So I
 17 knew it existed.
 18 Q I'm just trying to get more specific. Where did
 19 the -- did this information come from for you to put it in this
 20 memo?
 21 A The dollar amounts or the words?
 22 Q The paragraph above the first bullet. The fact that
 23 there was this compilation, the date of the compilation, and
 24 that it was prepared by Whitley Penn? Where did you get that
 25 information from?

M. HAWTHORN - DIRECT (MR. AMER) Page 1435

1 A In my position, I certainly know what -- that the
 2 company does not have a consolidated financial statement like
 3 you just can't go on scc.gov and get the Trump Organization
 4 financials. So I was aware, like I said, through media reports
 5 and knowing that this other document is prepared and out there,
 6 that that would be some level of description of assets that
 7 could satisfy the scowled auditor's request for this matter.
 8 Q You say very specifically that the compilation provides
 9 for the following at their estimated current values. That
 10 phrase "estimated current values," where did you come to learn
 11 that the compilation provides for estimated current values?
 12 A So for me to write this memo and fill in the numbers
 13 provided there, I had to get that from Patrick Birney. I didn't
 14 get a copy of the statement, but I understood how much
 15 cash -- how much cash does the organization have, what's the
 16 holdings that they have, so that I could write this memo on
 17 behalf of this request.
 18 Q Was there a specific reason why in your memo to the
 19 Johnston Carmichael accountants that you mentioned that the
 20 compilation set forth estimated current values?
 21 A My understanding of the statement is it is not a
 22 typical historical cost GAAP financial statement; that it is a
 23 statement that provides an indication of value and that was the
 24 purpose of this statement.
 25 Q Did you at the time that you wrote this memo have a

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1 A No.
 2 Q Did you have any understanding as to why it might
 3 be -- well, was there an issue with you getting your own copy
 4 of the statement?
 5 A I just knew it was a very sensitive document. It was
 6 already in the press and scrutinized and I didn't need to be any
 7 part of it.
 8 MR. AMER: Now is a good time, Your Honor.
 9 THE COURT: We will see you all at 2:15. Have a
 10 good lunch.
 11 MR. AMER: Can I just ask that the witness be
 12 admonished not to discuss his testimony with counsel?
 13 THE COURT: I hereby admonish you not to discuss
 14 your testimony with anybody. Thank you. Have a good lunch.
 15 (Witness exits the stand.)
 16 (Whereupon, a luncheon recess was taken.)
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M. HAWTHORN - DIRECT (MR. AMER) Page 1436

1 specific understand of what the phrase "estimated current
 2 values" meant?
 3 A Sure.
 4 Q What was your understanding?
 5 A The fair value of the assets at a point in time.
 6 Q And the point of time of this particular compilation,
 7 did you understand it was as of June 30, 2021?
 8 A Yes.
 9 THE COURT: One-minute warning.
 10 Q For purposes of preparing this memo, did you obtain a
 11 copy of the 2021 Statement of Financial Condition for Donald J.
 12 Trump.
 13 A I did not obtain a copy. I had a phone conversation
 14 with Patrick Birney to get the limited information and then what
 15 I did in a conversation with Fiona and Barry, the auditors from
 16 Scotland, I suggested that we could organize a virtual Zoom
 17 meeting, in effect a Google Meet with Camron Harris because
 18 Camron Harris was the audit partner that issued the compilation
 19 with Whitley Penn, and so they -- they were keen to that idea,
 20 so that way, I could stay out of it. It is not really my area
 21 and so we organized a Google Meet. Camron Harris --
 22 Q You're getting ahead of me. We will get to the Google
 23 Meet, but let me just ask one more question.
 24 Did you ask to get a copy of the 2021 Statement of
 25 Financial Condition?

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1 THE COURT OFFICER: All rise. Part 37 is back in
 2 session. The Honorable Judge Arthur Engoron presiding.
 3 Make sure all cell phones are on silent. Laptops
 4 and cell phones will be permitted but only to the members of
 5 the press. There is absolutely no recording or photography
 6 of any kind allowed in the courtroom. Now be seated and
 7 come to order.
 8 THE COURT: Counselors, are we going to put the
 9 schedule of witnesses for the week on the record at this
 10 point?
 11 MR. WALLACE: Certainly, Your Honor. I will say
 12 for the People we are going to continue with Mr. Hawthorne's
 13 testimony this afternoon. The next witness will be Donna
 14 Kidder.
 15 THE COURT: When do we expect to start her?
 16 MR. WALLACE: I expect that will begin this
 17 afternoon. I don't know that that would be completed this
 18 afternoon, though.
 19 Following witness would be Doug Larson, a former
 20 Cushman & Wakefield employee followed by Dave McArdle, also
 21 Cushman & Wakefield employee. After that, our next witness
 22 would be Ray Flores, a former Trump Organization employee;
 23 Jack Weisselberg, an employee of Ladder Capital; Craig
 24 Robertson, also an employee of Ladder Capital; and then
 25 later in the week Dave Orowitz, a former Trump Organization

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1 employee.

2 I would just add that exactly how we proceed

3 through that it do appears on which precise day it may

4 depend a little bit on which of the witnesses the defendants

5 choose to cross examine.

6 MS. GREENFIELD: Just one clarification about

7 earlier this morning I thought you mentioned Allen

8 Weisselberg being recalled.

9 MR. WALLACE: No, sorry. That was Jack

10 Weisselberg, his son.

11 MR. ROBERT: Jack is not tomorrow.

12 MR. WALLACE: Jack is not available tomorrow.

13 MR. KISE: Mr. Cohen is not coming this week.

14 THE COURT: The earliest that he will testify,

15 apparently subject to my receiving the all-important

16 doctor's note, is a week from today, Monday. So he will not

17 be here this week.

18 MR. KISE: This is a key witness for the

19 government. Of all the witnesses in the case they chose to

20 play him on the video in their opening. So we just want to

21 be sure that we have some understanding of that schedule.

22 And I know Your Honor is doing what you need to do there and

23 everyone else, including the government is moving around

24 Mr. Cohen's schedule now. So I would ask to the extent that

25 becomes an issue on our side that we would have the same

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1 do that from a hospital bed, but he does -- I'm not a social

2 media person, but I see he does continue to be active in his

3 pursuit of my client on a fairly frequent basis on social

4 media so he doesn't appear to be that infirmed.

5 THE COURT: Well, talk about sauce for the goose is

6 sauce for the gander.

7 MR. KISE: We're not saying we don't have a medical

8 excuse. He'll be here tomorrow.

9 THE COURT: Okay. Let's get the witness.

10 THE COURT OFFICER: Witness entering.

11 (Whereupon, the witness enters the courtroom and

12 approaches the witness stand.)

13 THE COURT: Okay. Let's continue with the direct

14 examination of Mr. Hawthorn, who I will remind, as I always

15 do, is still under oath.

16 CONTINUED DIRECT EXAMINATION

17 BY MR. AMER:

18 Q Welcome back. I'd like to pick up where we left off

19 with your memo from November 23, 2021, which is Exhibit 1380 in

20 evidence and it's page nine where your memo begins.

21 I want to just ask you about the first bullet that

22 appears after you indicate that the compilation provides for the

23 following at their estimated current values, then you reference

24 group assets -- total group assets exceeding 4 billion,

25 including unrestricted cash and cash equivalents in excess of

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1 accommodation. I don't think it will, but if there becomes

2 a scheduling conflict of some kind, we would want the same

3 accommodation.

4 THE COURT: Sauce for the goose is sauce for the

5 gander. That's the theme of this trial.

6 MR. WALLACE: And I would note we tried to be

7 cooperative and scheduled Mr. Cohen later because of

8 counsel's schedule, so I think we could continue to

9 cooperate on these issues and appreciate everyone's

10 flexibility to the degree necessary.

11 I will also add, though, we did play testimony from

12 Eric Trump, Donald Trump, Jr., Donald Trump, the father, and

13 Allen Weisselberg during my opening.

14 THE COURT: Yes, but they're all defendants.

15 MR. WALLACE: Fair enough, Your Honor.

16 THE COURT: Right. And just to repeat, the

17 earliest Michael Cohen will testify apparently subject to a

18 doctor's note, which I hope to receive later today, would be

19 a week from today, Monday the 23rd, but even that day is not

20 definite.

21 Yes?

22 MR. KISE: I just also want to note for the record

23 because I would be remiss if I didn't. He does continue to

24 be active -- for whatever this is worth to the Court, he

25 does continue to be active on social media. I know you can

M. Hawthorn - Plaintiff - direct (Amer) Page 1442

1 290 million and restricted cash and escrow deposits in excess of

2 28 million. I think we established when you wrote this memo you

3 did not have in your possession a copy of the 2021 statement;

4 correct?

5 A Correct.

6 Q So where did you get the figures that you used for this

7 first bullet point?

8 A So I had a conversation with Patrick Birney who is in

9 possession of the document.

10 Q And if we can pull up the 2021 statement. It's

11 Exhibit 1354 and maybe we can put it next to that paragraph in

12 your memo. If we can go to page four of the statement, which is

13 the assets page, you'll see that this statement lists cash and

14 cash equivalents at 293.8 million and escrow reserve deposits,

15 restricted cash and prepaid expenses at 28.3 million. Do you

16 see that?

17 A Yes.

18 Q And does that correlate to what you have in your first

19 bullet?

20 A Yes.

21 Q When you obtained this financial information from

22 Mr. Birney, which you then forwarded on to the Johnston

23 Carmichael accountants to address their audit needs, were you

24 comfortable passing along the information without having seen

25 the statement for yourself?

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1 A Yes.

2 Q And would you have passed along the financial

3 information in this first bullet if you had any doubt about the

4 accuracy of the information?

5 A The point of the memo is to just evidence that the

6 parent has sufficient liquidity and a lot of holdings so I

7 really was just trying to evidence that the parent has its

8 financial wherewithal. I would have had no issue sending

9 forward the statement if it was in my possession, but I didn't

10 need to have it or have it and I felt it was a better way to

11 have the auditors speak to each other and that satisfied my

12 requirement. I had a singular focus in this memo and that was

13 purely getting the audit of the Scotland entities completed.

14 Q I think my question was a little simpler, so let me try

15 again.

16 Would you have passed along the financial information

17 in this first bullet which you received from Mr. Birney if you

18 had any reason to doubt the accuracy of the information? It's

19 just yes or no?

20 A If I doubted the accuracy would I have passed it along?

21 I would not have passed it along unless I had some evidence or

22 some comfort that the information was generally accurate, right.

23 Q And I draw attention in the first bullet to the amount

24 of unrestricted cash and cash equivalents of -- in excess of 290

25 million. Why call out that figure?

M. Hawthorn - Plaintiff - direct (Amer) Page 1444

1 A That's the most relevant to the Scotland auditors. I

2 mean, they care about available working capital that would fund

3 the Scotland operations. So if I'm just thinking about telling

4 these auditors hey, the parent has a lot of liquidity, can I

5 show you a bank statement, hence why I attached the bank

6 statement to evidence, there is significant amounts of cash as

7 well as, you know, it's not -- it's -- it's stated in this way

8 to evidence that the parent has financial wherewithal to support

9 these entities.

10 Q Did you have an understanding when you sent this memo

11 to the accountants at Johnston Carmichael about who controlled

12 the unrestricted cash and cash equivalents amounts in excess of

13 290 million?

14 A I understood that it was controlled by the trust.

15 Q Would you have knowingly provided to the Johnston

16 Carmichael accountants a figure for cash and cash equivalents

17 that included amounts not within the control of the trust?

18 A If I knew that I wouldn't have probably provided that.

19 Q Why not?

20 A Again, you're trying to evidence the amount that the

21 trust has to satisfy any potential cash needs of the Scotland

22 operation.

23 Q And in order to satisfy that requirement would the cash

24 and cash equivalents have to be within the control of the trust?

25 A Right. Hence why I sent them a bank statement of 133

M. Hawthorn - Plaintiff - direct (Amer) Page 1445

1 million.

2 Q Did you have an understanding -- well, let me ask you

3 about the 28 million because you also call out that amount which

4 is restricted cash and escrow deposits. Why did you call out

5 that?

6 A It's just, again, further evidence that this is a very

7 liquid company with sufficient holdings that is able to support

8 the needs of its properties if required.

9 Q Now, in terms of the assets on the list, is the escrow

10 -- the restricted cash and escrow deposits sort of the next

11 level of available liquidity?

12 A Correct.

13 Q And did you have an understanding when you sent this

14 memo to the accountants at Johnston Carmichael about who

15 controlled the restricted cash and escrow deposits?

16 A I understood it was controlled by the trust.

17 Q Now, Mr. Hawthorn, are you aware that Mr. Trump has a

18 30 percent minority interest in something known as the Vornado

19 Partnership Interests?

20 A Vaguely familiar.

21 Q I'm going to put up on the screen Plaintiff 3041, which

22 is defendant's response to Plaintiff's 202 statement and

23 specifically the response to paragraph 403.

24 Now, there is a chart that you'll see that has

25 statement year, amount included based on 30 percent share in

M. Hawthorn - Plaintiff - direct (Amer) Page 1446

1 Vornado Property Interests, total cash liquidity reported and

2 then Vornado Property Interests cash as a percent of total cash.

3 And I just want to draw your attention to the line for 2021.

4 You'll see it has "total cash liquidity reported." That's the

5 293.8 million figure that was in the statement for 2021 and

6 that's the number you then reported forward to the Johnston

7 Carmichael accountants; correct?

8 A Yes.

9 Q Okay. And the defendant's response is that it's

10 undisputed that the values listed are those reflected in the

11 SOFCs and the amounts attributable to the Vornado operating

12 entities are as stated. Do you see that?

13 A Yes.

14 Q So I'm going to ask you to accept that as being

15 undisputed.

16 Now, during Mr. McConney's testimony we've been

17 referring to that 30 percent interest as Vornado cash, so I'm

18 going to use that reference in my questions as well; okay?

19 A Okay.

20 Q As the chart shows for 2021, the total cash is 293.8

21 and of that figure, 32 percent or 93 million and change is

22 Vornado cash. Do you see that?

23 A I see it.

24 Q Let me show you some testimony from Mr. McConney in

25 this trial. It's at page 619 of the transcript and it's line 15

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1 to 20:
 2 "QUESTION: Just so we're clear, Vornado cash is
 3 not cash that Mr. Trump has access to on his own; correct?
 4 "ANSWER: Correct.
 5 "QUESTION: He cannot withdraw the funds from the
 6 accounts where they sit; correct?
 7 "ANSWER: Correct."
 8 So were you aware that 32 percent of the 293
 9 million of cash and cash equivalents was Vornado cash?
 10 A No.
 11 Q Were you further aware that Vornado cash was not cash
 12 that was within the trust's control?
 13 A No.
 14 Q Mr. Hawthorn, if you had known at the time you prepared
 15 your memo in November of 2021 that 32 percent of the
 16 \$293 million figure reported in the 2021 statement as cash and
 17 cash equivalents was actually cash that was not within
 18 Mr. Trump's control, would you have included that amount in your
 19 memo as you did?
 20 A Probably not and it would have made no impact on the
 21 memo and its conclusions.
 22 Q My question was just simple but you would have included
 23 it or not?
 24 THE COURT: Yes, I'll direct the witness as I often
 25 do, just answer the question. No speeches, no commentary.

M. Hawthorn - Plaintiff - direct (Amer) Page 1449

1 e-mail we looked at that attaches your November memo. Isn't
 2 that right?
 3 A Correct.
 4 Q And the second sentence says, "I would also welcome a
 5 follow-up conversation if you can be available sometime
 6 Wednesday, November 24th." Done the British way; correct?
 7 A Correct.
 8 Q Okay. And did they express a need in the discussion
 9 you reference here to have a follow-up conversation after
 10 receiving your November memo?
 11 A I don't remember exactly, but I remember probably some
 12 phone conversations to make sure that they were satisfied in the
 13 information they required. So it culminated in the Google Meet
 14 that you had mentioned.
 15 Q Well, is it correct then that they were not satisfied
 16 just with the memo and that they needed an actual call?
 17 A They were interested for their audit work papers to
 18 document that they had more information than just my memo.
 19 Q And in the e-mail above, which is actually an e-mail
 20 you sent to Mr. Harris on December 7, 2021, you enlist his
 21 assistants with a joint Google Meet virtual call with the
 22 Johnston Carmichael accountants to discuss the financial
 23 condition; correct?
 24 A Correct.
 25 Q Was it your understanding that the Johnston and

M. Hawthorn - Plaintiff - direct (Amer) Page 1448

1 The other side can ask you questions also.
 2 So the first half of what you said was answered;
 3 the question the second half didn't.
 4 THE WITNESS: Yes, sir.
 5 MR. AMER: Can I get the second half stricken then,
 6 Your Honor?
 7 THE COURT: Yes. It was nonresponsive.
 8 MR. AMER: Thank you.
 9 Q Now, let me show you Exhibit 3146.
 10 Mr. Hawthorn, these are a series of e-mails between you
 11 and the Johnston Carmichael accountants as well as Mr. Harris at
 12 Whitley Penn that all postdate your November memo; correct?
 13 A Yes.
 14 MR. AMER: Your Honor, I'd ask that this be
 15 admitted into evidence.
 16 THE COURT: Granted. It's in.
 17 (Whereupon, the item previously referred to is
 18 received and marked Plaintiff's Exhibit Number 3146 in
 19 evidence.)
 20 Q And this e-mail exchange relates to setting up the
 21 Google Meet call; correct?
 22 A Yes.
 23 Q Let's go to page three. I just want to start with the
 24 e-mail that's in the middle of the page from you to Mr. Masson
 25 and Ms. Kenneth. You write to them and this is actually the

M. Hawthorn - Plaintiff - direct (Amer) Page 1450

1 Carmichael accountants needed to put eyes on the Statement of
 2 Financial Condition?
 3 A They expressed an interest of that, so I helped to
 4 organize this to accomplish that.
 5 Q And you enlisted Mr. Harris because he had the
 6 statement and you didn't; is that right?
 7 A Correct.
 8 Q Okay.
 9 A And it was helpful for auditors to speak to each other
 10 because they talk the same language and understand you like
 11 Camron also understands their objective of trying to solely meet
 12 an impairment test for their individual audit.
 13 Q You spoke their language too, didn't you?
 14 A Correct.
 15 Q Okay. Now, if you look at the first page of the
 16 exhibit, the bottom e-mail is from Mr. Masson to you also
 17 copying Ms. Kenneth and he indicates in the second paragraph
 18 "will we be able to have sight of the compilation report during
 19 the call?"
 20 A Yes.
 21 Q So that was something they needed to do for their audit
 22 procedures; is that right?
 23 A They requested it, yes.
 24 Q And then your e-mail at the top confirming that you
 25 will arrange and plan to have a sight of the compilation report

M. Hawthorn - Plaintiff - direct (Amer) Page 1451

1 for both he and Ms. Kenneth to view; correct?
 2 A Yes.
 3 Q Was there any reason why you didn't just ask for a copy
 4 of the statement so you could have this call with them on your
 5 own without having to involve Mr. Harris?
 6 A Like I mentioned before there is no need for me to have
 7 a copy and it gives the auditors better comfort hearing from the
 8 Whitley Penn auditor because he's most familiar with the
 9 statement that he could take them through it versus me.
 10 Q And you did in fact have this Google Meet virtual call
 11 with the Johnston Carmichael auditors and Mr. Harris of Whitley
 12 Penn; correct?
 13 A Yes.
 14 Q Were there any other people on this Google virtual call
 15 other than the four of you?
 16 A No, four of us.
 17 Q Was the 2021 Statement of Financial Condition shared
 18 with the Johnston Carmichael accountants during this Google Meet
 19 virtual call?
 20 A Yes, Camron Harris put it on his screen.
 21 Q Did he put the entire document up on the screen and go
 22 through every page or only portions of it? Do you remember?
 23 A I believe he scrolled through it and answered any
 24 questions that they had. I was more of invited to the call but
 25 didn't say much on the call. I let them -- I produced both

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1 Q For purposes of this call, did you have a copy of the
 2 2021 Statement of Financial Condition?
 3 A No.
 4 Q So, as of the time of this call, you still didn't have
 5 in your possession the 2021 statement, correct?
 6 A Correct.
 7 Q To your knowledge, were the Johnston Carmichael
 8 accountants ever sent a copy of the 2021 statement either during
 9 or after this Google Meet virtual call?
 10 A No.
 11 Q Do you know why not?
 12 A I think as we indicated, they just needed to see it, so
 13 that's all their audit needed. They had a sight of it because
 14 Camron Harris showed it. They had questions and he explained
 15 the answers to the questions and that was the end of it.
 16 Q Was this Google Meet virtual call the first time that
 17 you saw any portion of the 2021 statement?
 18 A I believe yes.
 19 Q Was it the first time you saw any portion of any annual
 20 Statement of Financial Condition for Donald J. Trump?
 21 A Yes.
 22 Q Do you recall any discussions with anybody within the
 23 Trump Organization about whether you should or should not have
 24 access to an actual copy of the 2021 statement?
 25 A No.

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1 parties and let them have their discussions.
 2 Transcript continues on the following page...
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M. HAWTHORN - DIRECT (MR. AMER) Page 1454

1 Q Do you recall how long the call lasted?
 2 A The Google Meet?
 3 Q Yes.
 4 A 20 minutes.
 5 Q To your recollection, were the Johnston Carmichael
 6 accountants satisfied with the information as it was shared with
 7 them on the call about the 2021 statement?
 8 A Yes.
 9 Q Mr. Hawthorn, if you had learned just prior to this
 10 call that 32 percent of the \$293 million figure reported in the
 11 2021 statement as cash and cash equivalents was actually Vornado
 12 cash that was not within Mr. Trump's control, would you as a
 13 matter of professional ethics have advised the Johnston
 14 Carmichael accountants of that fact?
 15 A Yes.
 16 Q And why is that?
 17 A Just to be transparent of what it is and knowing that
 18 the cash still there is satisfying their requirement.
 19 Q Based on the chart that we looked at, Mr. McConney's
 20 testimony and your involvement on the call, do you think
 21 reporting the 293 million figure to the Johnston Carmichael
 22 accountants was a misrepresentation?
 23 A It appears to have been overstated.
 24 Q Okay. My question was very specific, though.
 25 Do you think it was a misrepresentation?

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1 MR. KISE: Objection, Your Honor. That's calling
2 for a legal conclusion.
3 MR. AMER: I think accountants are capable of
4 determining whether something is a misrepresentation and it
5 is not within the purview of only lawyers to assess that.
6 MR. KISE: He is a fact witness, Your Honor. He
7 hasn't been called as an expert.
8 THE COURT: I will sustain the objection to the
9 extent of asking Mr. Amer to explain what he means by a
10 misrepresentation.
11 Q A representation to the accountants that was
12 inaccurate.
13 THE COURT: I will allow that.
14 Q Do you need the question again?
15 A Maybe just say it one more time, so we are clear.
16 Q Based on the chart that we looked at, Mr. McConney's
17 testimony and your involvement on the call, do you think that
18 reporting the \$293 million figure as a cash and cash equivalent
19 figure was a misrepresentation?
20 THE COURT: No. We said "incorrect."
21 MR. AMER: I'm sorry. I thought given my
22 definition, I could ask it that way, but I will rephrase it.
23 THE COURT: Rephrase it.
24 MR. AMER: Okay.
25 Q Based on the chart, Mr. McConney's testimony and your

M. HAWTHORN - DIRECT (MR. AMER) Page 1456

1 involvement on the call, do you think reporting the \$293 million
2 figure to the Johnston Carmichael accountants as a cash and cash
3 equivalent figure was inaccurate?
4 A I think yes.
5 Q And do you think -- I think you also mentioned in your
6 prior answer you thought it was an overstatement, correct?
7 A Correct.
8 Q Was that overstatement which the chart indicated was
9 32 percent Vornado cash, was that material?
10 A Not for the purposes of this analysis.
11 Q Well, just the 32 percent overstatement. You don't
12 think that's material?
13 A Not for the purposes of this analysis.
14 Q Is it material in terms of accounting materiality?
15 MR. KISE: Objection. It is calling for an expert
16 conclusion again. He already answered the question.
17 THE COURT: Sustained.
18 Q Do you know, to your knowledge, if the Johnston
19 Carmichael accountants were ever advised subsequent to the call
20 that 32 percent of the \$293 million figure was Vornado cash not
21 within the control of Mr. Trump or the trust?
22 A I don't believe so.
23 Q Now, I'd like to turn to another topic, hotel
24 management valuation. Let's go ahead and mark Exhibit 1308.
25 You'll see the bottom e-mail is an e-mail from Mr. Birney to you

M. HAWTHORN - DIRECT (MR. AMER) Page 1457

1 asking you to -- if you could update the THC management company
2 valuation spreadsheet as of June 30, 2021, and then the e-mail
3 above that is your response to him.
4 A Yes.
5 MR. AMER: There is a blank page, second page which
6 is the native version which is the attachment to the e-mail.
7 I'd ask that this be admitted into evidence, Your Honor.
8 THE COURT: Granted. It is in evidence.
9 (Whereupon, the Document was marked in evidence as
10 Plaintiff's Exhibit 1308.)
11 Q What is the spreadsheet that's referenced in this
12 e-mail?
13 A This is a listing of Trump hotels properties.
14 Q Is this the spreadsheet -- do you recognize this as
15 the spreadsheet that you're attaching in the top e-mail that you
16 then send back to Mr. Birney?
17 A I do.
18 MR. AMER: Your Honor, I'd ask that we admit the
19 native spreadsheet.
20 THE COURT: Granted. It is in.
21 (Whereupon, the Document was marked in evidence as
22 Plaintiff's Exhibit.)
23 Q Now, your e-mail to him, if we could just go back to
24 that, indicates that it's reflective of the most current 2021
25 forecasts and 2022 budget projections and follows methodology as

M. HAWTHORN - DIRECT (MR. AMER) Page 1458

1 applied in previous years. Do you see that?
2 A Yes.
3 Q Was this something that you provided to Mr. Birney in
4 previous years?
5 A Yes.
6 Q And for how many years had you been providing Mr.
7 Birney with updates of this spreadsheet?
8 A I don't recall exactly. Maybe since 2017 or something
9 like that.
10 Q Did you have an understanding when you received the
11 request from Mr. Birney to send an updated spreadsheet why he
12 was asking for it?
13 A No.
14 Q Did you have any understanding as to what use he was
15 going to put the spreadsheet to?
16 A No.
17 Q Let's go to the spreadsheet, so I can ask you some
18 questions about it. You'll see it has two tabs to the
19 spreadsheet where on the summary tab and then there is a cash
20 flow projection tab. Let me start with the summary tab. What
21 properties is this summarizing?
22 A Trump hotels managed and owned properties.
23 Q Are these are hotels that are part of the hotel
24 division that you were in charge of?
25 A Yes.

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1 Q In charge of?

2 A Yes.

3 Q What does management mean under agreement type?

4 A It means that Trump hotels is the manager and has an

5 HMA or hotel management agreement for that property.

6 Q Now, under the column C, initial term, some properties

7 say "owned." What does that signify?

8 A That means it is the manager and the owner.

9 Q And in accounting terminology, is there some phrase

10 used to discuss -- to reference this type of business

11 arrangement between where the same properties are both owned and

12 managed by the same entity? I can rephrase it.

13 You mentioned that for these owned properties, the

14 Trump Organization is both the owner of the hotel and the entity

15 that manages; is that correct?

16 A Correct.

17 Q Is it an affiliate of the hotel owner that's managing

18 the property?

19 A There is a separate legal entity that's established to

20 be the management company, so that the hotel can operate under

21 the Trump hotel's brand and have a similar-looking feel like

22 every other hotel in the brand regardless of who the owner is.

23 Q So just to go back to my question, I am correct that it

24 would be an affiliate that would be the managing entity --

25 A Other entity owned by the trust.

M. HAWTHORN - DIRECT (MR. AMER) Page 1461

1 yes or no.

2 THE COURT: If you can without misrepresenting or

3 being inaccurate.

4 Q Just to make sure we're on the same page, where the

5 initial term says "owned," it means both the hotel property and

6 the entity that manages the property are both Trump Organization

7 entities and it is a related party transaction, correct?

8 A Yes.

9 Q And for those properties where instead of saying

10 "owned," it is a number of years under column C, that would be a

11 situation where the Trump entity manages the property, but the

12 property is owned by another company?

13 A I'm going to say yes. I just see one example on there

14 where there is co-ownership, but I understand what you're

15 saying.

16 Q On row 16, it says, "Value of existing portfolio and

17 then there is a figure of almost 119 million for the value of

18 existing" -- does that total for the value of existing

19 portfolio include the value of management agreements for the

20 related party transactions?

21 A So you would have to go to the second tab and you could

22 see that is a projection for all the hotels and all the hotels

23 because there is a management agreement assigned -- there is a

24 management agreement contemplated and assigned I believe that

25 rolls up to the top sheet.

M. HAWTHORN - DIRECT (MR. AMER) Page 1460

1 Q And is this type of business arrangement something that

2 accountants call a related party transaction?

3 A That could be a common term for it, yes.

4 Q And then for the other hotels where it doesn't say

5 "owned," but has a number of years, what does that signify?

6 A That would signify the term of the management

7 agreement, how long it -- and it says initial term, so I guess

8 the initial -- most hotel management agreements are long-term

9 from 10 to 15 to 30 years, or they have extension rights that

10 could be at the manager's option, so I think this is just trying

11 to categorize in a summary cell the nature of the HMA or the

12 hotel management agreement.

13 Q I guess what I'm wondering is for those properties

14 where there's a number of years under initial term instead of

15 owned, does that mean it is owned by somebody else?

16 A Say that again. I'm sorry.

17 Q Sure. For those properties where it is indicated under

18 initial term a number of years instead of the word "owned," does

19 that mean that that property is owned by an entity outside the

20 Trump Organization?

21 A Correct.

22 Q So those would not be related party transactions,

23 correct?

24 A They would be an owner outside the trust. There's a

25 little more complication to this, but I'll just try to answer

M. HAWTHORN - DIRECT (MR. AMER) Page 1462

1 Q So is the answer to my question yes?

2 A Can you say your question one more time?

3 Q Sure. The figure of 1 -- almost 119 million for

4 existing value of existing portfolios includes the related party

5 transactions as well as the hotels that are either entirely

6 owned by some other entity or there's some co-ownership?

7 MR. KISE: Objection, Your Honor. It is a compound

8 question. He's asking him two different things. He's

9 already answered the first part of the question. He already

10 explained what the 118 figure is derived from by reference

11 to the cash flow projection, but now Mr. Amer is asking him

12 a different question that's compound which is trying to

13 combine the cash flow with the value of the hotel either

14 owned or on the other hand entirely owned or some other

15 entity. That's a very different question.

16 MR. AMER: I think I'm asking him the same question

17 and just asking to summarize the upshot of what he just

18 already said.

19 MR. KISE: Then it has been asked and answered.

20 There is no reason to summarize it. He already answered

21 about where the 118 came from. He told you exactly where it

22 came from. I know what Mr. Amer is trying to do and I am

23 not going to say it in front of the witness and Mr. Amer

24 knows exactly what he's trying to do.

25 THE COURT: Mr. Amer I will either ask for a

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1 readback. We, can all kind of decide whether it is compound
 2 question, or you can just ask differently. Up to you.
 3 MR. AMER: I'll try it more clearly.
 4 Q Because you've looked --
 5 THE COURT: You deem that withdrawn?
 6 MR. AMER: We can deem that withdrawn.
 7 Q You looked at the second tab before in order to answer
 8 the prior question and now we are back to the summary tab. And
 9 I just want to confirm that the value of almost 119 million
 10 which is listed as the value for existing portfolio includes all
 11 of the properties on the summary page that is above that row; is
 12 that right?
 13 MR. KISE: Same objection.
 14 THE COURT: Asked and answered?
 15 MR. KISE: Yes.
 16 THE COURT: Overruled. I generally don't like that
 17 objection. You know, let him ask it again.
 18 MR. KISE: He is asking a very different question
 19 and he knows exactly why.
 20 THE COURT: If it is a different question, then it
 21 is not asked and answered.
 22 MR. KISE: It is a misleading. If he is looking
 23 for clarification, then the clarification question is does
 24 the 118 million that's on that page, is that the sum of
 25 what's on --

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1 MR. AMER: This is a speaking objection and it is
 2 not misleading at all. The witness can either understand it
 3 and answer it or tell me he can't understand it.
 4 MR. KISE: He's asking if it includes a value of
 5 the properties themselves. That's what he's asking.
 6 MR. AMER: No, I don't think I asked that. I asked
 7 if it includes the existing portfolio for the properties
 8 above. I think it's fairly straightforward, Your Honor.
 9 THE COURT: Just ask it again, but I don't see
 10 anything objectionable about it.
 11 MR. AMER: Can I get a readback on this one, Your
 12 Honor?
 13 THE COURT: Yes.
 14 MR. AMER: Thank you.
 15 THE COURT: We will all listen carefully.
 16 (Whereupon, the requested portion of the record was
 17 read back.)
 18 MR. KISE: Same objection.
 19 THE COURT: There is no objection or it is
 20 overruled. Please answer.
 21 A Yes.
 22 MR. AMER: That wasn't so hard, was it?
 23 Q In each year from 2016 through 2021 that you provided
 24 Mr. Birney with an updated spreadsheet, did you include the
 25 value of management agreements between Trump Organization

M. HAWTHORN - DIRECT (MR. AMER) Page 1465

1 affiliates as part of the value of the existing portfolio?
 2 THE WITNESS: Is this one I can answer in a non-yes
 3 or no?
 4 THE COURT: I think so.
 5 THE WITNESS: Just in the nature of how this works?
 6 THE COURT: I think you can answer yes, no.
 7 Mr. Amer, are you looking for a yes-or-no answer?
 8 MR. AMER: I am.
 9 THE COURT: To me, it is a yes-or-no question. So,
 10 please, answer yes or no.
 11 A Can you restate the question again?
 12 Q In each year from 2016 through 2021 -- actually, I'll
 13 revise that because I think you said you only did it back to
 14 2017. In each year from 2017 through 2021 that you provided Mr.
 15 Birney with an updated spreadsheet, did you include the value of
 16 management agreements between Trump Organization affiliates as
 17 part of the value of the existing portfolio, yes or no?
 18 A Yes.
 19 Q And so you did include related party transactions in
 20 each of those years then?
 21 A There's value to those transactions, yes.
 22 Q And let's pull up the 2021 Jeff supporting data which
 23 is Exhibit 1352 in evidence. Let's go to row 1117. You'll see
 24 under ^ /HR-PBGS deals in this row, it says, "management
 25 company valuation" and for the June 30, 2021 column, there's a

M. HAWTHORN - DIRECT (MR. AMER) Page 1466

1 value of 118.9 million. Does that appear to you to track your
 2 spreadsheet value?
 3 A Yes. I'm not familiar with this sheet. However, that
 4 appears to be the same number.
 5 Q So this appears to be the number you provided to Mr.
 6 Birney in your update, the spreadsheet under total value of
 7 existing portfolio, correct?
 8 A Yes.
 9 Q Now, if we could go back to your spreadsheet, the other
 10 exhibit, sorry, which is 1308 native. You see row 18 says,
 11 "Value of future portfolio, N/A." What does that mean?
 12 A That's none or non-applicable.
 13 Q Was there a decision made to remove the value of future
 14 portfolios from this spreadsheet?
 15 A I think as of this point in time, there was nothing in
 16 the pipeline that was to be future developed as compared to
 17 previous years when there were future developments on the
 18 horizon and evidenced by HMAs.
 19 Q Well, let me just understand because row 18 doesn't
 20 have a zero value. It has an N/A. So was it -- to your
 21 knowledge, was it a determination made that you no longer needed
 22 to provide a value for future portfolio as opposed to --
 23 A No.
 24 Q Let me just finish my question -- as opposed to there
 25 being zero value to future portfolio?

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1 A In this example from 2021, there is no future portfolio
2 to value.
3 Q Why is that?
4 A Because there is no future other developments or hotel
5 developments from this point going forward.
6 Q So the Trump Organization ceased developing new hotel
7 projects?
8 A No, but the frequency was less than in previous years.
9 Q Did Mr. Birney tell you that you didn't need to put any
10 value in for future portfolio, if you recall?
11 A I don't recall.
12 Q Let's look at the second tab which says, "cash flow
13 projection." Can you describe generally what's reflected under
14 this tab?
15 A This is a summarization for each property by year of a
16 calculated management fee.
17 Q Is this management fee based on the management
18 agreement?
19 A I believe in most cases, yes.
20 Q Let's look at rows 141 to 145. So it says, "141 Trump
21 cash flows from hotel operations "and then there is a series of
22 numbers. What does that reflect?
23 A I have to click on the formula to refresh my memory of
24 this.
25 Q Why don't we click in B141. I don't know if that's

M. HAWTHORN - DIRECT (MR. AMER) Page 1469

1 A Correct.
2 Q And then what does row 144 do?
3 A It appears to apply a discount factor.
4 Q Why is a discount factor being applied?
5 A I didn't set up the template, so I'm not familiar; but
6 generally speaking, it is to apply some factor of the risk of
7 not all the management fees being collectible or realizable.
8 Q Is row 145 then a product of taking 143 and applying
9 your discount factor in row 144?
10 A Yeah. If we can click in B145, you could probably see
11 that.
12 Q And that confirms it?
13 A Yes.
14 Q What does the present value of the Trump cash flows
15 represent?
16 A That appears to be the gross number adjusted for the
17 discount factor and the inflation factor.
18 Q And why does this spreadsheet calculate the present
19 value of the Trump cash flows?
20 A Again, I don't know the purpose, end purpose of this
21 spreadsheet; but from my doing it over several years and putting
22 in the inputs, my understanding is, again, if you're cash
23 flowing out into a future period, if you want to get a value as
24 of this point in time, you need to apply present value concept
25 to get a value as of the point in time of the analysis.

M. HAWTHORN - DIRECT (MR. AMER) Page 1468

1 going to help you.
2 A I don't see anything. There is a formula up there. Do
3 you see the formula bar. It just says equals B138. So then can
4 we go to B138.
5 Q Does row 141 reflect the cash flows from the managing
6 agreements, the management agreements?
7 A I'd have to work through the formulas and see what's in
8 B138.
9 Q Why don't we click on B138 and the witness can see the
10 formula?
11 A Okay. So 133 would be the summarization of revenue
12 list. B136 which is an approximation of management company
13 expense. So if you go to B133, could we just see that that's a
14 summarization of the numbers above it.
15 Q What is 142, row 142? What does that reflect?
16 A Time value of money.
17 Q Why do that calculation?
18 A Because a dollar today is worth more than a dollar in
19 the future.
20 Q And how are you adjusting the cash flows for inflation
21 as it is indicated here in row 142?
22 A Looks like three percent.
23 Q What is reflected in -- well, so is row 143 then the
24 calculation that takes the number from 141 and discounts it for
25 inflation?

M. HAWTHORN - DIRECT (MR. AMER) Page 1470

1 Q Is applying an inflation factor and discount factor to
2 get a present value for future cash throw something that you
3 knew how to do at least as far back as 2016 when you joined the
4 Trump Organization?
5 A I'm familiar with the concept.
6 THE COURT: That didn't answer the question.
7 Q Right. My question is a little different. It's more
8 specific. Was applying an inflation factor and discount factor
9 to get a present value for future cash throw something you knew
10 how to do at least as far back as 2016 when you joined the Trump
11 Organization?
12 MR. KISE: Objection.
13 A Yes.
14 MR. KISE: Inflation and discount are two different
15 things.
16 THE COURT: I think the question acknowledged --
17 MR. KISE: He's asking about the discount factor,
18 that's fine; but inflation throws a different element into
19 it. Inflation -- accounting for inflation is very
20 different for inflation for a discount.
21 THE COURT: That doesn't negate the question, so --
22 MR. KISE: It is a compound question. It is asking
23 him two different questions.
24 THE COURT: No, he is not. He's asking one
25 question about two factors combined.

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1 Is that correct, Mr. Amer?
 2 MR. AMER: Yes. Yes.
 3 THE COURT: Overruled.
 4 Do you need a readback or you know the question?
 5 THE WITNESS: I could answer the question as yes.
 6 Q Thank you.
 7 What do rows 147 to 149 reflect?
 8 A I would need to see the formula in B147. Can that be
 9 double-clicked to see if there are cells that show what it is
 10 pulling?
 11 Q He double-clicked. I don't know if you needed him to
 12 do something else.
 13 A I can't see the highlighted rows at the end to see what
 14 it is doing. My presumption is it is totaling.
 15 Q What is a reversion analysis?
 16 A To be honest, it was on the template when I inherited
 17 it.
 18 Q Can you confirm that the value in 149 is the total
 19 value that then feeds back into the summary page?
 20 A Let me see the summary page.
 21 Q Sure.
 22 A So that's 118 and the other one says 139.
 23 Q No -- I'm looking at row 149.
 24 A Oh, the ^ 118,194?
 25 Q Yes.

M. Hawthorn - Plaintiff - direct (Amer) Page 1473

1 Q And then in the e-mail response from Mr. Birney he
 2 says, "okay, great. Please send worksheet that's synonymous
 3 with the spreadsheet we've been looking at;" is that correct?
 4 A Yes.
 5 Q And then he says, "Allen is okay with the figures."
 6 Do you know who he was referring to?
 7 A It appears to be Allen Weisselberg.
 8 Q Do you have an understanding how Mr. Weisselberg could
 9 be in a position to be okay with the figures before you send
 10 your spreadsheet?
 11 A No.
 12 Q Was there any, you know, high level of summary of the
 13 numbers that was provided in advance of sending the spreadsheet
 14 to your recollection?
 15 A No.
 16 Q So sitting here today you don't have any understanding
 17 as to how Mr. Weisselberg could be okay with the figures without
 18 having gotten your spreadsheet; right?
 19 A Yes. I can't make any context comment of that. All I
 20 did was put in the numbers in the spreadsheet for Patrick and
 21 send them to him.
 22 Q And then, of course, the top e-mail is your forwarding
 23 the spreadsheet; correct?
 24 A Yes.
 25 Q Just at the risk of wanting to clarify, am I correct

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1 A Then go back there. Yes, sir.
 2 Q I would like to look at an earlier spreadsheet you sent
 3 to Mr. Birney. Let's pull up Exhibit 1218 -- the native.
 4 Actually, let's go to the document first and then --
 5 THE COURT: Five-minute warning.
 6 Q Mr. Hawthorn, do you recognize this as an e-mail
 7 exchange you had with Mr. Birney where you're providing him with
 8 the updated spreadsheet in 2018?
 9 A Yes.
 10 MR. AMER: I'd ask that this be admitted into
 11 evidence, Your Honor.
 12 THE COURT: Granted. It is in.
 13 (Whereupon, the Document was marked in evidence as
 14 Plaintiff's Exhibit 1218.)
 15 Q The bottom e-mail from you to Mr. Birney, down a little
 16 bit more, the bottom of the first page. You indicate, "Soho was
 17 in last year's file, not in this year's." Can you explain that?
 18 A Trump Soho is a hotel under management that the owner
 19 bought out the management agreement in 2017. So if in a
 20 previous version there was a value probably ascribed in the
 21 management contract, it would no longer be in a future year
 22 because the cash was already realized from a sales transaction
 23 under the HMA.
 24 (Continued on the next page.)
 25

M. Hawthorn - Plaintiff - direct (Amer) Page 1474

1 that you did not have any understanding when you received this
 2 request and then sent the worksheet why Mr. Birney was asking
 3 for it; correct?
 4 A Correct.
 5 Q And you did not know how he was going to use the
 6 spreadsheet; right?
 7 A Correct.
 8 Q My next questions are on the worksheet, so if we want
 9 to take our break now, does that make sense?
 10 THE COURT: Yes. But just before you go, I want to
 11 address Mr. Kise's objection on the compound question.
 12 If the question is was the building made of brick
 13 and was the temperature cold, that's a compound question,
 14 requires two answers. If you ask are you able to do A and
 15 B, only if you can do A and B, should you answer yes. If
 16 you can't do either, you can only do one, you shouldn't
 17 answer no. So that's why I regard it as a single question.
 18 But I see your point.
 19 Okay. Let's take our usual ten-minute break over
 20 the course of 15 minutes.
 21 (Whereupon, there is a recess in the proceedings.)
 22 THE COURT OFFICER: All rise. Part 37 is back in
 23 session. Please be seated and come to order.
 24 MR. KISE: Just a quick housekeeping, Your Honor.
 25 I'll let Mr. Amer answer the question about of how long he's

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1 going to go. We just wanted to know if he's going to be --

2 can we let Ms. Kidder go and start her for 15 minutes? It's

3 up to you.

4 THE COURT: What do you think we should do?

5 MR. AMER: I think I probably have a half an hour.

6 I'm fine if the Court is okay to not start a witness for

7 15 minutes if that's where we end up, but that's entirely

8 Your Honor's --

9 THE COURT: I like to use every available moment,

10 but a half hour, let's start her, if that's okay.

11 I assume no cross examination of this witness at

12 this time?

13 MR. KISE: No.

14 THE COURT: I shouldn't have asked in the negative.

15 I should have asked you were you planning on any cross

16 examination. Hoist by my own petard.

17 MR. AMER: I should mention my time estimate did

18 not include any objections from Mr. Kise.

19 THE COURT OFFICER: Witness entering.

20 (Whereupon, the witness enters the courtroom and

21 approaches the witness stand.)

22 THE COURT: Would Mr. Kise ever object? Let's see

23 if we can move things along rapidly.

24 Okay, let's continue the examination of

25 Mr. Hawthorn.

M. Hawthorn - Plaintiff - direct (Amer) Page 1477

1 Q So can you describe for us what the future portfolio

2 that is reflected at a value of 45.2 million was?

3 A So by comparison to 2021, 2018 had a lot of deals in

4 the pipeline, so to speak, HMAs that were signed for hotels to

5 be opened, letters of intent or LOIs that were signed for hotels

6 to be opened. 2018 was a much different dynamic than 2021 and

7 in particular you see there was two other brands that the Trump

8 Hotel divisions had launched and was under development, so those

9 were included in this analysis.

10 Q I just want to follow up on something. You mentioned

11 about deals in the pipeline. I think you said LOIs, letters of

12 intent. Can you just describe that to me what that is?

13 A That's an agreement between parties for a hotel

14 development or a management agreement.

15 Q But it's not an actual signed management agreement;

16 correct?

17 A Correct. It's probably like the first step in agreeing

18 that you will work towards getting an HMA, but that there is

19 interest by both parties and kind of documents the basic terms

20 of the, you know, arrangement.

21 Q And is it correct to say that some LOIs result in a

22 management agreement and some do not?

23 A Yes.

24 Q Were there also deals in the pipeline that were

25 reflected only in discussions with the hotel owners as opposed

M. Hawthorn - Plaintiff - direct (Amer) Page 1476

1 Q Mr. Hawthorn, we were discussing Exhibit 1218, your

2 e-mail where you forward the spreadsheet in September of 2018.

3 So let's go ahead and pull up this native Plaintiff's 1218,

4 which is the spreadsheet.

5 MR. AMER: Your Honor, I ask that this spreadsheet

6 be admitted.

7 THE COURT: Granted. It's in.

8 (Whereupon, the item previously referred to is

9 received and marked Plaintiff's Exhibit Number 1218 in

10 evidence.)

11 Q Do you recognize this as the updated spreadsheets you

12 sent to Mr. Birney in September of 2018?

13 A Yes.

14 Q Now, I notice the first two tabs "summary in cash flow

15 projection" are the same as the 2021 spreadsheet we saw;

16 correct?

17 A Yes.

18 Q And let's look at that first tab, the summary tab.

19 For this spreadsheet there is a value of 45.2 million

20 roughly on Row 25 for a value of future portfolio. Do you see

21 that?

22 A Yes.

23 Q So that's different from what we saw in 2021 where it

24 said N/A; correct?

25 A Yes.

M. Hawthorn - Plaintiff - direct (Amer) Page 1478

1 to an LOI?

2 A I don't know unless we look specifically.

3 Q Okay.

4 A In that aspect I would defer to my boss at the time,

5 Mr. Eric Danzinger, the CEO of the group.

6 Q Now, in addition to those first two tabs that we looked

7 at, there are additional tabs that follow existing AI

8 projections, future deals, fee projections, new openings, and

9 new signings. Do those all relate to the future portfolio?

10 A Not the word "existing," but the one that says "future"

11 would.

12 Q Okay. Do you know why there was no existing AI

13 projections tab in the 2021 spreadsheet?

14 A I think it was at that time that it was concluded that

15 that brand would no longer move forward whereas in 2018 it was

16 very much a real thing.

17 Q And why don't we discuss that tab "existing AI

18 projections." What is that?

19 A This was a concept for an American Idea hotel brand,

20 which is a franchise hotel brand concept that was brought to

21 market by the Trump Hotels team in 2016 and a concept that would

22 have a different level of service versus a luxury Trump Hotels

23 product.

24 Q And is it your understanding then that this -- the

25 information on this tab would flow into the existing portfolio?

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1 A I don't know. We'd have to see where it links, but
 2 existing AI projections I can tell you that these hotels did not
 3 open ultimately, but at the time there were signed hotel
 4 management agreements. There was a lot of work done by the
 5 hotel team to gather up this brand franchise concept and so it
 6 was very much a real thing during 2018.
 7 Q I guess it's just a simpler question as to whether it's
 8 part of the existing portfolio or the future portfolio, if you
 9 know?
 10 A I would -- I would presume future because it's not
 11 open. My understanding is that existing is that there is a
 12 hotel that's operating versus future which is to open.
 13 Q Let's look at rows -- under -- let's look at the next
 14 tab, "future deals fee projections," Rows 23 to 28. Can you
 15 tell me what those reflect?
 16 A I guess they were projections at the time this was
 17 prepared of future hotels. If you -- I did go -- if you scroll
 18 up.
 19 So you see in Row 5 there is another place called
 20 Scion. That was a lifestyle brand of hotel division that the
 21 brand was also launching at the time of American idea. So you
 22 had three brands. You have the Trump Hotels luxury brand, upper
 23 at the high end of the market Scion, more of a lifestyle hotel
 24 four star and American Idea being a franchise model hotel.
 25 Q And I guess my question's more specific to Rows 23 to

M. Hawthorn - Plaintiff - direct (Amer) Page 1480

1 28 which ends with Row 28 being present value of Trump cash
 2 flow. So is this similar to what we saw before where you're
 3 doing a calculation to include inflation and then a discount
 4 factor to get to present value?
 5 A Yes.
 6 Q And does doing this type of calculation have any
 7 relationship to getting to an estimated current value for the
 8 management contracts?
 9 A Yes.
 10 Q In what way?
 11 A So conceptually it looks like it's taking the expected
 12 cash flow streams from management fees and future years and
 13 discounting them back to current time of this evaluation.
 14 Q And that gets you to estimated current value?
 15 A Yes.
 16 Q Let's look at the new openings and new signings tabs.
 17 So what are new openings?
 18 A This I believe is a tab to estimate the opening dates
 19 of new properties and the year they would open.
 20 Q And starting in Row 12 through Row 28, you'll see it
 21 says "TBD" under "property." What does that stand for?
 22 A That would probably just be a placeholder, to be
 23 determined.
 24 Q And in some rows the number of keys is zero, but in
 25 others it's 250. Why is there that difference?

M. Hawthorn - Plaintiff - direct (Amer) Page 1481

1 A Can you show me the 250?
 2 So this could have been based on the pipeline and trend
 3 of new development, the expected opening of hotels with 250 keys
 4 in those particular years.
 5 Q Is number of keys synonymous with number of rooms in
 6 the hotel?
 7 A Yes.
 8 Q And let's look at the new signings tab. Again, you'll
 9 see that starting in Row 9 all the way through the rest of the
 10 entries under "property" it says "TBD" again. What does that
 11 signify for this tab?
 12 A It's a placeholder again. Same thing, to be
 13 determined.
 14 Q And again, in some rows the number of keys is zero and
 15 in other rows it's 250. Same answer as a prior tab?
 16 A So, again, a presumption that the average number of
 17 keys of a new hotel development would be 250 that the brand
 18 would sign these developments in these years and they would open
 19 thereafter after a period of preopening.
 20 Again, these based off of signed hotel management
 21 agreements, signed letters of intent and/or updates from the CEO
 22 of Trump Hotels and the work that was being done by the
 23 development team of future properties.
 24 Q And just the last part of your answer where you say
 25 "updates from the CEO of Trump Hotels" that's Mr. Danzinger?

M. Hawthorn - Plaintiff - direct (Amer) Page 1482

1 A Yes.
 2 Q And by that do you mean to include discussions that
 3 he's had with property owners?
 4 A He would have had those discussions but we would have
 5 asked his input on this projection.
 6 Q I'm just trying to identify the bases for including him
 7 in the spreadsheet. You said signed hotel management
 8 agreements, signed letters of intent and then you describe this
 9 third category of updates from the CEO. So are the updates
 10 something different than LOIs and management agreements?
 11 A I can't speak to it because he was closest to the
 12 information, but, like, just as an example, if you are going to
 13 open a new hotel with one owner and you have a signed HMA, that
 14 hotel owner may say I want to do three more, five more, ten more
 15 hotels with you and these are all ready to go. So that could be
 16 an example. But in this particular case from 2018 it's hard to
 17 remember or know.
 18 Q At least your understanding is that some of these TBD
 19 deals are management agreements, some are LOIs and some may be
 20 something else. Is that fair?
 21 A I think that's fair.
 22 Q And the something else would be not anything in the
 23 form of a signed agreement; correct?
 24 A It could be -- again, I defer to the hotel group CEO at
 25 the time who had the connections, who had the wherewithal to

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M. Hawthorn - Plaintiff - direct (Amer) Page 1483

1 know the realistic possibility of new hotels.
 2 Q Well, you are updating the spreadsheet; right?
 3 A With his input. I wasn't the development guy at the
 4 time nor am I now.
 5 Q And so at least your understanding based on what you
 6 are being told was that some involved letters of intent and some
 7 involved something other than a letter of intent or a management
 8 agreement?
 9 A To the best of my recollection, yes.
 10 Q Okay. Now, if we go to the new openings tab and we
 11 look at Row 37 that you see lists 250 keys; is that right?
 12 A Yes.
 13 Q Now, if we look at the formula for Row 37 Column D. If
 14 we can click on that.
 15 Do you see that the formula says "equal", quote, "new
 16 signings", closed quote, exclamation mark, D 34?
 17 A Yes.
 18 Q So does that mean that this number is being pulled from
 19 the new signings tab?
 20 A I think there was a cadence to this, meaning that if a
 21 new deal was signed and you can go to that tab of where it was,
 22 like, what year -- like, say, for example, if that D 34 on new
 23 signings was 2020, then it took, you know, whatever the cadence
 24 of number of years to go from signing to opening, so I believe
 25 they're related.

M. Hawthorn - Plaintiff - direct (Amer) Page 1484

1 Q Well, just a very simple question about what this
 2 formula signifies as a matter of using an Excel spreadsheet.
 3 This formula means that you're pulling the number from the new
 4 signings tab at D 34, doesn't it?
 5 A Sure. Can we see what it is?
 6 Q Sure.
 7 A New signings D 34.
 8 MR. AMER: 34, not 24.
 9 A Okay.
 10 Q So this D 34 is the sum of E 34 to L 34; correct?
 11 A Yes.
 12 Q And then the new openings tab is pulling the number
 13 from this tab into that tab; right?
 14 A Yes.
 15 Q Okay. So let's go back to new openings.
 16 Now, if we click on the next two, Row 38 D, same
 17 formula; right? You have to answer.
 18 A Yes.
 19 Q And the one below that?
 20 A Yes.
 21 Q So -- and I've looked at all of these in this column
 22 and every single one of these formulas is pulling the number
 23 from the new signings tab. Does that sound right to you?
 24 A Okay, yes.
 25 Q So all of the number of keys information in the new

M. Hawthorn - Plaintiff - direct (Amer) Page 1485

1 openings tab is just being pulled from the new signings tab;
 2 correct?
 3 A Yes.
 4 Q Okay. Now, let's go to the future deals projections
 5 tab. And in the Scion -- is it pronounced Scion?
 6 A Yes.
 7 Q The Scion section. Let's go to Row 7.
 8 See it says "total keys?" In Column G for 2022 it says
 9 "1250." So what does that represent?
 10 A That would be the room count of the openings of hotel
 11 in 2022 projected from 2018.
 12 Q Okay. And if we look at the formula for that cell it
 13 says it's F 7, which is 2021 plus the sum of new openings H 6 to
 14 H 81. Do you see that?
 15 A Yes.
 16 Q Okay. But we've already established that all of the
 17 figures in the new openings tab are being pulled from the new
 18 signings tab; correct?
 19 A Right. You have to sign a hotel deal before you open
 20 it.
 21 Q Okay. I'm just trying to understand the relationship
 22 between these three tabs and the future deals fee projections
 23 for the number of keys in Row 7 is being pulled from the new
 24 openings tab which in turn gets pulled from the new signings
 25 tab; correct?

M. Hawthorn - Plaintiff - direct (Amer) Page 1486

1 A Correct.
 2 Q Okay. Can you walk us through the calculation in
 3 Column G to explain how the number of keys is being used, if at
 4 all, to generate the total revenue figure?
 5 A Let's go to room revenue in G 12 and see how that's
 6 derived. Right so you would take the total number of rooms
 7 times the number of days in the year and you would assume an
 8 occupancy rate that is how full the hotel is with guests.
 9 So if you took 1250 times 365 you get 465,000.
 10 Presuming there is 70 percent occupancy you'd have an occupied
 11 room nights of 319,000 times an average rate of \$450 is the room
 12 revenue in this file.
 13 Q And again, the total keys includes potentially new
 14 signings that are at the moment either could be a letter of
 15 intent or something else?
 16 A No. It only includes new openings, right. That's what
 17 the formula says.
 18 Q Okay. But we already discussed that new openings is
 19 pulling the number from the new signings tab; correct?
 20 A It is, but --
 21 Q Okay. And that Column G calculation then feeds into
 22 the summary tab for future portfolio; correct?
 23 A It should I guess if we follow the formula through.
 24 Q Well, just conceptually that's what you're doing;
 25 right? This is part of --

M. Hawthorn - Plaintiff - direct (Amer) Page 1487

1 A Correct. Same analysis as the one before conceptually.
 2 Q Okay. So I'd like to summarize a few basic points and
 3 then ask you a handful of final questions.
 4 We've established that you are a CPA with knowledge of
 5 GAAP; correct?
 6 A Yes.
 7 Q And we've established that you know how to do a
 8 discounted cash flow analysis to calculate present value of
 9 future cash flow; correct?
 10 A Yes.
 11 Q And you've worked on compilation engagements for the
 12 Trump Organization; yes?
 13 A Yes.
 14 Q And you understand the concept of stating assets in a
 15 compilation at their estimated current value; correct?
 16 MR. KISE: Objection. Is he an expert? We're back
 17 to that again?
 18 MR. AMER: I'm just setting the stage and this is
 19 the last background question.
 20 MR. KISE: He hasn't testified to that previously.
 21 If he's summarizing previous testimony, he hasn't testified
 22 to that previously.
 23 MR. AMER: I think he has testified to what an
 24 estimated current value is.
 25 THE COURT: I don't think he's asking technical

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1 A Be qualified to give it a try.
 2 Q Is that a yes?
 3 A Yes.
 4 Q Did Mr. Weisselberg, Mr. McConney or Mr. Birney ever
 5 ask you for such assistance?
 6 A Assistance in?
 7 Q In calculating the present value of future cash flows
 8 to estimate current values for Mr. Trump's Statement of
 9 Financial Condition.
 10 A Not directly, no.
 11 Q If at any point in time between 2016 and 2021,
 12 Mr. Weisselberg, Mr. McConney or Mr. Birney had asked for your
 13 assistance in addressing issues of GAAP compliance for
 14 Mr. Trump's Statement of Financial Condition, would you have
 15 been able to provide such assistance based on your knowledge and
 16 experience?
 17 A Yes.
 18 Q Did Mr. Weisselberg, Mr. McConney or Mr. Birney ever
 19 ask you for such assistance?
 20 A No.
 21 MR. AMER: That's all I have, Your Honor.
 22 THE COURT: Any cross at this time? No? Okay.
 23 The witness is excused. Thank you.
 24 (Whereupon, the witness is excused from the witness
 25 stand.)

M. Hawthorn - Plaintiff - direct (Amer) Page 1488

1 questions about GAAP. He's asking what he did, what he
 2 understands, so overruled. You want to just ask that last
 3 question again?
 4 MR. AMER: Sure.
 5 Q And you understand the concept of stating assets in a
 6 compilation at their estimated current value; correct?
 7 A Yes.
 8 Q At any point in time during the course of your
 9 employment at the Trump Organization did either Mr. Weisselberg,
 10 Mr. McConney or Mr. Birney ask you to work with them on
 11 preparing Mr. Trump's Statement of Financial Condition?
 12 A No.
 13 Q If any of them had asked you to work with them on
 14 preparing Mr. Trump's Statement of Financial Condition, would
 15 you have had the knowledge and experience to do so?
 16 A Yes.
 17 Q If at any point in time between 2016 and 2021,
 18 Mr. Weisselberg, Mr. McConney or Mr. Birney had asked for your
 19 assistance in calculating the present value of future cash flows
 20 to estimate current values for Mr. Trump's Statement of
 21 Financial Condition, would you have been able to provide such
 22 assistance based on your knowledge and experience?
 23 A Certainly would have tried my best.
 24 Q Do you believe you would have been able to do so based
 25 on your knowledge and experience?

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1 THE COURT: And the next witness?
 2 Transcript continues on the following page....
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D. KIDDER - DIRECT (MR. HAREN) Page 1491

1 THE COURT OFFICER: Witness entering.
 2 DONNA KIDDER, a witness called by the Plaintiff,
 3 after having been first duly sworn by the Clerk of the Court,
 4 took the witness stand and testified as follows:
 5 THE COURT OFFICER: State your full name and home
 6 or business address for the record.
 7 THE WITNESS: Donna Kidder. 721 Fifth Avenue, New
 8 York, New York 10022.
 9 THE COURT: Now, that's a nice, loud voice, right.
 10 Keep at that level and please commence the direct
 11 examination.
 12 DIRECT EXAMINATION
 13 BY MR. HAREN:
 14 Q Good afternoon, Ms. Kidder. Good to see you again.
 15 Can you, please, describe your educational background
 16 after high school.
 17 A Some college.
 18 Q Do you work at the Trump Organization?
 19 A Yes, I do.
 20 Q What is your title there?
 21 A Assistant controller.
 22 Q When did you join the Trump Organization?
 23 A March 2007.
 24 Q And what was your position when you joined the Trump
 25 Organization?

D. KIDDER - DIRECT (MR. HAREN) Page 1492

1 A Senior accountant.
 2 Q Who was the chief financial officer of the Trump
 3 Organization when you joined the Trump Organization?
 4 A Allen Weisselberg.
 5 Q And who was the controller of the Trump Organization
 6 when you joined the Trump Organization?
 7 A Jeffrey McConney.
 8 Q What was the assistant controller when you joined the
 9 Trump Organization?
 10 A Eric Sacher.
 11 Q And who did you report to when you started at the Trump
 12 Organization?
 13 A Eric Sacher, Jeffrey McConney and Allen Weisselberg.
 14 Q Did there come a time when Eric Sacher left the Trump
 15 Organization?
 16 A Yes, there did.
 17 Q At some point after Mr. Sacher left the Trump
 18 Organization, did you become the assistant controller?
 19 A A few years after that.
 20 Q Did that occur approximately in 2010?
 21 A Approximately.
 22 Q Can you describe in general terms what your
 23 responsibilities have been as assistant controller?
 24 A Cash management, overseeing a staff of approximately
 25 six at any different time, cash flow reports, condominium cash

D. KIDDER - DIRECT (MR. HAREN) Page 1493

1 flow reports, budgeting for commercial properties.
 2 Q And what do you mean by cash management?
 3 A Every Monday, you just -- if outside properties needed
 4 funding, I would compile a report and I would fund them as
 5 necessary and report on all of the owned entities' cash position
 6 at that time.
 7 Q And when you say "outside properties," what are you
 8 referring to?
 9 A Golf course, hotels.
 10 Q So if I have that correct, every Monday you would
 11 prepare a report about the cash position of the golf courses and
 12 hotels?
 13 A No. May I elaborate?
 14 Q Sure.
 15 A So the owned entities, everything would roll up to them
 16 and if the other entities needed funding, they would request it
 17 through me.
 18 Q And what do you mean by owned entities?
 19 A The trust owns everything, so you have the trust is
 20 where all the cash sits, the money sits with DJT Holdings.
 21 Q And if what you describe as outside entities need
 22 funding, they would ask you?
 23 A It would go through me and then the -- it would have
 24 to be approved by either Allen Weisselberg at the time or Ron
 25 Lieberman who was also in charge of the golf courses and Patrick

D. KIDDER - DIRECT (MR. HAREN) Page 1494

1 Birney.
 2 Q And you say "at the time." Did there come a time when
 3 Mr. Weisselberg stopped being involved in that process?
 4 A When he pled guilty to tax fraud.
 5 Q Okay. In your role as assistant controller, do you
 6 think of some entities as having their accounting work done
 7 in-house?
 8 A Yes.
 9 Q What is the phrase "in-house" refer to in the context
 10 of that work?
 11 A The corporate office and it would be billing, accounts
 12 payable, budgets.
 13 Q And which entities have their accounting work done
 14 in-house as you understand that term?
 15 A 40 Wall Street, Trump Tower Commercial, the various
 16 owned retail and residences, Trump Park Avenue.
 17 Q When you say "owned retail," what are you referring to?
 18 A In condominium building such as Trump Park Avenue,
 19 L.L.C. There are sponsor-owned units that are retail, so we
 20 would maintain the books and records there, the leasing.
 21 Q And I think you described these as outside entities a
 22 minute ago, but were there entities that did not have their
 23 accounting work performed in-house?
 24 A Yes.
 25 Q And which entities were those?

D. KIDDER - DIRECT (MR. HAREN) Page 1495

1 A All of the hotels such as the Doral, Trump Old Post
 2 Office, the hotels and golf courses overseas, and all of the
 3 golf courses that we owned, Colts Neck, DC, The Vineyard, their
 4 books and records were kept outside.
 5 Q And did those entities have their own controllers?
 6 A Yes, they did.
 7 Q Did those entities have a procedure for providing their
 8 cash position to you regularly?
 9 A Yes, they did.
 10 Q How often did they provide their cash position to you?
 11 A They were instructed to provide it every week whether
 12 Friday by 5:00 or Monday morning.
 13 Q You say "were instructed." Instructed by whom?
 14 A By me.
 15 Q And for the entities that did not have their accounting
 16 work performed in-house, did their cash position reports ever
 17 request cash?
 18 A Occasionally, they did.
 19 Q And was there an approval process for those cash
 20 requests?
 21 A Yes, there was.
 22 Q And whose approval was needed for a cash request to be
 23 granted?
 24 A Allen Weisselberg at the time.
 25 Q And can you describe the process by which his approval

D. KIDDER - DIRECT (MR. HAREN) Page 1496

1 was obtained?
 2 A The e-mail would be sent while he is still working in
 3 the accounting department. I would compile the report and we
 4 would discuss who needed financing and for what purposes. He
 5 would okay it. I would then fund the golf course or the hotel,
 6 what have you, each entity.
 7 Q And where would the funding typically come from?
 8 A From an owned entity. Prior to Donald Trump becoming
 9 president, it would have come from him directly. After that,
 10 the structure was the trust, Donald J. Trump Revocable Trust.
 11 Q And did an entity called DJT Holdings, L.L.C. play any
 12 role in that process?
 13 A Yes, the structure was the trust, DJT Holdings, L.L.C.
 14 and occasionally, there was a third entity after the Holdings
 15 called DTTM, L.L.C.
 16 Q And for entities that did not have their accounting
 17 work performed in-house, did they ever distribute cash higher up
 18 in the hierarchy of Trump Organization entities?
 19 A Yes.
 20 Q Can you describe the process by which that occurred?
 21 A Well, they would have a profit and they would get
 22 approval to distribute cash to the owned entity.
 23 Q And prior to Mr. Trump becoming President of the United
 24 States, would that cash be distributed up to him?
 25 A There might have been an entity in between, but

D. KIDDER - DIRECT (MR. HAREN) Page 1497

1 ultimately, he was the only owning beneficiary.
 2 Q Subsequent to him becoming the President of the United
 3 States, was there an ultimate endpoint for those cash
 4 distributions?
 5 A The trust.
 6 MR. HAREN: Let's put up on the screen Plaintiff's
 7 Exhibit 1306.
 8 Q Ms. Kidder, do you recognize this document?
 9 A Yes.
 10 Q What do you recognize it to be?
 11 A It appears to be the budget projection for 2015 for 40
 12 Wall Street.
 13 MR. HAREN: I would move this document into
 14 evidence.
 15 MR. ROBERT: Objection. Statute of limitations.
 16 THE COURT: Understood. Overruled. It is in.
 17 (Whereupon, the Document was marked in evidence as
 18 Plaintiff's Exhibit 1306.)
 19 Q Let's move to PX 1306 native one.
 20 Ms. Kidder, the document on the screen, do you
 21 recognize it?
 22 A That's the spreadsheet for the projected budget for 40
 23 Wall Street.
 24 MR. HAREN: I move this native file into evidence.
 25 MR. ROBERT: Same objection. I thought it was all

D. KIDDER - DIRECT (MR. HAREN) Page 1498

1 part of the one exhibit anyway.
 2 THE COURT: I thought so, too, but it is all in.
 3 It is all in evidence.
 4 MR. HAREN: All right. We have had a practice of
 5 doing the native files separately, so I just want to make
 6 sure that if there is a -- if someone moves in evidence an
 7 e-mail that has native files attached, that the whole
 8 exhibit will come in. Is that correct?
 9 MR. ROBERT: Why don't we just take it as it comes,
 10 but at this point, I thought it was all coming in as to this
 11 exhibit; but my same objection, Your Honor has already ruled
 12 is coming in.
 13 THE COURT: Right. We will do it ad hoc.
 14 MR. HAREN: Okay.
 15 Q Ms. Kidder, before asking you about the document, just
 16 can you describe Mr. Weisselberg's involvement in the 40 Wall
 17 Street budget process?
 18 A Yes. He would have the final review after everything
 19 was compiled. The operational expenses were compiled by Matthew
 20 Calamari who is the COO and the building manager, I believe, in
 21 2015 was Steve LaFiosca (ph). By operating expenses, I mean
 22 anything that was relevant to operating the building. For
 23 example, I want to say messenger and delivery because that's all
 24 I see, but also payroll. If you go down, contracts, anything
 25 like that. For real estate taxes, we would have reached out to

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1 Marcus Pollack (ph) for projection and he would have provided
 2 that. For the ground rent, there's actually an agreement. For
 3 the income, I would have prepared an income projection by any
 4 lease that was already in place. There are no assumptions in
 5 this. He would have -- Allen Weisselberg would have reviewed
 6 everything as well as Matthew Calamari would have reviewed
 7 everything and they would have tweaked or questioned or changed
 8 any numbers that they felt were too high or too low
 9 operationally. For the income, it was what it is. So it was
 10 what it was, I should say. So if there was a lease, it was in
 11 the income.
 12 Q So just speaking generally, the time period from 2011
 13 to 2021, what was Mr. Weisselberg's involvement in the 40 Wall
 14 Street budget process at a very high level?
 15 A Final approval.
 16 Q Do you have an understanding of the figure in cell Q151
 17 down to 153?
 18 A 15 -- so 151?
 19 Q Excuse me. It is O from 151 to 153.
 20 A So 0 151 to 153. Would you move it over a little, so I
 21 could see the titles --
 22 MR. HAREN: Zoom out a little bit. It is a very
 23 wide spreadsheet.
 24 A Yes, I know, unfortunately. All right. So there are a
 25 few different totals here. You would have the NOI before debt

D. KIDDER - DIRECT (MR. HAREN) Page 1500

1 service, after debt service in Capex. The final number
 2 is -- in some months, it is a profit and in others it is a
 3 loss, but ultimately for that year, it was projected a loss of
 4 \$4.1 million.
 5 Q And that's the -- scroll back to the left.
 6 That's a total NOI after debt service and Capex?
 7 A Yes.
 8 Q And Capex refers to capital expenditures?
 9 A Capital improvements, tenant improvements, lease, any
 10 leasing commissions. It looks here -- it is just a whole
 11 number. It is just one building improvement number. The
 12 capital improvement is just one line and that's for building
 13 improvement. That's what that code is.
 14 Q So speaking in reference to the negative \$4.17 million
 15 number, in your experience, if a business within the Trump
 16 Organization has negative income after debt over the course of a
 17 year, does someone have to advance money to the business?
 18 A Yes.
 19 Q Who does that?
 20 A The owning entity.
 21 Q So does that mean prior to Mr. Trump becoming
 22 president, he would advance the money?
 23 A That's correct.
 24 Q After Mr. Trump became president, the trust would
 25 advance the money?

D. KIDDER - DIRECT (MR. HAREN) Page 1501

1 A That is correct.
 2 MR. HAREN: Let's go to Plaintiff's Exhibit 1078.
 3 Q Ms. Kidder, I'll direct your attention to the bottom of
 4 the first page continuing on to the second page. There is an
 5 e-mail from you to a person named Joseph Piantedosi copying
 6 Brian Lynch and Jeff McConney with the subject "re TNGC
 7 Westchester cash position." Do you see that?
 8 A I do.
 9 Q Do you recognize this document?
 10 A Yes, I do.
 11 Q What do you recognize it to be?
 12 A This is the first time it appears that Jeff instructed
 13 a controller to pay a management fee and have it hit the books
 14 instead of just a journal entry.
 15 MR. HAREN: I move this document into evidence.
 16 THE COURT: Granted. It is in.
 17 (Whereupon, the Document was marked in evidence as
 18 Plaintiff's Exhibit 1078.)
 19 Q Looking at the e-mail on December 23rd of 2016, the
 20 e-mail states -- it has a subject of, TNGC Westchester cash
 21 position and it says, "Hi, Donna. I have attached the cash
 22 position for the club. We are positive we will be able to meet
 23 the payroll for next week with the existing funds." Do you see
 24 that?
 25 A Yes, I do.

D. KIDDER - DIRECT (MR. HAREN) Page 1502

1 Q Is this e-mail an example of what you called an outside
 2 entity sending you a cash position update?
 3 A Yes, it is.
 4 Q This is the time of e-mail you would receive weekly
 5 from those outside entities?
 6 A Yes.
 7 Q Is it typical to sweep funding from operating entities
 8 within the Trump Organization?
 9 A Yes, it is.
 10 Q Why does that occur?
 11 A Because we don't like to keep too much excess funds at
 12 entity level. Instead, we sweep it up to the owning entity for
 13 investment.
 14 Q And can you just describe in a little bit more detail
 15 what you mean by "sweep up to the owning entity"?
 16 A Well, if the golf course here had excess operational
 17 funds, he would issue a distribution to the owning entity.
 18 Q And ultimately, I think you described the process, but
 19 for some entities or -- excuse me. Before Mr. Trump became
 20 president, the distribution would ultimately go up to him; is
 21 that correct?
 22 A Correct.
 23 Q And after he became president, the distributions would
 24 go up to the trust?
 25 A Correct.

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1 Q I'm looking on page one on to page two of Plaintiff's
 2 Exhibit 1078. I think you mentioned this already. It
 3 states -- excuse me. It is the top of page two. It states, "I
 4 will be sending 405,388.38 which in turn you need to send right
 5 back as a 2015 management fee". Do you see that?
 6 A I do.
 7 Q And was there a reason that before the end of the year
 8 in 2016 there needed to be a monetary transfer of an amount for
 9 a management fee from the TNGC Westchester?
 10 A Sorry. Can you just repeat that question? I didn't
 11 hear the first part.
 12 MR. HAREN: Sure. Can I have a readback, please,
 13 Your Honor.
 14 THE COURT: Read back, please.
 15 (Whereupon, the requested portion of the record was
 16 read back.)
 17 A They didn't have enough operating cash left over at the
 18 end of the year.
 19 Q So you needed to send them \$405,000 and change and have
 20 them send it right back as a management fee?
 21 A Correct.
 22 Q Did you have an understanding how 405,388 was
 23 calculated?
 24 A Mazars calculated the management fee based on the gross
 25 profits at four and-a-half percent.

D. KIDDER - DIRECT (MR. HAREN) Page 1504

1 Q Was it four and-a-half percent of gross revenue or four
 2 and-a-half percent of gross profit?
 3 A Revenue.
 4 Q Let's move to Plaintiff's Exhibit 1133. Ms. Kidder, in
 5 reviewing this document, if you could turn to page three and
 6 review up from there. That might be easier.
 7 A It looks to be a couple of documents in one, but yes, I
 8 recognize it.
 9 MR. HAREN: I move this document into evidence.
 10 MR. ROBERT: I want to make sure this is one chain
 11 of e-mails. The witness said it looks like it is several
 12 together.
 13 MR. HAREN: It was produced to us like this.
 14 MR. ROBERT: Sorry? In hard form or electronic
 15 form?
 16 MR. HAREN: In the form in which it exists here.
 17 MR. ROBERT: So that means it is one e-mail
 18 exchange.
 19 MR. HAREN: It means it is a series of e-mails and
 20 one chain that has the items on the last page. They kind of
 21 stack up.
 22 MR. ROBERT: Okay.
 23 THE COURT: So we treat it as one document. Is
 24 that agreed?
 25 MR. ROBERT: I just wanted to make sure that it is

D. KIDDER - DIRECT (MR. HAREN) Page 1505

1 one exchange in the e-mail because of the witness' answer.
 2 THE COURT: Granted. It is in evidence.
 3 (Whereupon, the Document was marked in evidence as
 4 Plaintiff's Exhibit 1133.)
 5 Q Ms. Kidder, directing you to page three of the
 6 document, in the middle of the page, there is an e-mail from
 7 Jennifer Minton to you with the subject "Charlotte funding
 8 request 12.23.16." Do you see that right there in the middle of
 9 the page?
 10 A Yes, I do.
 11 Q Who is Jennifer Minton?
 12 A She is the controller for the golf course in Charlotte.
 13 Q Do you understand the subject "Charlotte funding
 14 request" to refer to the sort of weekly cash reports that you
 15 mentioned earlier?
 16 A Yes, I do.
 17 Q On page three, you asked her "Out of the 531K, can any
 18 of that be considered as a distribution to DJT"?
 19 A Yes, I see that.
 20 Q What did you understand that to refer to at the time?
 21 A In this e-mail, there would have been an attachment
 22 which would have been her cash position. I asked if any of her
 23 cash balance could be considered a distribution.
 24 Q And so that refers to the process you described earlier
 25 of seeing if there is excess cash left in an operating entity?

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1 A Yes.
 2 THE COURT: Five-minute warning.
 3 Q Ms. Minton, the subsequent e-mail at the top of page
 4 three and starting from page two, she writes, "We have never
 5 done this transfer for the management fee before, so I guess it
 6 wouldn't matter what we consider it." Do you see that?
 7 A Which -- I'm sorry. Which one?
 8 Q It is at the top of page two of the document. It
 9 begins with, "I had something come up unexpected yesterday and
 10 I'm out of the office today. I wanted to reply, sorry, but I am
 11 confused." Then it says, "We have never done this transfer for
 12 the management fee before, so I guess it wouldn't matter what we
 13 consider it."
 14 My question is, did you understand Ms. Minton to have
 15 been asking you how to classify a management fee?
 16 A Yes.
 17 Q And your response on page two states, "It is a
 18 management fee. Allen would like it below the line." Do you
 19 see that?
 20 A Yes, I did.
 21 Q Is that Allen Weisselberg?
 22 A Yes.
 23 Q Allen Weisselberg gave direction as to how Trump
 24 Organization golf clubs classified their management fees?
 25 A Correct.

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1 Q And what did you understand below the line to mean?

2 A After all of the operating expenses and the -- in

3 the -- the first NOI, just as I showed you in -- on 40 Wall

4 Street, they would have a report and it would have different

5 NOIs before management fees, before Capex such as that. So

6 that's what he means by below the line.

7 Q There would be a net operating income generated before

8 the management fee was subtracted?

9 A The NOI would be before the management fee, it would be

10 higher and then after the management fee, it would be less.

11 Q In the e-mail, again, in the middle of page two, you

12 stated to Ms. Minton, "He would like it recorded below the line.

13 He also suggests that Ed already knows how to show it on the

14 reports that are provided to AW/Ron/Patrick, so he can advise."

15 What did you understand that sentence to refer to?

16 A Ed Raymundo is the controller at the Florida properties

17 in Mar-A-Lago and he has been reporting this for years before

18 Jennifer Minton was hired and she had never seen an entry like

19 this on her books, so he was just going to show her how to do it

20 on the golf reports.

21 Q And what did you mean reports that are provided to

22 AW/Ron/Patrick?

23 A Those are the monthly reports from the golf courses,

24 profit and loss, income and expense, balance sheets.

25 Q So those monthly reports that you're describing, can

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1 you be more specific about what they contain?

2 A From what I have seen, it is a profit and loss

3 statement, an income and expense statement, a balance sheet.

4 There might or might not be management fees attached. They

5 usually went direct to Allen, Ron and Patrick.

6 Q And these monthly reports contain income and expense

7 information for each of the golf clubs in the Trump

8 Organization?

9 A Just the one they were responsible for. Each

10 controller would submit their own reports.

11 Q So each of the controllers would submit a report with

12 the income and expenses for their property?

13 A Correct.

14 Q And did you have an understanding that Patrick

15 Birney -- you are referring to Patrick Birney, right?

16 A Correct.

17 Q Did you have an understanding that Mr. Birney would

18 then consolidate that information into a single report?

19 A I don't know what he did with all of the reports.

20 Q Looking at page one of Exhibit 1133 and at the bottom

21 of the page, you wrote "I sent you a separate wire yesterday so

22 you can pay the management fee. (It also happens to be

23 531,903.42). Do you see that?

24 A Yes.

25 Q Is this another instance in which you sent funding to a

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1 club for it to immediately send it back as a management fee?

2 A Yes, it is.

3 MR. HAREN: I think that's a good place to stop for

4 the day, Your Honor.

5 THE COURT: Okay. Hold on. As usual, ten o'clock

6 tomorrow. Have a good evening.

7 MS. FAHERTY: Your Honor, can you give an

8 admonition to the witness before she departs not to discuss

9 her testimony with anyone.

10 THE COURT: I hereby admonish you not to discuss

11 your testimony with anyone.

12 THE WITNESS: Yes, Your Honor.

13 (Witness exits the stand.)

14 (Whereupon, the trial was adjourned to October 17,

15 2023 at 10:00 a.m.)

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PATRICK BIRNEY, MARK HAWTHORN, DONNA KIDDER October 16, 2023

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NYS Attorney General v.
Donald Trump et al.

Donna Kidder, Douglas Larson
October 17, 2023

Janelle C. London, RMR, CRR & Nicole Robinson, SCR

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1 SUPREME COURT OF THE STATE OF NEW YORK
 2 COUNTY OF NEW YORK : CIVIL TERM : PART 37
 3 PEOPLE OF THE STATE OF NEW YORK, BY
 4 LETITIA JAMES, ATTORNEY GENERAL OF
 5 THE STATE OF NEW YORK,
 6 Plaintiff,
 7 -against- Index No. 452564/2022
 8 DONALD J. TRUMP; DONALD TRUMP, JR.; ERIC TRUMP;
 9 IVANKA TRUMP; ALLEN WEISSELBERG; JEFFREY MCCONNEY;
 10 THE DONALD J. TRUMP REVOCABLE TRUST; THE TRUMP
 11 ORGANIZATION, INC.; TRUMP ORGANIZATION, LLC;
 12 DJT HOLDINGS, LLC; DJT HOLDINGS MANAGING MEMBER;
 13 TRUMP ENDEAVOR 12, LLC; 401 NORTH WABASH VENTURE,
 14 LLC; TRUMP OLD POST OFFICE, LLC; 40 WALL STREET,
 15 LLC.; AND SEVEN SPRINGS, LLC,
 16 Defendants.
 17 ----- X
 18 60 Centre Street
 19 New York, New York 10013
 20 October 11, 2023
 21 B E F O R E:
 22 HONORABLE ARTHUR F. ENGORON,
 23 Justice, Supreme Court
 24 A P P E A R A N C E S :
 25 OFFICE OF THE ATTORNEY GENERAL
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 ERIC HAREN, ESQ.
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 MARK LADOV, ESQ.
 (Appearances continued on the next page.)

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1 THE COURT OFFICER: All rise. Part 37 is now in
 2 session. The Honorable Judge Arthur Engoron presiding.
 3 Make sure all cell phones are on silent. Laptops and cell
 4 phones will be permitted but only to members of the press.
 5 There is absolutely no recording or photography of any kind
 6 allowed in the courtroom. Now be seated and come to order.
 7 THE COURT: I understand there is some
 8 photographers outside that want to come in for a few
 9 minutes, so look your best.
 10 (Whereupon, there is a pause in the proceedings.)
 11 THE COURT: They are the eyes and ears of the
 12 public, or at least the eyes in this case.
 13 Okay. We're continuing with the testimony of Ms.
 14 Kidder; correct?
 15 It takes a while to get the witnesses. They're
 16 sequestered or something. She'll be here eventually.
 17 THE COURT OFFICER: Witness entering.
 18 (Whereupon, the witness enters the courtroom and
 19 approaches the witness stand.)
 20 THE COURT: I'll remind the witness, as I always
 21 do, that she is still under oath.
 22 And let's continue with the direct examination.
 23 CONTINUED DIRECT EXAMINATION
 24 BY MR. HAREN:
 25 Q Good morning, Ms. Kidder.

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 21
 22
 23 NICOLE C. ROBINSON, CSR
 JANELLE C. LONDON, RMR, CRR
 Senior Court Reporters
 24
 25

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1 A Good morning.
 2 MR. HAREN: I'd like to put on the screen
 3 Plaintiff's Exhibit 1300.
 4 THE COURT: And I'll ask both of the participants
 5 to keep their voices up.
 6 MR. HAREN: Yes. Thank you, Your Honor.
 7 CONTINUED DIRECT EXAMINATION
 8 BY MR. HAREN:
 9 Q Ms. Kidder, do you recognize the e-mail on the screen?
 10 A I recognize my name, but there is nothing attached, so
 11 I'm not sure what it would be.
 12 MR. HAREN: Sure. Can we take down that image and
 13 pull up the attachment that is PX 1300_native?
 14 A Yes, I recognize this.
 15 Q And what do you recognize it to be?
 16 A That's a weekly cash report.
 17 Q And can you explain what you mean by "weekly cash
 18 report?"
 19 A These are the owned entities and that is the cash
 20 position of disposable amounts. This is what we spoke of
 21 yesterday, the weekly cash reporting.
 22 Q Can you explain at the top of the spreadsheet it
 23 states: "From Allen Weisselberg to Donald J. Trump dated
 24 December 29, 2016." Do you see that?
 25 A Yes, I do.

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1 Q Do you have a practice of preparing spreadsheets like
2 this at the Trump Organization?
3 A I prepare it every week.
4 Q And what is the purpose of this spreadsheet?
5 A To show the cash positions of the entities that are
6 holding accounts are owned entities, owning entities.
7 Q And prior to Mr. Trump becoming president of the United
8 States was the purpose of this document to allow Allen
9 Weisselberg to give Mr. Trump an update on the cash position of
10 the entities contained in the spreadsheet?
11 A Correct.
12 Q And was that the -- can you describe the purpose of
13 these spreadsheets after Mr. Trump became president?
14 A It's still the same practice except it doesn't go to
15 President Trump directly.
16 Q Okay. Thank you.
17 MR. HAREN: Now, focusing on the e-mail,
18 Exhibit 1300, and the spreadsheet, Exhibit 1300 native, I'd
19 like to move those documents into evidence, please.
20 THE COURT: Granted. It's in.
21 (Whereupon, the item previously referred to are
22 received and marked Plaintiff's Exhibit Numbers 1300 and
23 1300 native in evidence.)
24 Q Ms. Kidder, focusing on the spreadsheet, I'd like to --
25 there is a tab at the bottom titled "cash."

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1 What -- actually, let me go back to a different
2 question.
3 When were you first assigned the task of preparing
4 weekly cash spreadsheets of this sort?
5 A When Eric Sacher resigned and I was assigned this task.
6 Q And that was in about 2008 as we discussed yesterday?
7 A Correct.
8 Q Okay. I'd like to walk through Rows 11 through 26.
9 Can you -- do you have an understanding of the
10 information contained in those rows?
11 A Yes.
12 Q And what's your understanding?
13 A The first line is a checking account at Capital One,
14 the second is a money market account at Capital One. If you
15 scroll over I could see if there is another column that says the
16 name.
17 I believe that was personal. The other way. The other
18 way. Okay.
19 So this was 2016 prior to President Trump becoming the
20 president, so everything was still in his name as far as the
21 Capital One account. It was not yet in the trust. That's his
22 personal account. Capital One Money Market is his personal
23 account.
24 Q Just -- without speaking specifically about the
25 particular accounts, just as a general matter what is the

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1 information reflected in Rows 11 through 126?
2 A Cash position as of that day.
3 Q And what is the relationship between that information
4 and what you described yesterday as owner entities?
5 A He's the owning entity.
6 Q And so the cash flows up?
7 A That is correct.
8 Q In Columns Q and S in Row 80, I'd like to direct your
9 attention to some figures. Do you have an understanding of the
10 information contained in Cell Q 80?
11 A Yes.
12 Q And what's your understanding?
13 A It's the cash total of the lines above it.
14 Q And how about R 80?
15 A That's the restricted cash or investments.
16 Q And S 80?
17 A The available cash and investments.
18 Q So is the idea that there is a total sum as restricted
19 and taking out restricted, what's in S 80 is what remains?
20 A That is correct.
21 Q Okay. Can we turn to the tab of the spreadsheet
22 entitled "AW REC." And first, do you have an understanding of
23 the phrase AW REC?
24 A Yes. This was a spreadsheet Allen Weisselberg created
25 to fill in, so it's Allen Weisselberg's reconciliation and as

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1 the title states it's funding for the TU settlement.
2 Q And what does TU settlement refer to?
3 A Trump University.
4 Q Directing your attention to Row 36. Do you see the
5 figure in G 36 of 16,567,203?
6 A Yes.
7 Q Does that come from the cash tab that we looked at as
8 the portion of the cash that was not restricted?
9 A It should.
10 Q And then I'd like to scroll or just look at Row 37
11 where it states "see A and see above" and there is a figure of
12 5.6 million. Do you see that?
13 A I see that.
14 Q Why are those figures subtracted here?
15 A Would you be able to scroll up?
16 Q Sure.
17 A I don't recall. This was awhile ago I did this
18 spreadsheet.
19 Q Sure. We can take a look through.
20 Do you see that Item A is 3.1 million in current cash?
21 A Yes.
22 Q And Item C is 2.5 million in MAL/TIGC?
23 A Yes.
24 Q Do you have an understanding of what MAL/TIGC refers
25 to?

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1 A That I do recall or understand. MAL is Mar-A-Lago,
2 TIGC is the golf course in Florida and that would anticipate a
3 distribution of that amount.
4 Q And there is a heading of this section that states
5 "funding for TU settlement" and there is a total in Cell G 10 of
6 25 million. Do you see that?
7 A Yes.
8 Q And do you have an understanding that the figures above
9 25 million are the sums of money that are funding for TU
10 settlement?
11 A Yes.
12 Q And do you have an understanding of the Cell G 8?
13 A Yes.
14 Q And what's your understanding?
15 A That was a Ladder Capital loan Allen Weisselberg took
16 out. I believe it was for Trump Plaza to add to the cash
17 required to pay the Trump University settlement.
18 Q And I'd like to go back to -- go down to Cell I 42.
19 Do you see in Row 42 it states "projected cash
20 liquidity" with an asterisk and there is a figure of 8,087,203?
21 A I do.
22 Q And in Row 45 there is an addition of 1,667,000 for PH
23 28 sale net?
24 A I do.
25 Q Do you have an understanding of what PH 28 sale net

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1 refers to?
2 A That was the anticipated sale of penthouse 28, the net
3 profit at Trump Park Avenue LLC.
4 Q So there is a projected cash liquidity in Cell I 42 and
5 then the net from the sale of PH 28 of 1.667 and that sums to
6 cell -- the number in I 46; is that right?
7 A That's how it should add, yes.
8 Q Okay. Ms. Kidder, I'm going to shift to a different
9 topic, 40 Wall Street budgets.
10 We spoke yesterday about the budget process for 40 Wall
11 Street. How did that process work for other entities that you
12 considered in house?
13 A The only other entity that we actually prepared a
14 budget for was Trump Tower commercial and it was exactly the
15 same process.
16 Q And can you explain more what you mean by "exactly the
17 same process?"
18 A Sure. So for the income based on the leases in place I
19 would prepare the income projection for the budget year. For
20 the expenses it would be Matthew Calamari. He would put that
21 together if there were any capital improvements to the building.
22 I would speak with Michael Calamari. Leasing commissions,
23 whatever attorney was working on leases, if they had a number I
24 would add that. We would work as a team and put the numbers
25 together and then the budget, the projected budget, would go to

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1 Allen Weisselberg for approval and review.
2 Q And that process was the same from 2011 to 2021?
3 A Yes.
4 Q And do you have an awareness of how the budget process
5 works for club properties in the Trump Organization?
6 A Not really, no.
7 MR. HAREN: Let's move to Plaintiff's Exhibit 1295.
8 Q Ms. Kidder, do you recognize this document?
9 A It says it's the 40 Wall Street 2011 Operating/Capital
10 Budget.
11 Q And do you recognize it?
12 A It looks like something I would have prepared, yes.
13 MR. HAREN: I move this document into evidence.
14 THE COURT: Granted. It's in evidence.
15 (Whereupon, the item previously referred to is
16 received and marked Plaintiff's Exhibit Number 1295 in
17 evidence.)
18 Q So I just want to start at the bottom in Cell R 108 and
19 work up from there.
20 Do you have, Ms. Kidder, an understanding of the
21 information in Cell R 108?
22 A It's a loss for the year.
23 Q And what's the amount of the loss?
24 A \$4,851,994.
25 Q I'd like to scroll up in the spreadsheet to the item

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1 for interest expenses. Do you see in Row 22 it states "interest
2 on mortgage?"
3 A Yes, I do.
4 Q And do you see that the amount is 9,288,267?
5 A Yes.
6 Q And elsewhere in the spreadsheet there is an expense
7 for building improvements of 1.8 million. I think it's at the
8 bottom. Do you see that in Row 106?
9 A I do.
10 Q So I'm going to represent to you that if you start at a
11 loss of 4,851,994 and you add back in the interest expense in
12 the building improvements expense you get to a figure of
13 6,236,273.
14 MR. HAREN: And I think as in prior instances the
15 Court can take judicial notice of the mathematical
16 calculation.
17 And I'd like to pull up on the screen Plaintiff's
18 Exhibit 1573.
19 Q And Ms. Kidder, I'm not going to ask you any questions
20 about this document, but I just want to point out that some
21 figures match.
22 MR. HAREN: So could we go to page 138, please?
23 Q Ms. Kidder, do you see that under operating expenses --
24 MR. ROBERT: Objection, Your Honor.
25 THE COURT: Go ahead.

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1 MR. ROBERT: The document is not in evidence
2 because it couldn't be because it's hearsay and now he's
3 reading from a document that's not in evidence, that can't
4 come into evidence because it's hearsay, so I object to the
5 question.
6 MR. HAREN: I'm not offering it for the truth of
7 the matter at this stage. We have another witness coming
8 later who in fact prepared the appraisal. I just want to
9 show and demonstrate the two figures match and move on.
10 MR. ROBERT: I still think it's hearsay nonetheless
11 and even if you can subject it to connection later, it's
12 still an inadmissible statement contained in the document.
13 THE COURT: Objection overruled because it's not
14 being introduced to prove the truth of its contents, but I
15 understand your point.
16 MR. HAREN: Thank you, Your Honor.
17 Q Ms. Kidder, under "operating expenses" it reads:
18 "We have analyzed the actual operating expenses for
19 2008, 2009 and 2010 and budget expenses for 2011 as provided by
20 ownership."
21 MR. HAREN: Just go to page 140, please.
22 Q So this is another table in the appraisal in the column
23 that states "budget count CY 2011" and at the bottom there is a
24 figure for net operating income that matches to the dollar --
25 the figure on the budget you prepared.

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1 MR. HAREN: I'm going to move into evidence now the
2 -- not the appraisal, but the budget Ms. Kidder prepared
3 because I haven't done that yet. I'd like to move --
4 MR. ROBERT: As to that in the previous one the
5 statute of limitations, objection, Your Honor.
6 THE COURT: I understand that as a standing
7 objection on the record and -- but the document is in
8 evidence. Granted.
9 MR. HAREN: Thank you.
10 Can we pull up Plaintiff's Exhibit 1296, please?
11 Q Ms. Kidder, do you recognize this document?
12 A Yes, I do.
13 Q What do you recognize it to be?
14 A One of the assumption reports Allen Weisselberg would
15 request that I prepare periodically.
16 MR. HAREN: I move Plaintiff's Exhibit 1296 native
17 into evidence.
18 MR. ROBERT: Objection. Statute of limitations.
19 THE COURT: Granted. It's in.
20 It's a standing objection, but if you feel the
21 need, you can say it every time.
22 (Whereupon, the item previously referred to is
23 received and marked Plaintiff's Exhibit Number 1296 in
24 evidence.)
25 Q Ms. Kidder, do you see at the top of the page reads:

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1 "40 Wall Street LLC six-year budget projection?"
2 A Yes, I do.
3 Q And you prepared this document?
4 A I did.
5 Q Did anybody give you instruction as to how to prepare
6 this document?
7 A Yes.
8 Q Who did?
9 A Allen Weisselberg.
10 Q Did Mr. Weisselberg direct you to prepare this
11 document?
12 A Yes, he did.
13 Q Does this document contain assumptions?
14 A Yes.
15 Q Did Allen Weisselberg direct you to make the
16 assumptions contained in this document?
17 A Yes, he did.
18 Q I'd like to look down at Column R.
19 Do you see the information in Cell R 10 that states
20 "assumed full lease up 1/2013?"
21 A Yes, I do.
22 Q What does that indicate?
23 A It means that whatever vacant space at the time was to
24 be assumed as fully leased up as of 1/2013.
25 Q And is that one of the assumptions Mr. Weisselberg

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1 directed you to make?
2 A Yes.
3 Q And the next row down where it states on the left side
4 in Column C and D "pending lease assumption." Do you see that?
5 A Yes.
6 Q What does that indicate?
7 A That's also another line item Allen had me assume that
8 there were at least leases that were currently out and pending
9 signing, so he wanted to break that out on a separate line.
10 Q And is the assumption that the pending leases would
11 generate the figures in Cells J through Q an assumption that
12 Mr. Weisselberg directed you to make?
13 A Correct.
14 MR. HAREN: Can we zoom out a little bit?
15 Q Ms. Kidder, if we could scroll down through general
16 expenses and administrative expenses all the way to the bottom.
17 Are there in this six-year budget projection any line
18 items for leasing commissions?
19 A I don't see any.
20 Q Tenant improvements?
21 A I don't see any on the spreadsheet.
22 Q How about capital expenditures?
23 A There aren't any on this report.
24 Q Did Mr. Weisselberg ever convey anything to you about
25 what this document would be used for?

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1 A No, he did not.
 2 MR. HAREN: Let's move to Plaintiff's Exhibit 1032.
 3 Q Ms. Kidder, this document is very large. I'm not going
 4 to show you a ton of it, but I will just state it was produced
 5 in this form and I'd like to direct you to page three.
 6 Does this page of the document appear to be a scan of
 7 the six-year budget projection that you prepared that we just
 8 looked at as Exhibit 1296?
 9 A I don't know if it's the same one, but it's definitely
 10 a six-year budget projection that I prepared.
 11 Q And you can see on the right side it contains the same
 12 language "assumed full lease up 1/2013," do you see that?
 13 A Yes, I do.
 14 Q Included in vacancy assumption calculation as pending
 15 lease assumption, does it appear to you to be the same or
 16 similar to the exhibit that was number 1296?
 17 A It is the same or similar.
 18 Q And did Mr. Weisselberg direct you to prepare this
 19 document?
 20 A Yes.
 21 Q And did Mr. Weisselberg direct you to make the
 22 assumptions that are contained in this document?
 23 A Yes.
 24 Q I'd like to direct your attention lower on the page to
 25 where there is some handwriting.

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1 Ms. Kidder, do you see on the right side of the page
 2 there is some adding machine math?
 3 A I do.
 4 Q And do you see that one figure is labeled A, another is
 5 labeled B?
 6 A I do.
 7 Q Do you recognize the handwriting here?
 8 A It appears to be Allen Weisselberg's.
 9 Q And just to get an understanding of the calculation
 10 that's taking place, do you see in the line that says "operating
 11 cash flow" the figure on the left, which I think is 9885810 is
 12 labeled B?
 13 A Yes, I see that.
 14 Q And the full total of all the figures of 141,057,720 is
 15 labeled A?
 16 A Yes, I see that.
 17 Q And in the adding machine calculation can you see that
 18 the full total is -- that -- excuse me -- the B, meaning the
 19 number 9885810 is subtracted from the full total?
 20 A Yes, I see that.
 21 Q And so is the effective result of this calculation to
 22 sum the budgeted figures for 2013 to 2017 with the assumptions
 23 contained in this document?
 24 A Yes.
 25 MR. HAREN: The Court can take judicial notice that

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1 the Figure 131,171,910 when divided by five is 26,234,382.
 2 And I'd like to switch to Plaintiff's Exhibit 788,
 3 the 2011 Supporting Data and look at Rows 112 to 119.
 4 Q Ms. Kidder --
 5 THE COURT: Normally you pause when you say you'd
 6 like me to take judicial notice so.
 7 MR. HAREN: My apologies, Your Honor.
 8 THE COURT: I created my own pause. I will take
 9 judicial notice of the math, assuming it's correct.
 10 MR. HAREN: Thank you.
 11 THE COURT: I'm sure you checked it five times.
 12 MR. HAREN: I probably had done the adding and
 13 subtracting many times at this point. I appreciate that.
 14 Q Ms. Kidder, in Cell G 119, do you see a net operating
 15 income of 26,234,400?
 16 A I see that, yes.
 17 Q And do you see that the document states "average income
 18 for the five-year period 2013 to 2017" in Cell B 114?
 19 A I'm sorry, which cell?
 20 Q It crosses over into B and C, but it's Row 114.
 21 A The number that's 47819?
 22 Q Yes.
 23 A I see that, yes.
 24 Q And do you see that in Row 116 it states "average
 25 expenses for the five-year period 2013 to 2017 in the amount of

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1 21,585,000?"
 2 A I see that.
 3 Q Did you ever when preparing the six-year cash flow
 4 projection in Exhibit 1296 have an understanding that it would
 5 be used to value 40 Wall Street for the purposes of a Statement
 6 of Financial Condition for Mr. Trump?
 7 A No, I did not.
 8 Q Moving to a new topic of management fees.
 9 Ms. Kidder, I want to just talk about the refinancing
 10 of 40 Wall Street in 2015 with Ladder Capital Finance.
 11 Do you generally recall that that occurred?
 12 A Yes.
 13 MR. HAREN: I'd like to mark Plaintiff's
 14 Exhibit 652.
 15 THE COURT: It's marked. Are you looking to
 16 introduce it into evidence?
 17 Q Ms. Kidder, do you recognize this document?
 18 A Yes.
 19 Q What do you recognize it to be?
 20 A Allen Weisselberg instructed Haroula Zapantis to
 21 provide the trailing 12 as of 3/31/15. So she prepared it, sent
 22 it to me and I forwarded it on to Allen Weisselberg who then
 23 forwarded it on apparently to Jack Weisselberg.
 24 Q Just to clarify, when you say "trailing 12," what are
 25 you referring to?

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1 A The 12 months of income and expense for 40 Wall Street.
 2 Q And looking at the document there is an e-mail at the
 3 bottom from Ms. Zapantis to you and then an e-mail from you to
 4 Jack Weisselberg copying Allen Weisselberg. Do you see that?
 5 A Yes.
 6 Q So is it -- just so I understand, Allen Weisselberg
 7 directed Ms. Zapantis to prepare this document, Ms. Zapantis
 8 sent it to you and you sent it along to Jack Weisselberg?
 9 A In this e-mail trail, but prior to that it would have
 10 gone to Allen Weisselberg for his review before being sent to
 11 Jack Weisselberg.
 12 Q And what's your basis for that understanding?
 13 A I'm sorry. I don't understand the question.
 14 Q What's your basis for an understanding that the
 15 trailing 12 cash flow document would have had to have been
 16 reviewed by Allen Weisselberg before it went to an outside
 17 party?
 18 A Everything would have had to have been reviewed by
 19 Allen Weisselberg.
 20 Q And when you say "everything?"
 21 A Any document such as this, trailing 12, a financial
 22 statement.
 23 Q So any -- fair to say any financial document before it
 24 went to an outside party had to be approved by Allen
 25 Weisselberg?

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1 A Yes.
 2 Transcript continues on the following page.....
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D. KIDDER - DIRECT(MR. HAREN) Page 1532

1 Q Who is Haroula Zapantis?
 2 A She is a senior accountant at the Trump Organization.
 3 Q Did Jeff McConney and Allen Weisselberg generally
 4 supervise her work?
 5 A Yes.
 6 Q And I would like to take a look at the attachment
 7 beginning on page two. I think you actually answered my
 8 question about this document, so I'll just move to admit it.
 9 MR. ROBERT: Objection; statute of limitations.
 10 And is it with the attachment, too, so we make sure it is
 11 one document?
 12 MR. HAREN: Yes, it is one document. The
 13 attachment is not needed.
 14 MR. ROBERT: Same objection.
 15 THE COURT: Same ruling. Granted. It is in
 16 evidence.
 17 (Whereupon, the Document was marked in evidence as
 18 Plaintiff's Exhibit 652.)
 19 Q Let's move to Plaintiff's Exhibit 636. Ms. Kidder, do
 20 you recognize this e-mail and its attachment?
 21 A Yes, I do.
 22 Q What do you recognize them to be?
 23 A The year-end cash flows for the periods requested for
 24 40 Wall Street year ending December 31, 2012, 2013 and 2014.
 25 MR. HAREN: I move to admit this document into

D. KIDDER - DIRECT(MR. HAREN) Page 1533

1 evidence.
 2 MR. ROBERT: Same objection.
 3 THE COURT: Same ruling. Granted. It is in.
 4 (Whereupon, the Document was marked in evidence as
 5 Plaintiff's Exhibit 636.)
 6 Q Ms. Kidder, focusing on the e-mail on the first page,
 7 do you see a request from Jack Weisselberg?
 8 A I do.
 9 Q And what is Mr. Weisselberg, being in this case Jack
 10 Weisselberg, asking for?
 11 A The attached information.
 12 Q And when you say "attached information" -- well, he
 13 states in his e-mail, "Please send me the 2012-2014 year-end
 14 cash flow statements for 40 Wall." Do you see that?
 15 A Yes, I do.
 16 Q You understood him to mean -- what did you understand
 17 that to mean at the time?
 18 A The year ending December 31st and corresponding year
 19 cash flow statements. That's what is attached.
 20 Q And before you sent him the attachment, did you obtain
 21 approval to do so?
 22 A Yes, I did.
 23 Q From whom?
 24 A Allen Weisselberg.
 25 Q I'd like to direct your attention to page three of the

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1 document. And speaking generally, what is the information
 2 contained on this page?
 3 A Cash basis income, cash basis expenses.
 4 Q And is that for a particular year?
 5 A I'm sorry?
 6 Q Is that for a particular year?
 7 A December 31, 2014 -- year ending December 31, 2014.
 8 Q And the subsequent page, page four, same question?
 9 A Same information, year ending December 31, 2013.
 10 Q And same question for page five?
 11 A Same information for year ending December 31, 2012.
 12 Q Okay. Focusing your attention on page five under
 13 "administrative expenses "about ten lines down, there's an item
 14 entitled, "management fees and expenses".
 15 A Yes.
 16 Q And the amount identified is \$99,999. Do you see that?
 17 A I do.
 18 Q And do you see a similar entry on page four for 2013?
 19 A I do.
 20 Q And do you see a similar entry on page three for 2014
 21 in the amount of 100,000 exactly?
 22 A Yes.
 23 Q Let's move to Plaintiff's Exhibit 1024. Ms. Kidder, do
 24 you recognize this document?
 25 A It's a detailed general ledger for 40 Wall Street

D. KIDDER - DIRECT(MR. HAREN) Page 1535

1 L.L.C.
 2 Q Is it for a particular year?
 3 A 2012.
 4 MR. HAREN: Could we scroll down to account number
 5 51511 in row 19739.
 6 Q Ms. Kidder, do you see in this detailed general ledger
 7 an account 51511 for management fees and expenses?
 8 A I do.
 9 Q Do you see that in each month in 2012, there's a fee of
 10 \$8,333.33?
 11 A I do.
 12 Q Do you see in row 19761 -- excuse me. 19,757 and
 13 19,759, there are --
 14 A Yes.
 15 Q There are -- there's one fee amount specified of
 16 \$788,218.76?
 17 A I do.
 18 Q And another in two rows down from that of \$620,685.77?
 19 A Yes, I see that.
 20 Q In the entries, there is a notation of "DM." Do you
 21 have an understanding of what "DM" means?
 22 A It is a debit memo.
 23 Q Does the phrase "manual transaction" relate to the
 24 abbreviation DM?
 25 A Correct.

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1 Q What is manual transaction mean?
 2 A This would have been an internal transfer from 40 Wall
 3 Street, L.L.C. to the entity, the Trump Corporation for payment
 4 of the 2010 management fee and below it the 2011 management fee.
 5 MR. HAREN: Could we scroll down to cell C19779.
 6 Actually, S. Excuse me.
 7 Q Is the figure in S19779 a running total of management
 8 fees for 2012?
 9 A I don't see 19,000. I'm --
 10 Q Oh. There's a figure in -- it says on the far right
 11 column 1,508,904. You see that?
 12 A Yes.
 13 Q Is that in your understanding a running total of
 14 management fees in 2012?
 15 A That's the running total of management fees paid in
 16 2012 cash basis.
 17 Q Understand. Do you have an understanding as to why the
 18 1.5 million in management fees paid in calendar year 2012 was
 19 not included in the year end cash flow report for 2012 that was
 20 provided to Ladder Capital?
 21 A Allen Weisselberg said that since they were affiliated
 22 entities, management fees such as those could be omitted from
 23 the statement for this purpose.
 24 Q Let's look at plaintiff's exhibit --
 25 MR. HAREN: Actually, could I move this exhibit

D. KIDDER - DIRECT(MR. HAREN) Page 1537

1 first into evidence to the extent I have not already done
 2 so?
 3 MR. ROBERT: Same objection.
 4 THE COURT: Same ruling. Granted. It is in
 5 evidence.
 6 (Whereupon, the Document was marked in evidence as
 7 Plaintiff's Exhibit 1024.)
 8 MR. HAREN: Let's go to Plaintiff's Exhibit 1025.
 9 Q Ms. Kidder, do you recognize this document?
 10 A It is a general ledger, detailed general ledger.
 11 Q For which property?
 12 A 40 Wall Street, L.L.C. for calendar year 2013.
 13 MR. HAREN: Could we scroll down to row 19130.
 14 Q Ms. Kidder, beginning in row 19129, do you see an
 15 account 51511 for management fees and expenses?
 16 A Yes, I do.
 17 Q And do you see a similar pattern of \$8,333.33 per
 18 month?
 19 A Yes, I do.
 20 Q And do you have an understanding of the information in
 21 row 19144 and just 19144? Do you see that information?
 22 A It's the Mazars calculated management fee for calendar
 23 year ending 2012.
 24 Q And that amount is paid in 2013 according to this
 25 general ledger, right?

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1 A Correct.

2 Q And it is identified by "DM." Does that again refer to

3 manual transaction?

4 A That does.

5 Q And do you have an understanding as to why only -- why

6 this figure was omitted from the cash flow report provided to

7 Ladder Capital?

8 A Again, Allen Weisselberg said it was a payment to an

9 affiliated company and didn't need to be included for that

10 purpose.

11 Q When he said "a payment to an affiliated company," did

12 he have a phrase that he used?

13 A That's the best of my recollection.

14 Q Understood.

15 THE COURT: That wasn't the phrase, though, right?

16 That wasn't the phrase he used. He's looking for certain

17 words.

18 Q Would it refresh your recollection if I told you that

19 in your testimony, you said one pocket to another?

20 A Okay. One pocket to another.

21 MR. HAREN: Okay. Let's move to Plaintiff's

22 Exhibit 1026.

23 Q Ms. Kidder, do you recognize this document?

24 A Detailed general ledger 40 Wall Street, L.L.P. calendar

25 year 2014.

D. KIDDER - DIRECT(MR. HAREN) Page 1539

1 MR. HAREN: I move this document into evidence.

2 THE COURT: Granted. It is in evidence.

3 (Whereupon, the Document was marked in evidence as

4 Plaintiff's Exhibit 1026.)

5 MR. HAREN: I would like to scroll down to the rows

6 beginning 17,629.

7 Q Ms. Kidder, do you see again an account 51511 for

8 management fees and expenses?

9 A I do.

10 Q And do you see a similar pattern of \$8,333.33 per

11 month?

12 A I do.

13 Q And do you see an entry for a management fee paid on

14 June 12, 2014 in the amount of \$907,988?

15 A I do.

16 Q And do you have an understanding as to why that figure

17 is not reflected on the cash flow report provided to Ladder

18 Capital?

19 A The same explanation as the last questions. One pocket

20 to another.

21 Q Thank you.

22 MR. HAREN: I move this document into evidence.

23 MR. ROBERT: Same objection.

24 THE COURT: Granted. It is in.

25 (Whereupon, the Document was marked in evidence as

D. KIDDER - DIRECT(MR. HAREN) Page 1540

1 Plaintiff's Exhibit 1026.)

2 MR. HAREN: Let's move to Plaintiff's Exhibit 1063.

3 Q Ms. Kidder, do you recognize this document?

4 A Yes.

5 Q What do you recognize it to be?

6 A It appears to be another trailing cash flow that was

7 prepared for Jack Weisselberg.

8 Q On page two of the document, I want to direct you to

9 the far right-hand column. And the print on this document is

10 very small, so we're going to have to zoom in.

11 Under administrative expenses, do you see that there's

12 a row for management fees and expenses in the amount of

13 \$100,000?

14 A Yes, I do.

15 MR. HAREN: Could we put on the screen with this

16 image the same image from the version sent in Exhibit 652.

17 Q So, Ms. Kidder, on the right, you'll see that there's a

18 list of administrative expenses. Next to management fees and

19 expenses, it states \$1,007,988 and that was in the version you

20 sent on April 10, 2015 in Exhibit 652. And then here in

21 Exhibit 1063, the figure has been reduced to 100,000 in the

22 version sent on April 21st of 2015.

23 Do you have an understanding as to how the management

24 fee number came to be reduced to 100,000?

25 A Allen Weisselberg instructed me to make the change.

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1 MR. HAREN: I move Exhibit 1063 into evidence.

2 MR. ROBERT: Same objection.

3 THE COURT: Same ruling and granted. It is in.

4 (Whereupon, the Document was marked in evidence as

5 Plaintiff's Exhibit 1063.)

6 MR. HAREN: Let's move to Exhibit 1061. This is

7 related to the transactions that we've been looking at.

8 Q Ms. Kidder, do you recognize this document?

9 A Yes.

10 Q What do you recognize it to be?

11 A It seems to be a chain of questions relating to the

12 finance.

13 MR. HAREN: I move this document into evidence.

14 MR. ROBERT: Same objection.

15 THE COURT: Granted. It is in evidence.

16 (Whereupon, the Document was marked in evidence as

17 Plaintiff's Exhibit 1061.)

18 Q In the e-mail on page one is a question from Jack

19 Weisselberg to you and it reads, "I have some questions on the

20 historicals (some of which related to potential one-time

21 costs)."

22 Do you have an understanding as to what Jack

23 Weisselberg was referring to there?

24 A He's asking questions about what we tagged as one-time

25 costs on the information that was sent to him previously.

D. KIDDER - DIRECT(MR. HAREN) Page 1542

1 Q And looking further into the items in the e-mail that
2 he sent to you, there is a question there about real estate
3 taxes. Do you see that?
4 A I do.
5 Q And in number two, "There's a question about one-time
6 items that need to be removed, but the G&A operating expenses
7 drop significantly from 2012 and 2013 to 2014 and the T-12."
8 Do you have an understanding as to what that refers to?
9 A The T-12 means trailing 12.
10 Q And do you have an understanding of what Mr.
11 Weisselberg meant by "G&A operating expenses drop significantly
12 from 2012 and 2013 to 2014 and the T-12"?
13 A He's asking why the expenses in those categories
14 dropped in those years significantly.
15 Q And he concludes by asking, "Am I missing any other
16 non-recurring costs." Do you see that?
17 A Yes, I do.
18 Q Do you have an understanding as to why Jack Weisselberg
19 was asking about non-recurring costs?
20 A Because if it is an extraordinary expense, it wouldn't
21 be factored into financing. For example, if you have a legal
22 invoice for a tenant that you're evicting that's \$750,000 in one
23 year, you wouldn't expect to see the same number the next.
24 Q In looking at page one at the top, there is an e-mail
25 from you to Allen Weisselberg.

D. KIDDER - DIRECT(MR. HAREN) Page 1543

1 Why did you forward Jack Weisselberg's e-mail to Allen
2 Weisselberg?
3 A That was standard practice and item number one, I
4 wouldn't know how to answer. That's why there's a question
5 mark. I wasn't involved in any tertiary filings with Marcus &
6 Pollack. Number two I did answer because I knew that the
7 operational team and Allen Weisselberg were cutting the expenses
8 as much as they could.
9 Q And there's a reasons in item two to the test required
10 at one point by the bank. Does that refer to a debt service
11 cover ratio?
12 A That is correct.
13 Q What's your understanding of what debt service ratio
14 means?
15 A Minimal. I just -- Jeffrey McConney prepared that
16 calculation.
17 Q Moving to a new topic, Plaintiff's Exhibit 1282. Ms.
18 Kidder, we're going to spend a little bit of time talking about
19 some penthouses at Trump Park Avenue.
20 A Okay.
21 Q Ms. Kidder, do you recognize this document?
22 A Yes, I do.
23 Q What do you recognize it to be?
24 A I used to track all of the deals and agreements for
25 Ivanka Trump, so I prepared a spreadsheet.

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1 Q So this spreadsheet that's attached to the e-mail is
2 something you prepared?
3 A Yes.
4 Q And it was part of your practice to prepare
5 spreadsheets of that type?
6 A For Ivanka, yes.
7 Q Can you give us a time period as to when that was part
8 of your responsibilities?
9 A I believe it was in 2010 it started up until June of a
10 couple of years ago.
11 Q Okay. Does 2017 sound about right?
12 A Yes.
13 Q Who is Lizabeth Kyprislidis?
14 A She works for the Trump Organization, trademarks,
15 licensing.
16 MR. HAREN: Actually, can I move the e-mail into
17 evidence?
18 THE COURT: Granted. It is in.
19 MR. ROBERT: Statute of limitations.
20 THE COURT: Understood.
21 (Whereupon, the Document was marked in evidence as
22 Plaintiff's Exhibit 1282.)
23 MR. HAREN: Let's pull up 1282 native.
24 Q Ms. Kidder, the spreadsheet on the screen reflects the
25 document you prepared?

D. KIDDER - DIRECT(MR. HAREN) Page 1545

1 A Yes, it does.
2 MR. HAREN: Could we go to the PH28 tab, please. I
3 move the native file into evidence.
4 THE COURT: It is in evidence.
5 (Whereupon, the Document was marked in evidence as
6 Plaintiff's Exhibit.)
7 Q Do you see at the top of the page it reads, "502 Park
8 Avenue Penthouse 28"?
9 A Yes, I do.
10 Q What's your understanding of that phrase?
11 A It was an agreement between Ivanka Trump and Jared
12 Kushner and Trump Park Avenue, L.L.C. to rent Penthouse 28 at
13 502 Park Avenue.
14 Q And do you see next to agreement date it reads,
15 "January 6, 2011"?
16 A Yes.
17 Q Next to the word "terms," it indicates a start date of
18 January 1, 2011?
19 A Yes.
20 Q And next to the word "conditions," it reads "Tenant
21 shall have exclusive right during the term of this lease to
22 purchase the unit at the price of \$8,500,000"?
23 A Yes, I see that.
24 Q Did you obtain the information in this tab concerning a
25 lease of Penthouse 28 from somewhere?

D. KIDDER - DIRECT(MR. HAREN) Page 1546

1 A From whichever attorney worked on the lease. I don't
2 recall the name.
3 Q But did you obtain the information from the lease?
4 A Yes, I did.
5 MR. HAREN: Let's move to Exhibit 1278.
6 Q Ms. Kidder, do you recognize this e-mail?
7 A I recognize the e-mail.
8 Q And what do you recognize it to be?
9 A That I sent Jeff McConney an attachment of the
10 agreements for 2012 for Ivanka deals.
11 Q Just so I understand, you understand the attachment to
12 be a similar spreadsheet to the one we looked at a minute ago?
13 A Yes.
14 Q And you were sending Mr. McConney a copy of it on
15 November 28, 2012?
16 A Apparently so, yes.
17 MR. HAREN: I move the e-mail into evidence.
18 MR. ROBERT: Objection. Statute of limitations.
19 THE COURT: Overruled. Granted. It is in.
20 (Whereupon, the Document was marked in evidence as
21 Plaintiff's Exhibit 1278.)
22 MR. HAREN: Can we move to 1278 native, please.
23 Q Ms. Kidder, this is the attachment to the e-mail?
24 MR. HAREN: And if we could again click on the tab
25 PH28.

D. KIDDER - DIRECT(MR. HAREN) Page 1547

1 THE COURT: Granted.
2 Q Ms. Kidder, does the information on this tab reflect
3 the lease between Trump Park Avenue, L.L.C. and Ivanka Trump and
4 Jared Kushner for a lease Penthouse 28 at 502 Park Avenue with
5 an option to purchase of \$8.5 million?
6 A Yes.
7 Q So you provided that information to Jeffrey McConney in
8 the spreadsheet on November 28th of 2012?
9 A Yes.
10 MR. HAREN: I move the native file into evidence.
11 THE COURT: Granted.
12 (Whereupon, the Document was marked in evidence as
13 Plaintiff's Exhibit.)
14 MR. ROBERT: Same objection.
15 MR. HAREN: Could we move to Plaintiff's 618,
16 please. For the record, this is a 14-page document produced
17 in this action by Ivanka Trump.
18 Q Ms. Kidder, I would like to direct your attention to
19 page 14. Do you recognize this e-mail?
20 A Yes.
21 Q What do you recognize it to be?
22 A It is an e-mail from Sonja Talesnik regarding the
23 modification of Penthouse 20 and 28.
24 Q And who is Sonja Talesnik?
25 A She is an attorney at the Trump Organization.

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1 Q And can you speak just in general terms to her areas of
2 work at the Trump Organization?
3 A Well, usually, she just deals with the management of
4 the condominiums, but apparently in this instance, she assisted
5 in the preparation of these two documents.
6 Q When you say she works on matters relating to
7 condominiums, what do you mean?
8 A She works with the management team for the homeowners
9 associations that we manage.
10 Q In looking at the e-mail on the page, do you see that
11 there is a line at the top that reads, "Please see amendment to
12 the lease that provides that the right to purchase the PH28 has
13 been surrendered"?
14 A I do.
15 Q And do you have an understanding as to what that means?
16 A That means that Ivanka Trump and Jared Kushner no
17 longer would be exercising the right in the lease to purchase
18 Penthouse 28.
19 Q And then it follows with "re-PH20 "and it states,
20 "Attached to the lease for PH20, which will commence November 1,
21 2015 "and it continues, and then item D states to the far right,
22 "Tenant shall have the exclusive right which is not assignable
23 during the term of this lease "-- let me read that again
24 because I missed the parenthesis.
25 "Tenant shall have the exclusive right (which right is

D. KIDDER - DIRECT(MR. HAREN) Page 1549

1 not assignable) during the term of this lease to purchase the
2 unit at the price of \$14,264,000, notwithstanding the filing of
3 any amendment to the offering plan that may increase the price
4 of the unit."
5 Do you see that?
6 A I do.
7 Q Did you have an understanding on or about the date of
8 this e-mail that Ms. Trump had an option to purchase this
9 penthouse unit for \$14,264,000?
10 A Yes.
11 Q Where did you gain that understanding?
12 A From this e-mail and the attachments.
13 MR. HAREN: Okay. Let's move to Plaintiff's
14 Exhibit 1157, which is already in evidence.
15 Q Ms. Kidder, do you see in Exhibit 1157 an e-mail from
16 Patrick Birney to you copying Allen Weisselberg and Jeffrey
17 McConney?
18 A Yes, I do.
19 Q And the subject is 2015 Trump Organization corporate
20 cash flow.
21 A Yes.
22 Q And in the e-mail, Patrick writes, "Donna, see attached
23 2015 Trump Organization corporate cash flow shell."
24 A Yes.
25 Q Do you have an understanding of the word "shell" in

D. KIDDER - DIRECT(MR. HAREN) Page 1550

1 this e-mail?
2 A An un-filled out Excel spreadsheet.
3 Q Pulling up the native document that's also already in
4 evidence, do you have an understanding as to who created this
5 Trump Organization corporate cash flow shell?
6 A Patrick Birney at the direction of Allen Weisselberg.
7 Q Mr. Weisselberg and Mr. McConney are copied on Mr.
8 Birney's e-mail that's Exhibit 1157. Do you have an
9 understanding as to their involvement in the generation of the
10 Trump Organization corporate cash flow spreadsheet?
11 A They would have created the parameters and instructed
12 Patrick and myself from the parts that I was responsible for
13 what to include.
14 Q Thank you.
15 MR. HAREN: I'm going to move to a different topic,
16 licensing and incentive fees, and I'll turn to Plaintiff's
17 Exhibit 3169.
18 Q Ms. Kidder, do you recognize this document?
19 A Yes.
20 Q What do you recognize that to be?
21 A It is a report that I was instructed by Jeffrey
22 McConney to prepare every year at this time; at this time being
23 usually for that range, July to June.
24 Q And speaking generally about this report that you
25 prepared every year, what does it contain?

D. KIDDER - DIRECT(MR. HAREN) Page 1551

1 A It contains the projected amount of license fees and/or
2 incentive fees that would be received through the license deals
3 from that date through the ending date.
4 MR. HAREN: I move this e-mail into evidence.
5 THE COURT: Granted. It is in.
6 (Whereupon, the Document was marked in evidence as
7 Plaintiff's Exhibit 3169.)
8 MR. HAREN: Could we, please, pull up Exhibit 3169
9 in native form.
10 Q Ms. Kidder, do you recognize the spreadsheet on the
11 screen?
12 A Yes.
13 Q And what do you recognize it to be?
14 A The projection. Some of the numbers are actual if it
15 was prepared in September and then started in July and the rest
16 would be a projection.
17 Q The information that is in column B, how did you obtain
18 that information?
19 A So per the instructions given to me by Jeffrey
20 McConney, I was to take the -- and you could see the
21 explanation based on projected sell-out of remaining units
22 to -- as if they would all sell out in that timeframe.
23 Q And how did you go about obtaining the information to
24 do the analysis?
25 A From the licensees. They would have a projected

D. KIDDER - DIRECT(MR. HAREN) Page 1552

1 sell-out or the selling price for all of the remaining units.
2 Q And can you walk us through what -- just how far the
3 numbers are calculated from column B over to column G, not about
4 the numbers themselves, but generally what the columns reflect?
5 A We will start with A27. That seems to be easiest
6 because that's actually the entire amount is based on a project
7 asked sell-out. That's a report provided by the licensee of all
8 the units that they have for sale, Trump-branded units. That is
9 the fee based on whatever the percentage is of royalty in the
10 agreement. That's the total fee.
11 Then the next column is zero. And the column E is TTT.
12 That was the entity that received I want to say 21 percent or a
13 piece depending on what the agreement said of the license fees.
14 The net is to DJT, that's to Donald Trump, which is the license
15 fees less the fees payable to TTT.
16 Q And just so I understand, column B is the total fee.
17 Then there is some amount taken out for less TTT which might be
18 zero. And then there's some amount taken out for TTT. And then
19 what remains in column G is the net?
20 A Correct.
21 Q And what does TTT refer to?
22 A TTT Consulting, L.L.C.
23 Q And what is TTT Consulting, L.L.C.?
24 A It was an agreement with Eric Trump, Donald Trump, Jr.
25 and Ivanka Trump to receive a percentage of fees generated by

D. KIDDER - DIRECT(MR. HAREN) Page 1553

1 certain license deals.
2 Q Are there any assumptions built into the information
3 contained in column B regarding sell-out timing?
4 A Well, the calculation in and of itself is an assumption
5 if column B was an assumption because they would only get fees
6 if we received column B.
7 (Continued on the next page.)
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D. Kidder - Plaintiff - direct (Haren) Page 1554

1 Q So what I'm trying to understand is that -- let's take
2 as an example, the line for Dubai.
3 MR. HAREN: Could you expand Row 25 so we can see
4 the text?
5 Q Let's look at, I guess, Row 27, the same row you were
6 looking at. It states: "DT marks WOR1 (and then it ends with
7 on balance of projected sellout.)" And the number is 6,167,301.
8 Is this figure -- is that figure based on any
9 assumption as to how quickly the sellout would occur?
10 A As if it all happened in that time frame on the top of
11 the page.
12 Q And the time frame on the top of the page is --
13 MR. HAREN: Can we scroll up by June 2018?
14 Q So the assumption is that the whole sellout would occur
15 between July 1, 2017 and June 2018?
16 A Yes.
17 Q And to the extent there are --
18 MR. KISE: Your Honor, maybe it's me. This has
19 been very granular this morning, but I'm trying to find out
20 what relevance TTT Consulting has. I'm not sure how any of
21 this has to do with why we're here.
22 MR. HAREN: I'll just say to Mr. Kise these figures
23 play a role in the statements that are in question and some
24 of the valuations, so I'm getting an understanding of the
25 assumptions from the witness who prepared the spreadsheet.

D. Kidder - Plaintiff - direct (Haren) Page 1556

1 THE COURT: Granted. It's in.
2 (Whereupon, the item previously referred to is
3 received and marked Plaintiff's Exhibit Number 3168 in
4 evidence.)
5 Q Line that says "net to DJT" at the bottom, under "total
6 fees," do you see where it says 25,785,639?
7 A I do.
8 Q Does that figure match the information contained on
9 Plaintiff's Exhibit 3169 native one?
10 A 25,785,639 those are the numbers on the worksheets.
11 Q So from Plaintiff's Exhibit 3168, which was produced by
12 Mazars, I think you would agree that the total licensing fee
13 amount reflected on Plaintiff's Exhibit 3168 came from a
14 spreadsheet that you prepared?
15 A Yes.
16 Q Thank you.
17 MR. HAREN: Your Honor, I have no further questions
18 for this witness at this time.
19 THE COURT: Okay. Will there be any cross
20 examination of the witness at this time?
21 MR. KISE: No.
22 THE COURT: The witness is excused.
23 Plaintiff call your next witness. We have another
24 seven minutes or so before we break.
25 (Whereupon, the witness is excused from the witness

D. Kidder - Plaintiff - direct (Haren) Page 1555

1 MR. KISE: I don't know that the TTT numbers have
2 anything to do with the Statements of Financial Conditions,
3 but if he can tie it up at some point, but it's very
4 granular.
5 THE COURT: I'll give him some further leeway
6 subject to connection.
7 Q So Ms. Kidder, to the extent that there are sellouts
8 reflected in the annual spreadsheet that you prepared and is the
9 assumption about the space of the sellout the same as what you
10 just described?
11 A Yes.
12 MR. HAREN: Let's mark as plaintiff -- excuse me --
13 not mark. Let's pull up Plaintiff's Exhibit 3168, which is
14 already marked.
15 Q Ms. Kidder, putting aside the handwriting on the top of
16 the page and on the right side of the page, do you recognize
17 this spreadsheet as one of the annual spreadsheets you prepared?
18 A Yes.
19 Q And do you see that there is handwriting at the top of
20 the page and in parens it says "Donna?"
21 A Yes.
22 Q Do you recognize that handwriting?
23 A I believe it's Jeffrey McConney's.
24 MR. HAREN: I move to admit this document into
25 evidence.

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1 stand.)
2 MR. LADOV: Your Honor, I'm Mark Ladov here on
3 behalf of the People of the State of New York and we call
4 Doug Larson as our next witness.
5 THE COURT: Okay. Mr. Larson?
6 We're looking for Mr. Larson, Lieutenant.
7 THE COURT OFFICER: We're on it.
8 THE COURT: We'll take a break at 11:30 and I'll
9 give a five-minute warning before that.
10 Mr. Haren, you ended so abruptly here.
11 MR. HAREN: Your Honor, I neglected to say the
12 magic words about Plaintiff's Exhibit 1032.
13 MR. ROBERT: Which one is that?
14 THE COURT: 1032.
15 MR. ROBERT: I already handed it back. I'm sure I
16 will have another objection.
17 Just a statute of limitations objection, Your
18 Honor, is fine.
19 THE COURT: Granted. It's in evidence and we're
20 ready for the -- for Mr. Larson.
21 (Whereupon, the item previously referred to is
22 received and marked Plaintiff's Exhibit Number 1032 in
23 evidence.)
24 THE COURT OFFICER: Witness entering.
25 (Whereupon, the witness enters the courtroom and

D. Larson - Plaintiff - direct (Ladov) Page 1558

1 approaches the witness stand.)
 2 THE COURT OFFICER: Please raise your right hand.
 3 Do you solemnly swear or affirm that any testimony
 4 you give will be the truth, the whole truth and nothing but
 5 the truth?
 6 THE WITNESS: I do.
 7 THE COURT OFFICER: Please have a seat.
 8 Please state your full name and either home or
 9 business address on the record.
 10 THE WITNESS: Douglas Larson. 125 Park Avenue, New
 11 York, New York.
 12 THE COURT: Okay. Counsel, please proceed.
 13 Mr. Larson, sounds like you have a nice loud voice.
 14 Just remember to speak right into the microphone.
 15 THE WITNESS: Sure.
 16 DIRECT EXAMINATION
 17 BY LADOV:
 18 Q Good morning, Mr. Larson. Where do you currently work?
 19 A I work at Newmark.
 20 Q And what is Newmark?
 21 A Newmark is a full-service real estate company.
 22 Q And what is your title there?
 23 A Executive vice president.
 24 Q What is the scope of your work at Newmark?
 25 A Valuation advisor, appraiser.

D. Larson - Plaintiff - direct (Ladov) Page 1559

1 Q So are you a professional appraiser?
 2 A Yes.
 3 Q Do you hold any professional licenses related to your
 4 work?
 5 A Yes. I'm a certified New York real estate appraiser.
 6 Q And within that New York real estate appraisal work do
 7 you have any specializations?
 8 A Yes, office and retail.
 9 THE COURT: Witness please be a little closer to
 10 the microphone like this.
 11 THE WITNESS: Okay.
 12 Q And maybe you can just explain for us briefly what's
 13 the difference between office and retail property?
 14 A Retail properties are, you know, occupied or leased to
 15 merchandisers to sell goods and office space is occupied by
 16 office users.
 17 Q How long have you been with Newmark?
 18 A Six years.
 19 Q And where did you work prior to Newmark?
 20 A Cushman & Wakefield.
 21 Q And what is Cushman & Wakefield?
 22 A It's also a full-service real estate company.
 23 Q How long were you at Cushman?
 24 A Almost 25 years.
 25 Q What title did you hold when you left Cushman?

D. Larson - Plaintiff - direct (Ladov) Page 1560

1 A I'm trying to remember. Senior director. I can't
 2 recall exactly.
 3 Q And so was the work you did at Cushman the same as the
 4 work you're doing now at Newmark?
 5 A Yes.
 6 Q And have you spent your entire career as a professional
 7 appraiser?
 8 A Yes.
 9 Q So Mr. Larson, I'd like to show you a copy of an
 10 appraisal that has already been entered into evidence as
 11 Plaintiff's Exhibit 118, and I'm going to walk through this
 12 document with you for a couple of minutes just to understand a
 13 little bit about what your appraisal practice entails. So if
 14 you can turn to page eight of this document.
 15 Are you familiar with this document, Mr. Larson?
 16 A Yes. This is an appraisal prepared by Cushman &
 17 Wakefield for Ladder Capital.
 18 Q And what's the property being appraised here?
 19 A It's 40 Wall Street.
 20 Q And you can see it says an "Appraisal report as of
 21 June 1, 2015." So what does that signify?
 22 A That is the effective date of value.
 23 Q And if you turn, I guess, like, three more pages to
 24 page 11 of this document, is that your signature, Mr. Larson?
 25 A Yes, it is.

D. Larson - Plaintiff - direct (Ladov) Page 1561

1 Q And does your signature signify that this is the final
 2 version of this appraisal report?
 3 A Yes.
 4 Q And there is two other names listed here. Can you just
 5 tell me who those people are?
 6 A Naoum, Mike Papagianopoulos and Robert Nardella.
 7 Q And what was Mr. Papagianopoulos's role in working on
 8 this appraisal with you?
 9 A He worked on our team appraising office properties.
 10 Q And what was Mr. Nardella's role?
 11 A Easy area leader.
 12 Q And Mr. Larson, does this report accurately describe
 13 the information that you received along with your colleagues to
 14 perform this appraisal?
 15 A Yes, it does.
 16 Q And this appraisal report, does it accurately describe
 17 your analysis of that information?
 18 A Yes, it does.
 19 Q So does this appraisal report accurately state your
 20 opinion of the value of 40 Wall Street as of June 1, 2015?
 21 A Yes.
 22 Q I'd like to turn to page 118 of the document and you'll
 23 see here there is an addendum that reads "Engagement Letter."
 24 Can you just tell me generally speaking what is the
 25 importance of an engagement letter to an appraisal engagement?

D. Larson - Plaintiff - direct (Ladov) Page 1562

1 A Every appraisal requires an engagement and it states
 2 the terms of the agreement between client and appraiser.
 3 Q So let's look at the letter here just to understand
 4 what some of those terms are.
 5 MR. LADOV: Can we scroll down to page 188?
 6 Q And we can see that this letter describes the
 7 anticipated scope of work.
 8 MR. LADOV: Can you scroll down a little bit more?
 9 So the first header there is "USPAP Compliance."
 10 Q Do you understand what USPAP refers to?
 11 A Yes, it's the Uniformed Standards of Professional
 12 Appraisal Practice.
 13 Q And, again, at a high level what does USPAP compliance
 14 mean?
 15 A Every appraisal needs to be USPAP compliant and it
 16 states the scope of work, the process of preparing an appraisal.
 17 Q And does USPAP apply to any opinion of value that you
 18 may work on as an appraiser?
 19 A Can you restate that?
 20 Q I guess what I'm asking is if you were doing -- so we
 21 know that this full 2,300-page appraisal report, you need to
 22 comply with USPAP to perform this work, but if somebody came to
 23 you and said "I don't need a full appraisal report, I just need
 24 you to help me value my property over here for a specific asset,
 25 I want to figure out what it's worth," do you need to comply

D. Larson - Plaintiff - direct (Ladov) Page 1563

1 with USPAP there as well?
 2 A Yes, every appraisal needs to be USPAP compliant.
 3 Q So from your answer I understand that there is no
 4 difference to you as an appraiser between an appraisal, meaning
 5 this formal report and any opinion of value that you might offer
 6 for a specific real estate property?
 7 A It would need to be USPAP compliant, correct.
 8 Q So looking down here where it says "general scope of
 9 work," the first item listed is "inspect the property to the
 10 extent necessary to adequately identify the real estate."
 11 Did you inspect this property as part of your
 12 appraisal?
 13 A Yes.
 14 Q And why do you do that?
 15 A Well, we look at the condition of the property, we look
 16 at the condition of the space, the tenancy fit outs, mechanical
 17 system. So it's a complete inspection.
 18 THE COURT: Five-minute warning.
 19 Q You just got here.
 20 So the second item here says "research relevant market
 21 data in terms of quantity, quality and geographic comparability
 22 to the extent necessary to produce credible appraisal results."
 23 Again, can you just tell us generally what you did to
 24 comply with that requirement?
 25 A Well, we look at, you know, market trends, market

D. Larson - Plaintiff - direct (Ladov) Page 1564

1 statistics, surveys, data collected from public resources in
 2 discussion with other real estate professionals in prior
 3 appraisals.
 4 Q And this is all your standard practice in the regular
 5 course of business; is that correct?
 6 A Yes, absolutely.
 7 Q And then below that it reads, quote, "Consider and
 8 develop those approaches relevant and applicable to the
 9 appraisal problem. We anticipate developing the following
 10 valuation of approaches."
 11 And there is two approaches listed, the income
 12 capitalization approach and the sales comparison approach.
 13 So just taking those one by one, can you explain to us
 14 what the income capitalization approach means?
 15 A Yes. It's -- there are two components of it; the
 16 direct capitalization and a discount cash flow analysis. The
 17 requirement in New York City and complicated assets, the primary
 18 method of value is discount cash flow. And it looks and reviews
 19 of income less expenses and operations and occupancy and rents
 20 of the property.
 21 Q And then once you've determined that income when you're
 22 using that method what do you do next to try to determine the
 23 value of the property?
 24 A You apply investment rates.
 25 Q And are investment rates similar to cap rates?

D. Larson - Plaintiff - direct (Ladov) Page 1565

1 A Yes, it's one of the investment rates that's used.
 2 Q Sir, what exactly is a cap rate?
 3 A A cap rate is -- it's net operating income divided by a
 4 purchase price and it's a return on and of an investment.
 5 Q And does the cap rate come into play with the direct
 6 capitalization method as well?
 7 A Yes.
 8 Q Okay. And can you just explain for us how that works?
 9 A So a net operating income needs to be calculated and
 10 the capitalization rate, that overall capitalization rate is
 11 applied and produces a value by direct capitalization.
 12 Q And what factors go into determining a cap rate when
 13 you're doing that kind of an analysis?
 14 A You typically look at sales and extract those
 15 capitalization rates, you discuss with investment sale brokers
 16 and professionals, look at investor surveys and extract it from
 17 the market.
 18 Q And sorry, you said singles in your answer. What do
 19 you mean by singles there?
 20 A I couldn't hear you.
 21 Q I think one of the first things that you said was you
 22 look at singles. Maybe I misunderstood you?
 23 A No. I don't think I said singles.
 24 Q Okay. Sorry. So you also -- sorry. Why don't you
 25 explain?

D. Larson - Plaintiff - direct (Ladov) Page 1566

1 A No, there are several sources for looking at cap rates
 2 and -- which I just stated. So the capitalization rate doesn't
 3 apply to the year one net operating income and a value is
 4 produced.
 5 Q And so when you're taking capitalization rates derived
 6 from property sales and using them to think about how to value a
 7 different property, do you have to adjust the cap rate to make
 8 it apply to the property you're looking at?
 9 A Yes.
 10 Q And what factors would you look at in terms of making
 11 those kinds of adjustments?
 12 A Well, you have to analyze where you got the cap rate
 13 from, what sale and know the occupancy or above or below market
 14 rents or contract rents to determine if the cap rate is market.
 15 THE COURT: One-minute warning.
 16 MR. LADOV: Okay.
 17 Q And generally speaking, if I understood your testimony
 18 correctly, the direct capitalization approach is sort of a
 19 simpler version of this analysis than the discounted cash flow
 20 approach. Is that fair to say?
 21 A Direct capitalization is used as support for the
 22 discounted cash flow analysis. In my practice almost every
 23 appraisal applies a discounted cash flow and it's much more
 24 complicated.
 25 THE COURT: Okay. As usual, we are going to take a

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1 ten-minute break that will take 15 minutes. See you back
 2 here at 11:45. And I'm starting at 11:45 whether or not
 3 you're here.
 4 (Whereupon, there is a recess in the proceedings.
 5 The transcript continues on the following page....
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D. LARSON - DIRECT (MR. LADOV) Page 1568

1 THE OFFICER: All rise. Part 37 is back in
 2 session. Be seated and come to order.
 3 THE COURT: Witness.
 4 MR. LADOV: One housekeeping issue. We are looking
 5 at Plaintiff's 118, the appraisal of 40 Wall Street. This
 6 was previously moved into evidence for purposes of notice.
 7 Based on Mr. Larson's testimony, we would seek to move it
 8 into evidence for all purposes at this time.
 9 THE COURT: Hearing no objection, which I will
 10 probably overrule anyway, granted. It is in evidence.
 11 (Whereupon, the Document was marked in evidence as
 12 Plaintiff's Exhibit 118.)
 13 THE COURT OFFICER: Ready, Judge?
 14 THE COURT: Yes.
 15 Please continue the examination.
 16 Q So Mr. Larson, before the break, you were explaining
 17 the income capitalization approach. Can you just give us a
 18 similar high level explanation of what the sales comparison
 19 approach involves?
 20 A Yes. The sales comparison approach is another
 21 technique or one of the approaches to value a property. It
 22 applies prices per foot extracted from sales and makes
 23 adjustments to them and then applies them to the subject
 24 property.
 25 Q And when you say "adjustments," what kind of

D. LARSON - DIRECT (MR. LADOV) Page 1569

1 adjustments are you talking about?
 2 A This would be adjustments for condition of sale, for
 3 occupancy, for physical characteristics, location.
 4 MR. LADOV: And so let's scroll back down do page
 5 189 of the exhibit. And I just want to look at a section in
 6 the engagement letter entitled, "Fee expenses and other
 7 terms of engagement."
 8 Q So you'll see, Mr. Larson, it says, "start date." "The
 9 appraisal process will initiate upon receipt of signed agreement
 10 and the receipt of the property specific data."
 11 Are you able to start your appraisal process before
 12 getting a signed letter of agreement like this one?
 13 A No.
 14 Q And two lines down, it says, "Delivery three weeks from
 15 receipt of signed engagement letter."
 16 Is that sort of a typical amount of time that you would
 17 take to prepare a full appraisal of a commercial property like
 18 this one?
 19 A That's a typical timeframe, yes.
 20 Q And finally at the very top, it says, "Fee \$25,000."
 21 Again, you cannot provide an opinion of value without some sort
 22 of engagement like this probably including a fee; is that right?
 23 A That is correct.
 24 Q So stepping away from this document for a moment, Mr.
 25 Larson, have you ever entered into an engagement like the one

D. LARSON - DIRECT (MR. LADOV) Page 1570

1 that we were just looking at with the Trump Organization or any
 2 of its affiliated entities as a client?
 3 A I have not.
 4 Q Has the Trump Organization ever paid you for appraisal
 5 services?
 6 A They have not.
 7 Q I know this question is going to be redundant, but has
 8 the Trump Organization ever paid you for any other kind of
 9 valuation services?
 10 A No, they have not.
 11 Q As we saw from that last report, you have appraised
 12 properties owned by the Trump Organization, correct?
 13 A Yes.
 14 Q But all of those appraisal were done for other clients
 15 and not the Trump Organization; is that right?
 16 A Yes, they were done for lenders.
 17 Q So now I would like to show you a document that was
 18 previously entered as Plaintiff's Exhibit 1100. So let's
 19 actually start by scrolling down to the middle of the screen
 20 there. So you can -- actually, do you recognize this document,
 21 Mr. Larson?
 22 A Yes. This is an e-mail blast that I send out regarding
 23 market information and also there is an -- looks like there is
 24 a second e-mail from Jeff McConney.
 25 Q Right. We are just going to focus on the e-mail that

D. LARSON - DIRECT (MR. LADOV) Page 1571

1 you sent out for now.
 2 A Okay.
 3 Q You said "e-mail blast." What does that mean to you?
 4 A They send out marketing information to a wide variety
 5 of real estate professionals for marketing purposes.
 6 Q And when you say "marketing purposes," what do you mean
 7 by that?
 8 A It's -- it's a way to get a company's information out
 9 so -- and a way to get your name out to clients for potential
 10 work.
 11 Q And do you have an understanding of how large your
 12 mailing list was for these e-mail blasts?
 13 A It's very large.
 14 Q And this e-mail was coming from your Newmark account,
 15 but did you do similar e-mail blasts when you were at Cushman &
 16 Wakefield?
 17 A Yes.
 18 Q I would like to scroll up now and in the forward of
 19 this e-mail, you can see some of the different attachments. Can
 20 you just describe generally what those documents are?
 21 A Yes. The attachments read, New York City office market
 22 overview, office building sales, office market
 23 overview, another office market overview, trends in the market,
 24 some leasing information, so --
 25 Q So these are market reports that you're sending out to

D. LARSON - DIRECT (MR. LADOV) Page 1572

1 your clients based on recent sales data; is that right?
 2 A Yeah. This is -- this is recent information that, you
 3 know, we would have put together to send out, yes.
 4 Q So I would like to take a couple of moments to look at
 5 the second document on this list labeled
 6 "officebuildingsales.dot.pdf and it begins on page 39 of the
 7 document. So again, when you were talking earlier about
 8 deriving cap rates from properties or dollars per square-foot
 9 from properties, is this the kind of information that you used
 10 in your practice?
 11 A Yes.
 12 Q And then in addition, this document -- you can scroll
 13 down. You'll see it.
 14 It includes about 20 different sales comps. You would
 15 share this with your client, so they could get an understanding
 16 of market conditions; is that correct?
 17 A That is correct.
 18 Q Just turning back to the e-mail looking back at page
 19 one of the document, I think you started to say this before, but
 20 at the top, you can see that this is a forward from Jeff
 21 McConney to somebody else at the Trump Organization dated
 22 September 6, 2018. Do you know Jeff McConney?
 23 A Yes.
 24 Q How do you know him?
 25 A Through appraisal appraisals that we did.

D. LARSON - DIRECT (MR. LADOV) Page 1573

1 Q So he was your contact at the Trump Organization for
 2 some of those appraisals; is that correct?
 3 A Yes. His name would have been provided by the lender
 4 as the property contact.
 5 Q So I would like to turn now to look at one of the
 6 properties that you did not appraise for the Trump Organization,
 7 a property called Niketown.
 8 MR. LADOV: Can we turn to Plaintiff's Exhibit 707
 9 and turn to page 8 of 25.
 10 Q If you are okay with the screen, I could kind of keep
 11 going.
 12 A Yeah, I can see the screen.
 13 Q All right. So I just want to read the first couple of
 14 sentences under Niketown. It says, "Mr. Trump is currently the
 15 owner of 100 percent of the equity interests in the entities
 16 that are the lessees with respect to two long-term ground
 17 leasehold estates relating to the land and buildings located
 18 between Fifth and Madison Avenues and principally on 57th Street
 19 in New York City. On December 8, 1994, the premises were leased
 20 to Nike Retail Services, Inc."
 21 So based on that description, how would you
 22 characterize the Niketown property?
 23 A This is a retail property.
 24 Q As compared to an office property?
 25 A Correct.

D. LARSON - DIRECT (MR. LADOV) Page 1574

1 Q I would next like to turn to Plaintiff's Exhibit 708.
 2 So Mr. Larson, this is a supporting data spreadsheet that Jeff
 3 McConney of the Trump Organization provided to an outside
 4 accounting firm named Mazars. This spreadsheet along with other
 5 documents was used to support Mr. McConney's evaluations of
 6 Trump Organization assets and then those values were included in
 7 the annual Statements of Financial Condition that we just looked
 8 at and the reason I'm showing you this is because this document
 9 shows certain conversations involving you that I would like to
 10 ask you about.
 11 MR. LADOV: So if we could scroll down to line 62.
 12 Q Again, you'll -- you can see that this is the
 13 information used to value Niketown, the property we were just
 14 talking about. And I think you can also see that this is an
 15 analysis that valued Niketown at \$287,600,000.
 16 If I direct you to lines 80 and 81, do you see that the
 17 support shows that the value of the Niketown was derived by
 18 taking an NOI, a net operating income, of \$8,456,103 and
 19 applying a cap rate of 2.940 percent. Do you see that?
 20 A Yes.
 21 Q Is that calculation what you described earlier as the
 22 direct capitalization method?
 23 A Yes. Applying a cap rate to net operating income is a
 24 direct cap approach.
 25 Q Sir, I would like to scroll down and direct you to the

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1 notes at line -- at lines 92 to 97. It says there under "cap
 2 rate," "9/17/13, per telephone conversation with Doug Larson of
 3 Cushman & Wakefield, cap rates for retail properties in upscale
 4 areas like Times Square and the Fifth Avenue area are usually
 5 almost 60 basis points lower than office space. To be
 6 conservative, we reduced the cap rate used on Trump Tower by 50
 7 basis points to arrive at the cap rate used by Niketown."
 8 So Mr. Larson, do you have any specific recollection of
 9 a phone call with Jeff McConney on September 17, 2013?
 10 A No.
 11 Q Did you know back in 2013 that Mr. McConney was citing
 12 you as a source for his property valuations in this document
 13 that he was sending outside the Trump Organization?
 14 A No, I wasn't aware.
 15 Q Did you advise Mr. McConney to value Niketown by
 16 reducing the cap rate used on Trump Tower by 50 basis points and
 17 then using that cap rate to reach a value?
 18 A Well, you would probably want to apply retail sales cap
 19 rates to look at rather than adjusting office cap rates which
 20 are a different property type. It doesn't make sense.
 21 Q So if it doesn't make sense to you, is it your opinion
 22 that you would not have offered this advice to Mr. McConney back
 23 in 2013?
 24 A I don't recall doing that.
 25 Q And you mentioned that you would use retail comps for a

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1 property like Niketown; is that right?
 2 A Yes, you would look at retail comps.
 3 Q We looked a moment ago at an e-mail blast that you sent
 4 out sales information to clients. Would some of that sales
 5 information include retail comps?
 6 A I don't know. Could you show me again?
 7 Q Well, I'm not thinking of that specific e-mail, but
 8 generally speaking, did you at -- when you were at Cushman &
 9 Wakefield have retail comps that you shared with clients who
 10 were seeking that kind of information?
 11 A Yes, we have retail comps.
 12 Q So does this 2013 valuation of Niketown reflect your
 13 opinion of value for this property?
 14 A No, it does not.
 15 Q So now I would like to put these notes side by side
 16 with PX 707, the Statement of Financial Condition, and page
 17 eight. And you can see at the bottom there, it says, "The
 18 current value of \$287,600,000 reflects the net proceeds which
 19 Mr. Trump in conjunction with his associates and outside
 20 professionals expect to be derived from rental activities
 21 pursuant to the lease described above as well as the residual
 22 value of the property."
 23 So Mr. Larson, you can see that the value in the
 24 Statement of Financial Condition ties back to the number reached
 25 in the supporting data for Niketown. Do you see that?

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1 A You would have to scroll over a little bit. Yes, it
 2 does.
 3 Q So to the extent that you are the outside professional
 4 listed in the Statement of Financial Condition, do you believe
 5 it would be accurate to say that the value of about \$287 million
 6 was determined by Mr. Trump in conjunction with you?
 7 A No, it is incorrect.
 8 Q You are the only outside professional listed here, is
 9 that right, in the support notes?
 10 A Yes.
 11 Q So since the Niketown valuation support referred back
 12 to Trump Tower, I would like to take a look at the supporting
 13 notes for Trump Tower in 2013 as well and that can be found on
 14 lines 30 through 60.
 15 MR. LADOV: You can take down the statement, too.
 16 Q So if I can direct you to lines 39 and 40, this
 17 document shows that Trump Tower is being valued -- this
 18 document shows that Trump Tower is being valued by applying a
 19 3.44 percent cap rate to an NOI of a little bit over
 20 \$18 million. Do you see that?
 21 A Yes.
 22 Q And then if I direct your attention to the bottom of
 23 the screen, and we can blow this up, there is a note for
 24 June 30th of 2013. And it states, "Information provided by Doug
 25 Larson of Cushman & Wakefield, Inc. which reflects cap rates of

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1 3.22 percent, 3.54 percent and 3.56 percent for office buildings
2 at 450 Park Avenue, 650 Madison Avenue and 499 Park Avenue. We
3 used the average rate for these three properties." Do you see
4 that note as well?
5 A Yes.
6 Q So actually, now I do want to show you the support
7 document where those numbers come from. I'm going to show you a
8 document that is marked as Plaintiff's Exhibit 3184.
9 Mr. Larson, do you recognize this document?
10 A Yes, it's an e-mail.
11 Q And who is the e-mail from?
12 A From myself.
13 Q And you sent it to Jeff McConney at the Trump
14 Organization; is that right?
15 A Yes.
16 Q It is dated August 5, 2013?
17 A Yes.
18 Q There is some attachments to this e-mail. Are these
19 the same kind of market reports that we were looking at earlier?
20 A Yes, very similar.
21 MR. LADOV: Your Honor, I would move this document
22 into evidence.
23 MR. ROBERT: Objection. Statute of limitations.
24 THE COURT: Overruled. Granted. It is in
25 evidence.

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1 (Whereupon, the Document was marked in evidence as
2 Plaintiff's Exhibit 3184.)
3 Q I would like to open the first attachment to this
4 e-mail. It is in the record as PX 3184 native 01. I would
5 actually like to put that chart side by side with the notes from
6 the 2013 spreadsheet for the valuation of Trump Tower.
7 MR. LADOV: Can we put up Trump Tower PX 708, lines
8 30. Actually, if you can scroll down again, we are going to
9 look at the note on lines 58 through 60.
10 Q So Mr. Larson, I just want to -- I just want to tie
11 these numbers from the supporting data spreadsheet to this sales
12 summary. Again, there is a note at the bottom of the sales
13 summary. It says, "It is compiled by Cushman & Wakefield
14 valuation and advisory"? This is a market report that you send
15 out in your e-mail blasts to clients?
16 A Yes.
17 Q In this case, you sent it directly to Jeff McConney in
18 response to his request for information?
19 A Yes.
20 Q And so if we look, you can see the 3.22 percent cap
21 rate for 450 Park Avenue. That's the first number listed in the
22 supporting data spreadsheet, correct?
23 A Yes, I see that.
24 Q And then 3.54 percent for 650 Madison Avenue, that
25 lines up as well?

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1 A Yes, correct.
2 Q Then the last number, 3.56 percent, that also ties to
3 the third cap rate used in the supporting data spreadsheet; is
4 that right?
5 A Yes.
6 Q And looking at the table, those are the three lowest
7 cap rates on the table, right?
8 A Yes.
9 Q So using them would derive the highest value using that
10 direct capitalization method you mentioned earlier, correct?
11 A Yes.
12 Q And this chart is called "Comparable Office Building
13 Sales Summary." So these are office comps, right?
14 A Yes.
15 Q So again, looking at that note, were you aware at that
16 time in 2013 that Mr. McConney was citing you and your
17 information as a valuation source in his work papers?
18 A No, I was not.
19 Q And did you ever advise him to choose these three
20 lowest cap rates from a sales comp chart in order to value Trump
21 Tower?
22 A No. I would look at -- you have -- in order to
23 select comps, you would want to look at more than three comps
24 and you'd have to know like the details behind those sales. So
25 you'd really want to analyze and analyze a bigger set. That

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1 would be our practice.
2 Q And when you say "analyze," are you referring to the
3 kinds of adjustments that you talked about earlier?
4 A Yes.
5 Q And so now I would like to turn back to document
6 Exhibit 707, the Statement of Financial Condition, on page five.
7 Sorry. I believe it is page seven actually, for Trump Tower.
8 And you can see in the middle of the page, it says, "The
9 estimated current value of \$526,800,000 is based on a evaluation
10 by Mr. Trump in conjunction with his associates and outside
11 professionals applying a capitalization rate to the cash flow to
12 be derived from the building operations."
13 Again, Mr. Larson, to the extent that you are the
14 outside professional mentioned in this statement, do you believe
15 that that representation is accurate?
16 A Just repeat that again. Thank you.
17 Q So my question is to the extent that you are the
18 outside professional listed here, is it accurate to say that Mr.
19 Trump valued this property, Trump Tower, at \$526 million in
20 conjunction with you?
21 A No, that's incorrect.
22 Q So I would like to turn back to the supporting data
23 spreadsheet and I'd like to go back to Niketown which we were
24 talking about a couple of minutes ago. I am going to walk us
25 through some of the subsequent years. So can we look at 742

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1 native one. Let's go down to line 72.
 2 So again, you can see that this is Niketown which we
 3 were talking about a couple of minutes ago. I just want to
 4 direct you to lines 103 to 105. Again, you can see there, there
 5 is a similar calculation. This time, the NOI is a little bit
 6 over \$9.6 million. The cap rate is 2.48 percent. Do you see
 7 that?
 8 A Yes.
 9 Q And that's used to reach a value of \$389,600,000. Is
 10 that -- do you see that?
 11 A Yes, I do.
 12 MR. LADOV: Let's go look at the cap rate note for
 13 2016 here. And actually, can we put this note side by side
 14 with PX 708 native one, lines 92 to 97. So that would be
 15 the 2016 note and the 2013 note. Great.
 16 Q So Mr. Larson, if you can take a moment to look at
 17 these two notes. On the left, we have 2013. On the right, we
 18 have 2016. But these two notes are describing an identical
 19 valuation method. Do you see that?
 20 A Yes, I do.
 21 Q And the only difference is that on the left-hand side,
 22 we have in the 2013 notes a reference to a September 17, 2013
 23 phone call with you. And on the right-hand side, we have a
 24 reference to an identical September 17, 2016 phone call with
 25 you. Do you see that?

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1 Q And then the note for 2017 also refers to this 2013
 2 phone call. Do you see that?
 3 A Repeat that. Show me.
 4 Q So if you look here at 2017, can you see that both of
 5 these notes are referring to a September 17, 2013 phone call
 6 with you in order to derive the method used to value Niketown?
 7 A Yes, I see that.
 8 (Continued on the next page.)
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1 A Yes.
 2 Q So, Mr. Larson, do you recall a September 17, 2016
 3 conversation with Jeff McConney about adjusting office comps to
 4 find a cap rate to value Niketown?
 5 A I don't recall that.
 6 Q Well, you already testified that you would not have
 7 given Mr. McConney this advice in 2013; is that correct?
 8 A Yes.
 9 Q So did you give him this advice in 2016?
 10 A That would have been unlikely because you have retail
 11 comps, you know, and it's -- it's not how we would value in our
 12 practice.
 13 THE COURT: I'll ask the witness again to speak in
 14 the microphone. It's a skill. You have to look to your
 15 left, but talk straight.
 16 Q So I would like to now jump ahead to 2017 and this is
 17 PX 758. We can put that side by side. If we could leave up PX
 18 742. Again, I just want to focus on the cap rate notes. So it
 19 would be line 124 in the 2017 spreadsheet. So on the right-hand
 20 side is the document we just looked at. On the left-hand side
 21 is the 2017 supporting data spreadsheet.
 22 Do you see that the note in 2017, referring back to the
 23 2016 analysis, has now changed, the date of the phone call with
 24 you from September 17, 2016 back to September 17, 2013?
 25 A Yes, I see that.

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1 Q And, again, were you aware in 2017 that Mr. McConney
 2 was reporting in his work papers to outside parties that he was
 3 valuing Niketown based on a 2014 conversation with you?
 4 A No, I was not.
 5 Q As an appraiser, would you use a --
 6 A Also, I was at Newmark in June 2017.
 7 Q So you were no longer at Cushman & Wakefield in 2017
 8 when that note was written?
 9 A Yes.
 10 Q And I was starting to ask as a professional appraiser,
 11 would you use information that you would receive in 2013 in
 12 order to value an office building in Manhattan four years later
 13 in 2017?
 14 A There would have been most likely more current sales to
 15 look at.
 16 THE COURT: You can answer that yes or no.
 17 THE WITNESS: Yes. Could you repeat the question?
 18 THE COURT: I think you better repeat the question.
 19 MR. LADOV: Can we get a read back on the question,
 20 Your Honor?
 21 THE COURT: Read back, please.
 22 (Whereupon, the requested portion of the
 23 proceedings was read back by the court reporter.)
 24 A The answer is no.
 25 Q And actually, just to correct my question, I said

D. Larson - Plaintiff - direct (Ladov) Page 1586

1 office building, but Niketown wasn't an office building, was it?

2 A No. It's a retail property.

3 Q Thank you.

4 And so I'd like to go to one more valuation from

5 Niketown and this time from 2018. And I'm going to show you a

6 document in evidence as Plaintiff's Exhibit 774.

7 MR. LADOV: And we can scroll down to line 91 --

8 sorry. 774 native one? If we can scroll down to the notes

9 about the cap rate for Niketown in 2018?

10 Q So, again, if you can pull that up and read it for a

11 moment. Mr. Larson, would you agree that the valuation

12 methodology described in both of those notes for 2017 and 2018

13 is the same?

14 A It's very close.

15 Q And the only real difference that -- I guess there is

16 two differences. One says that cap rates are usually 50 to 60

17 basis points and the other usually says they're almost 60 basis

18 points. Is that what you're thinking about when you say they're

19 close?

20 A Yes, that's correct.

21 Q And then in addition, the note for 2017 relies on the

22 2013 telephone conversation. We've talked about the note for

23 2018 is now relying on a September 14, 2018 conversation with

24 Doug Larson correctly identified as Doug Larson of Newmark.

25 Mr. Larson, do you recall having a conversation on

D. Larson - Plaintiff - direct (Ladov) Page 1587

1 September 14, 2018 where you advised anyone at the Trump

2 Organization to value Niketown in this manner?

3 A I don't recall that, no.

4 Q And, again, were you aware in 2018 that the Trump

5 Organization was stating that they were relying on you as a

6 valuation professional in order to reach these values?

7 A I was not aware.

8 Q And once you saw this did you have any reaction to

9 finding that your name was being used in these documents?

10 A It's inappropriate and inaccurate.

11 Q And why do you say that?

12 A Because it should have been -- I should have been told

13 and, you know, an appraisal should have been ordered.

14 Q And you can't provide the kind of information to value

15 a specific asset without ordering an appraisal and that kind of

16 a formal engagement; correct?

17 A Yes, you need a formal engagement.

18 Q So I want to move on to another property. We're going

19 to look at a property called -- sorry. Excuse me. 1290 Avenue

20 of the Americas and I'd like to show you a document marked as

21 Plaintiff's Exhibit 1824 for identification.

22 A Okay.

23 Q Mr. Larson, are you familiar with this document?

24 A Yes, it's an appraisal of 1290 Sixth Avenue prepared

25 for Deutsche Bank.

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1 Q And the date on this appraisal is as of November 1,

2 2012; is that correct?

3 A Yes.

4 Q And if you flip to page six, is that your signature,

5 Mr. Larson?

6 A Yes.

7 Q And does this appraisal report accurately describe the

8 information that you and your colleagues use to value 1290

9 Avenue of the Americas?

10 A Yes, it does.

11 Q And does this report accurately state your opinion of

12 the value of 1290 Avenue of the Americas as of November 1, 2012?

13 A Yes, it does.

14 MR. LADOV: Your Honor, I would move this into

15 evidence.

16 MR. ROBERT: Objection. Statute of limitations.

17 THE COURT: Overruled. It's in evidence.

18 Q So if we can flip to page four of the document, can you

19 tell us what your opinion of the market value of 1290 Avenue of

20 the Americas on November 1, 2012 was?

21 MR. LADOV: I think we need to scroll down a little

22 bit more.

23 A It was \$2 billion.

24 MR. LADOV: And then can we turn to page 11?

25 Q I want to show you some information from the summary.

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1 Again, there is some information here?

2 MR. LADOV: It says -- actually, scroll -- yes.

3 Down a tiny bit more, please. Thank you. Perfect.

4 Q So it says "direct capitalization" and we were talking

5 about that before. So what's the cap rate that you used for

6 direct capitalization analysis here?

7 A The overall capitalization rate is 4.5 percent.

8 Q And one other thing I want to point you to in this

9 appraisal, it's on page 27. And so I want to direct you to the

10 sentence about midway down. It says, "The Trump Organization

11 owns the remaining 30 percent minority interest in the property

12 and the property being 1290 Avenue of the Americas" and explains

13 that the rest of the interest is owned by Vornado Realty Trust.

14 Do you see that?

15 A Yes, I do.

16 Q So your appraisal of 1290 was of the value for the

17 property as a whole; is that correct?

18 A Yes.

19 Q Do you value minority interests in your practice as an

20 appraiser?

21 A No. We have specialists who do that in the appraisal

22 group.

23 Q Why do you need a specialist?

24 A Because there is a lot of variables to consider.

25 Q So it would be -- well -- strike that.

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1 And does Cushman employ other appraisers besides
2 yourself who specialize in valuing minority interests?
3 A Yes, I do.
4 Q And do you have any understanding of what they do to
5 adjust the value based on those kinds of factors?
6 A I have very little understanding of that.
7 Q Then I won't ask you anymore further questions about
8 it.
9 So I want to turn back to the Supporting Data
10 spreadsheet. This is going to be Exhibit 708 native at
11 line 669. And, again, so this is an analysis of Vornado
12 Partnership Interest with Mr. Trump. It actually includes two
13 properties, 1290 Sixth Avenue, which we were just looking at and
14 555 California Street.
15 So can I direct you to line 678 and 679? And do you
16 see there for 1290 Sixth Avenue there is an NOI listed of
17 \$93,271,000 in 2013 and then there is a value of slightly more
18 than \$2.9 million and it says, quote, "value based on a cap
19 rate. See notes below."
20 A Yes, I do see that.
21 Q So if we scroll down further in the page to line 704,
22 we can see the cap rate note for 2013. And here it says:
23 "1290 based on information provided by Doug Larson of
24 Cushman & Wakefield, which reflects a cap rate of 3.12 percent
25 for a comparable office building on Fifth Avenue between 51st

D. Larson - Plaintiff - direct (Ladov) Page 1591

1 and 52nd Streets?" Is 3.12 percent the cap rate that you used
2 to value this same property just a few months earlier?
3 A No. No, it's not.
4 Q Did you advise Jeff McConney or anyone else at the
5 Trump Organization to value this property in June -- as of
6 June 2013 using a cap rate of 3.12 percent?
7 A No, I did not.
8 Q And is this valuation consistent with your opinion of
9 value from the 2012 appraisal of the same property?
10 A It is not.
11 MR. LADOV: And actually, I just want to scroll
12 up a little bit in the notes.
13 Q So that first note reads for 555 California. That's a
14 property we weren't talking about, but it says "555 based on
15 e-mail from Robert Farwell of Cushman & Wakefield in San
16 Francisco, which also states a similar office building selling
17 for \$750 per square foot which equals \$1,125,000,000 for 555."
18 Mr. Larson, do you know Robert Farwell?
19 A Yes.
20 Q And who he is?
21 A He's an appraiser in San Francisco.
22 Q And similarly, did you have any response to seeing his
23 name listed in this document?
24 MR. KISE: Objection. Response same.
25 THE COURT: I'll ask for something more specific

D. Larson - Plaintiff - direct (Ladov) Page 1592

1 than that generality.
2 Q Do you recall a moment at which you first saw that
3 Mr. Farwell's name was identified in this document?
4 A Repeat that again.
5 Q Do you recall at some point in time first seeing this
6 document and first seeing Robert Farwell's name in it?
7 A When I've seen this? It was shown to me yesterday.
8 Q And what reaction did you have to seeing Mr. Farwell's
9 name in this document?
10 MR. KISE: Objection. Again, reaction.
11 MR. LADOV: Your Honor, we can move forward.
12 That's fine. I withdraw the question.
13 THE COURT: All right. You didn't even want to
14 hear what I had to say?
15 MR. LADOV: I apologize. If we were going to win,
16 you should hold off.
17 THE COURT: I don't think in terms of winners and
18 losers, but if it could be a little more specific. I don't
19 want to stop you from --
20 MR. LADOV: Your Honor, it's fine. We can move
21 forward.
22 THE COURT: Okay. Then withdrawn, okay.
23 MR. LADOV: Question withdrawn.
24 Q So I do want to turn back to Plaintiff's Exhibit 707,
25 and this is the Statement of Financial Condition. And I want to

D. Larson - Plaintiff - direct (Ladov) Page 1593

1 turn to the bottom of page 19 and the top of page 20.
2 And, again, it says Mr. Trump owns 30 percent of these
3 properties. And then scrolling down it says for 1290 Avenue of
4 the Americas and 555 California Street, quote, "The estimated
5 current value net of debt of \$745,800,000 is based on an
6 evaluation made by Mr. Trump in conjunction with his associates
7 and outside professionals. This valuation was arrived at by
8 applying a capitalization rate to the net operating income and
9 taking into consideration any debt and return of capital."
10 Mr. Larson, you already testified that you do not value
11 minority property interests; is that correct?
12 A I do not.
13 Q And again, to the extent that you are one of the
14 outside professionals listed here, do you think it was accurate
15 for this document to state that the estimated current value of
16 Mr. Trump's minority interests in 1290 Avenue of the Americas
17 was based on an evaluation made by Mr. Trump in conjunction with
18 you?
19 MR. KISE: Objection, Your Honor. Mischaracterizes
20 the evidence and this witness has no foundation to testify
21 about this statement in the SOFC. It doesn't mention his
22 name, it doesn't mention anything to do with Cushman &
23 Wakefield. We don't know if that -- he's the outside
24 professional or if it's any outside professional.
25 MR. WALLACE: I'm going to renew my objections to

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1 speaking objections, which are seemingly instructing -- to
 2 Mr. Kise's view of the evidence. If he has an objection to
 3 foundation, he should say "objection, foundation."
 4 MR. KISE: I'm just explaining that it's a bench
 5 trial. I'm just explaining it, Judge.
 6 MR. WALLACE: I'm not worried about the judge. I'm
 7 worried about the witness.
 8 MR. KISE: I'm not worried about either one.
 9 THE COURT: I appreciate the bode of confidence.
 10 Well, the easiest way to rule on this is we haven't
 11 established he's the outside professional being referred to,
 12 so I'll sustain it on that and we'll rule on the other
 13 objections.
 14 Q So let me ask you a different question, Mr. Larson:
 15 Looking at the 2013 analysis of 1290 Avenue of the
 16 Americas, did Mr. McConney or anyone else at the Trump
 17 Organization determine the appropriate cap rate to use to value
 18 that property in conjunction with you?
 19 MR. FIELDS: Objection. Speculation. He doesn't
 20 know what Mr. McConney did or didn't do.
 21 MR. LADOV: I'm asking whether he did work in
 22 conjunction with Mr. McConney.
 23 THE COURT: Overruled. If the witness knows the
 24 answer to the question.
 25 MR. KISE: That wasn't a question, though, Your

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1 Honor. The question was did he do something. It wasn't did
 2 he work with Mr. Larson. I can read it right there.
 3 THE COURT: Well --
 4 MR. KISE: The question was did Mr. McConney do X,
 5 not did Mr. McConney work with Mr. Larson to do X. Big
 6 difference.
 7 MR. LADOV: I think it's for the witness to
 8 determine whether he understands the question or not.
 9 And again, I don't think Mr. Kise should be having
 10 these speaking objections in front of the witness.
 11 THE COURT: Let's either -- I rather you just
 12 rephrase the question. So without prejudice, I'll ask the
 13 witness to -- the attorney to rephrase the question.
 14 Q So let me withdraw that question, Mr. Larson.
 15 Did you work with Mr. McConney in 2013 to determine the
 16 cap rate that he used to value this property?
 17 A No, I did not.
 18 THE COURT: All right. Remember to keep your voice
 19 up. The answer was no, I did not?
 20 THE WITNESS: Correct, I did not.
 21 Q So let's move forward. I have a couple of documents to
 22 show you for the purpose of putting them into evidence.
 23 So the first one I want to show you is a document
 24 marked for identification as Plaintiff's Exhibit 238. And if
 25 you could scroll down to page two of this document.

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1 Mr. Larson, do you recognize this document?
 2 A Yes. This is an appraisal of 40 Wall Street as of
 3 October 1, 2010.
 4 Q And I think you said October 1st, but is it correct
 5 that --
 6 A August 1st. I misread.
 7 Q And if we turn to page five of this document. Is that
 8 your signature, Mr. Larson?
 9 A Yes.
 10 Q Does this appraisal report accurately describe the
 11 information that you and your colleagues received to value 40
 12 Wall Street in 2010?
 13 A Yes.
 14 Q And does this report accurately state your opinion of
 15 the value of 40 Wall Street as of August 1, 2010?
 16 A Yes.
 17 MR. LADOV: So, Your Honor, I'd move this document
 18 into evidence.
 19 MR. ROBERT: Objection, Your Honor, in addition to
 20 -- this is an appraisal from 14 years ago. This is outside
 21 even the Attorney General's own scope of what is potentially
 22 at issue in this case. Our view is this is 2016 to date.
 23 Their view is it goes back to 2014 or even earlier, but
 24 there is no dispute as far as I'm aware of anything going
 25 back to 2010. So on top of everything else, it's

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1 irrelevant.
 2 MR. LADOV: So, Your Honor, I would just say you
 3 have repeatedly explained that there is no statute of
 4 limitations bar on evidence. We will tie this evidence to
 5 the relevant claims in this case within the statute of
 6 limitations, but there is absolutely no basis for barring
 7 this admission.
 8 MR. ROBERT: Your Honor, I'm appalled to hear that
 9 there is no limitation on irrelevant evidence from 14 years
 10 ago on an appraisal when that is not part of their 300
 11 paragraph complaint. So, again, I would renew my objection
 12 on relevance and statute of limitations.
 13 MR. WALLACE: Your Honor, I'm apologizing for
 14 speaking over my colleague, but I will say we have already
 15 established that the 2011 Statements of Financial Condition
 16 are considered by Deutsche Bank throughout the entire period
 17 that the Deutsche Bank loans were open -- information from
 18 2010 was in the files of the Trump Organization. This
 19 information was available to the Trump Organization at the
 20 time they were making representations.
 21 They are free to argue that the evidence should not
 22 be granted much weight, that it doesn't matter, but the idea
 23 that it's not relevant is simply not accurate and the fact
 24 that this appraisal was prepared at the time and was in the
 25 files of the Trump Organization is part of the record and is

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1 an appropriate part of the record.
 2 MR. ROBERT: Your Honor, Deutsche Bank was clear
 3 that they did not rely on the Statements of Financial
 4 Condition and the values contained therein. Deutsche Bank's
 5 testimony was clear that they relied on the Deutsche Bank
 6 values that came from Deutsche Bank Valuation Services
 7 Group. This is not from the Statement of Financial
 8 Condition.
 9 MR. WALLACE: This is a closing argument, not a
 10 factual objection.
 11 MR. ROBERT: You're making a whole speech here. I
 12 started out with a simple objection then you added
 13 something, Mr. Wallace. I'm just putting context to why we
 14 think this is relevant and improper.
 15 MR. WALLACE: I think the record will show how
 16 simple the objection is.
 17 MR. ROBERT: I'll let the record speak for itself.
 18 THE COURT: In terms of relevancy, subject to
 19 connection. If it was irrelevant, it's irrelevant.
 20 Also, I don't think the trier of fact has to agree
 21 that Deutsche Bank didn't rely on it, so overruled.
 22 Ask again, read back?
 23 MR. LADOV: I -- well, I think we moved it into
 24 evidence, Your Honor, by overruling the objection.
 25 THE COURT: I'm sorry. It's in evidence.

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1 Just for the benefit of everybody, statute of
 2 limitations bars claims not in evidence. Of course, you can
 3 argue that the evidence is irrelevant, but that's not been
 4 established, okay?
 5 Q So Mr. Larson, I'm actually going to take this document
 6 down and show you a document. It was actually introduced
 7 earlier this morning for identification as Plaintiff's
 8 Exhibit 1573, so I believe that defendants should have a copy of
 9 it from this morning.
 10 THE COURT: It will be on the screen anyway.
 11 Q So Mr. Larson, do you recognize this document?
 12 A Yes. It is an appraisal of 40 Wall Street prepared for
 13 Capital One bank as of November 1, 2011.
 14 Q And if we scroll to page five, Mr. Larson, is that your
 15 signature?
 16 A Yes, it is.
 17 Q And does this appraisal report accurately describe the
 18 information that you and your colleagues received to value 40
 19 Wall Street in 2011?
 20 A Yes.
 21 Q And does this report accurately state your opinion of
 22 the value of 40 Wall Street as of August 1, 2011?
 23 A Yes.
 24 MR. LADOV: So, Your Honor, I believe that this was
 25 introduced earlier, but I would at this point move it into

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1 evidence for all purposes.
 2 THE COURT: Granted. It's in evidence for all
 3 purposes.
 4 (Whereupon, the item previously referred to is
 5 received and marked Plaintiff's Exhibit Number 1573 in
 6 evidence.)
 7 Q And I can take this document down and show you one more
 8 appraisal. It's -- I'm going to show you a document marked as
 9 Plaintiff's Exhibit 121, and can we turn to page two of this
 10 document.
 11 Mr. Larson, do you recognize this document?
 12 A Yes.
 13 Q And what is it?
 14 A This is an appraisal of 40 Wall Street prepared for
 15 Capital One Bank as of November 1, 2012.
 16 Q And if we turn to page six, can you tell me if that's
 17 your signature?
 18 A Yes, it is.
 19 Q And does this appraisal report accurately describe the
 20 information you and your colleagues use to value 40 Wall Street
 21 in 2012?
 22 A Yes, it does.
 23 Q And does this report accurately state your opinion of
 24 the value of 40 Wall Street as of November 1, 2012?
 25 A Yes, it does.

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1 MR. LADOV: Your Honor, I would move this document
 2 into evidence.
 3 MR. FIELDS: Statute of limitations.
 4 THE COURT: Overruled. It's in evidence.
 5 (Whereupon, the item previously referred to is
 6 received and marked Plaintiff's Exhibit Number 121 in
 7 evidence.)
 8 Q So we can take this down and we'll take a couple more
 9 minutes, Mr. Larson, with one more document that was already
 10 introduced as Plaintiff's Exhibit 118. And we had looked at
 11 this earlier. It's the 2015 appraisal of 40 Wall Street.
 12 MR. LADOV: And can we turn to page 136 of this
 13 appraisal report? And actually, if you can scroll down a
 14 little bit just to the bottom of 136 and the top of
 15 page 137.
 16 Q Yes, so it says here "market rental rate retail space"
 17 and the first sentence reads, quote, "The subject property is
 18 leased to four retail tenants that include Dean & DeLuca and
 19 Neapolitan Express along the Wall Street side of the building.
 20 Neapolitan Express leases 550 square feet on the grade while
 21 Dean & DeLuca leases 18,500 square feet on the grade."
 22 And then if you go down a little bit down here you can
 23 see mention of the Dean & DeLuca lease with a contract rent of
 24 \$1.4 million. Do you see all of that?
 25 A Yes, I do.

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1 Q And this is part of a section of your appraisal report
2 entitled, "Income Capitalization Approach." And you talked
3 about that earlier; correct?
4 A Yes.
5 Q So do you know whether this \$1.4 million lease with
6 Dean & DeLuca was included in your valuation of the property's
7 income in this 2015 appraisal?
8 A Yes, it would have been.
9 Q And if we can turn to page 15 and look at the bottom of
10 the page -- and this is the direct capitalization analysis.
11 So, again, just to confirm that net operating income
12 number that includes the income from the Dean & DeLuca lease; is
13 that right?
14 A That is correct.
15 Q And then you applied a 4.25 percent capitalization rate
16 to that net operating income; is that right?
17 A Yes.
18 Q And you did a couple of adjustments, but the final
19 value of \$540 million that was consistent with your opinion of
20 the value of 40 Wall Street at that time; is that right?
21 A Yes, that's correct.
22 Q So next I'd like to show you a document that has been
23 admitted as Exhibit 3004 native 01 and it's a spreadsheet
24 similar to the ones that we were looking at.
25 I would like to scroll down to lines 117 through 136.

D. Larson - Plaintiff - direct (Ladov) Page 1603

1 And I can show you here there is a reference here in the 2015
2 line to a \$540 million Cushman & Wakefield appraisal done
3 June 2015 for loan refinancing of Ladder. That's the appraisal
4 we've been looking at; is that right?
5 A Yes.
6 Q And then you can also see in addition to that
7 \$540 million there is additional value listed of \$120,348.
8 Do you see that?
9 A Yes, I do.
10 Q And part of that additional value is derived by taking
11 the vacant retail space lease with Dean & DeLuca of \$1.4 million
12 and applying a 3.04 percent cap rate to it. Do you see that?
13 A Yes.
14 Q So you already included the Dean & DeLuca lease in your
15 \$540 million valuation; correct?
16 A That is correct.
17 Q So is this \$660 million valuation, is that double
18 counting the Dean & DeLuca lease?
19 A I'm not sure, you know, what they did. I know my -- in
20 the -- in my June 2015 appraisal Dean & DeLuca was included in
21 the valuation.
22 Q So that's fine. And then I guess the other question I
23 would ask they applied -- whoever did this analysis applied a
24 cap rate of 3.04 percent. Is that the same cap rate that you
25 used to determine the value of 40 Wall Street in 2015?

D. Larson - Plaintiff - direct (Ladov) Page 1604

1 A No, it's not.
2 THE COURT: Five-minute warning.
3 MR. LADOV: I think that's fine, Your Honor. I
4 think I actually have one more document to show the witness.
5 Can we turn to Plaintiff's Exhibit 731 native?
6 Q And this is another version of the Statement of
7 Financial Condition Supporting Data for 2015. And looking at --
8 actually, sorry.
9 MR. LADOV: Can we scroll down to line 117?
10 Q And so this is another analysis of the value of 40 Wall
11 Street in 2015. And do you see here that the value reached in
12 this document is now \$735 million?
13 A Yes, 735,400,000?
14 Q Correct.
15 A Yes.
16 Q And then, again, looking at this document, do you see
17 any mention up here of the appraisal that you performed?
18 A No, I do not.
19 Q And this valuation is reached by applying a 3.29 cap
20 rate to an NOI of \$24,194,280. Do you see that?
21 A Yes.
22 Q And again, 3.29 percent, is that the cap rate that you
23 used in your appraisal in 2015?
24 A It is not.
25 Q And looking at the note there at the bottom and it says

D. Larson - Plaintiff - direct (Ladov) Page 1605

1 for June 30, 2015, quote, "Based on information provided by
2 Douglas Larson of Cushman & Wakefield on 11/23/2015, which
3 reflects a 3.04 percent for 100 Wall Street," and then it says
4 "based on a telephone conversation with Doug Larson on 2/1/2016
5 since the ground lease still has about 190 years left, the
6 effect on the cap rate is minimal to be conservative. We
7 increased the cap rate from .25 percent to 3.29 percent."
8 So, again, Mr. Larson, did you work with Mr. McConney
9 or anyone else at the Trump Organization to value 40 Wall Street
10 in this manner for the 2015 Statement of Financial Condition?
11 A No, I did not.
12 Q And the cap rate that's described here is not the cap
13 rate that you used in your appraisal in 2015; is that correct?
14 A Just repeat that again.
15 Q Sure. The cap rate here of 3.29 percent, that's a
16 different cap rate than the 4.25 percent cap rate that you used
17 in your appraisal; is that right?
18 A Yes, that is correct.
19 Q And then finally, I'd like to turn to the Statement of
20 Financial Condition of Mr. Trump as of June 30, 2015. This is
21 Document 729. And I'd like to turn to the top of page nine.
22 And Mr. Larson, you can see it says, quote, "The
23 estimated current value of \$735,400,000" --
24 MR. KISE: Your Honor, this is going to be the same
25 objection.

D. Larson - Plaintiff - direct (Ladov) Page 1606

1 MR. LADOV: I haven't even finished --
 2 MR. KISE: I know, but I can read it. Let's just
 3 save ourselves the time.
 4 THE COURT: No, let him read it and we can discuss.
 5 We have two minutes.
 6 So you want to re-read the whole thing?
 7 MR. LADOV: I'll start again, Your Honor.
 8 Q So the text at the top of this page says, quote, "The
 9 estimated current value of \$735,400,000 is based upon an
 10 evaluation made by Mr. Trump in conjunction with his associates
 11 and outside professionals of leases that have been signed or are
 12 currently the subject of negotiation and a capitalization rate
 13 applied to the resulting cash flow to be derived from the
 14 building's operations."
 15 So Mr. Larson, is this estimated current value of
 16 735,400,000 consistent with your opinion of value for 40 Wall
 17 Street in June 2015?
 18 A No, it is not.
 19 Q And did you work with Mr. McConney or anyone else at
 20 the Trump Organization to determine the capitalization rate used
 21 to generate this valuation of \$735 million?
 22 A No, I did not.
 23 MR. LADOV: I have no further questions, Your
 24 Honor.
 25 THE COURT: Finished with this witness?

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1 MR. LADOV: Yes.
 2 THE COURT: Any cross examination of this witness
 3 at this time?
 4 MR. FIELDS: Yes, Your Honor.
 5 THE COURT: So after lunch break.
 6 Okay. We'll be back at 2:15 everyone. Have a good
 7 lunch.
 8 (Whereupon, there is a luncheon recess in the
 9 proceedings.)
 10 Transcript continues on the following page....
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D. LARSON - CROSS(MR. FIELDS) Page 1608

1 A F T E R N O O N S E S S I O N
 2 * * * * *
 3 THE COURT OFFICER: All rise. Part 37 is back in
 4 session. The Honorable Judge Arthur Engoron presiding.
 5 Please be seated and come to order.
 6 THE COURT: Welcome back, everybody, some of you.
 7 I understand we have some cross-examination by counsel.
 8 MR. FIELDS: Yes, Your Honor. May it please the
 9 Court, Mr. Lazaro Fields for President Trump on the defense.
 10 THE COURT OFFICER: Witness entering.
 11 (Witness resumes the stand.)
 12 THE COURT: Okay. Welcome back. Let's begin with
 13 the cross-examination of Mr. Larson.
 14 MR. FIELDS: Thank you, your Honor.
 15 CROSS-EXAMINATION
 16 BY MR. FIELDS:
 17 Q Good afternoon, Mr. Larson.
 18 A Hello.
 19 Q My name is Lazaro Fields. I'm going to ask you a
 20 couple of questions, okay?
 21 A Okay.
 22 Q Mr. Larson, on direct examination, you were asked by
 23 counsel about valuations and appraisals. Do you recall those
 24 lines of questions?
 25 A Yes.

D. LARSON - CROSS(MR. FIELDS) Page 1609

1 Q And you understand that there is a difference between a
 2 valuation and appraisal; is that correct?
 3 A They are the same thing.
 4 Q A valuation and an appraisal is the same thing; is that
 5 your testimony?
 6 A But the words can be used interchangeably.
 7 Q Isn't it true, Mr. Larson, that a real estate developer
 8 can value their properties, correct?
 9 A Yes.
 10 Q That doesn't mean that a real estate developer is
 11 conducting an appraisal of their property, correct?
 12 A Yes, that would be correct.
 13 Q Because a real estate developer, unless they are a
 14 certified appraiser, cannot conduct an appraisal; is that
 15 correct?
 16 A Yes, that would be -- that would make sense.
 17 Q So now would you agree with me, Mr. Larson, that
 18 appraisals and valuations are different?
 19 A An appraisal is a very detailed, organized appraisal,
 20 yes. It's an -- sometimes the terms are used loosely together.
 21 Q But an appraisal -- strike that. Withdrawn.
 22 A valuation is not necessarily an appraisal, correct?
 23 A Like I said, the terms are used interchangeably
 24 together, but an appraisal is a term that's used by appraisers
 25 in compliance with USPAP.

D. LARSON - CROSS(MR. FIELDS) Page 1610

1 Q An appraisal is a term of art; is that correct?
 2 A Appraisal is an -- is an estimate of a market value.
 3 Q Is it a term of art?
 4 A It's a -- it would really be -- I don't know if you
 5 call it a term of art. I'm not sure.
 6 Q Okay. But you would agree with me that if I said that
 7 I, as a property developer, valued my property, that does not
 8 necessarily mean that I conducted an appraisal of my property,
 9 correct?
 10 A Unless you're a certified appraiser, it would not be an
 11 appraisal. It would not be an appraisal, you know, a formal
 12 appraisal, no.
 13 Q But it would be a valuation, correct?
 14 A I guess you could say that.
 15 Q And there's nothing that prohibits President Trump as a
 16 real estate developer from valuing his own properties; is that
 17 correct.
 18 A I wouldn't know any -- I don't know.
 19 Q I want to be very clear, Mr. Larson. My question is
 20 there's nothing from prohibiting President Trump from valuing
 21 his own properties, correct?
 22 A Not that I know of.
 23 Q All right. Do you remember being interviewed by the
 24 Attorney General's office on October 29th of 2019?
 25 A Yes.

D. LARSON - CROSS(MR. FIELDS) Page 1611

1 Q And there was a record taken of your testimony that
 2 day; is that right?
 3 A Yes.
 4 Q Have you looked at your testimony since that day?
 5 A I've looked at it once, yes.
 6 Q When did you look at it?
 7 A Weeks ago.
 8 Q I'm going to direct you to page 207, line five that
 9 will be pulled up on the screen here.
 10 A Okay.
 11 Q Do you recall being asked:
 12 "QUESTION: Is that something you would have found
 13 significant or remembered? Do you remember it?
 14 "ANSWER: No, I don't remember this, and I'm sure
 15 owners value their own properties, so it is nothing that
 16 stands out."
 17 That was your testimony, correct?
 18 A Yes.
 19 Q I'll direct you to page 166, line seven:
 20 "QUESTION: So you would say this valuation is
 21 inaccurate?
 22 "ANSWER: It's not my valuation. Yes, it could be
 23 his valuation or Trump's valuation, but it's not my
 24 valuation."
 25 So you would agree nothing prohibits President

D. LARSON - CROSS(MR. FIELDS) Page 1612

1 Trump as a real estate developer from valuing his property,
 2 correct?
 3 A Yes. I guess anybody can do their own valuation.
 4 Q Just because President Trump or any of his designees
 5 value their own properties doesn't necessarily mean that he's
 6 conducting an appraisal of his own property; is that correct?
 7 A To prepare an appraisal by an appraiser, professional
 8 appraisal, you need to be licensed and meet the requirements of
 9 USPAP.
 10 Q So would the answer to my question be no?
 11 A Just repeat the question again, so I don't get lost.
 12 MR. FIELDS: May I have a readback, Your Honor.
 13 THE COURT: Yes, read back, please.
 14 (Whereupon, the requested portion of the record was
 15 read back.)
 16 A So could you ask it another way, so I understand? I'm
 17 sorry. Just want to make sure I'm clear.
 18 Q So Mr. Larson, we've established that valuations and
 19 appraisals are two different concepts, correct?
 20 MR. LADOV: Objection.
 21 THE COURT: Yes and no. I don't know that I would
 22 let that stand because he said they're interchangeable, but
 23 they're also different. Look, I think the term "valuation,"
 24 it can mean an appraisal, but the fact that somebody owns
 25 property or even doesn't own it, they could put a value on

D. LARSON - CROSS(MR. FIELDS) Page 1613

1 it in their head or on paper. So I don't know that I would
 2 totally agree with the premise of your question. I didn't
 3 hear the question. I only heard the premise.
 4 MR. FIELDS: So let me back up.
 5 Q Mr. Larson, we've established that nothing prohibited
 6 President -- prohibits President Trump or anyone from valuing a
 7 property without doing an appraisal, right?
 8 A Yes. Anybody can value their -- their own property.
 9 Q And as far as you are aware, there is nothing illegal
 10 or unethical about anyone valuing property without doing an
 11 appraisal, correct?
 12 A I'm not aware.
 13 Q In terms of the manner in which you value property and
 14 I want to use the word "value" deliberately. When you value
 15 property, do you apply one of the three valuation methods
 16 generally?
 17 A Correct.
 18 Q And those methods are the cost method, the income
 19 method and the sales comparable method; is that right?
 20 A Yes.
 21 Q Now, when you conduct an appraisal, do you also use
 22 those same three methods to appraise the value of a property?
 23 A The market will dictate what appraisal methodology you
 24 use or what -- whether or not you use the cost approach, sales
 25 approach or income capitalization approach. The market will

D. LARSON - CROSS(MR. FIELDS) Page 1614

1 dictate that.
 2 Q But you would agree with me that when you appraise a
 3 property, you use one of those three methods?
 4 A One or two typically in New York. Cost approach is
 5 typically not applied.
 6 Q Let me ask it another way. Is there another method
 7 other than the three that we've just discussed that you would
 8 employ to appraise the value of a property?
 9 A No.
 10 Q Okay. So then we can agree that the universe of
 11 methods available to you or to anyone to value or appraise a
 12 property are the three that we've just discussed; namely, the
 13 cost approach, the income approach or the sales comparable
 14 approach?
 15 A Yes.
 16 Q And your testimony a minute ago was that the cost
 17 approach is generally disfavored in New York City; is that
 18 correct?
 19 A It's typically not used.
 20 Q And why is that?
 21 A Because there's a lot of depreciation, older buildings
 22 in New York which make it less reliable.
 23 Q For both commercial and residential?
 24 A I -- I can only speak to office, in commercial.
 25 Q The income and sales comp approaches are the methods

D. LARSON - CROSS(MR. FIELDS) Page 1615

1 that are most often used to appraise the value of property,
 2 specifically commercial property in New York City; would that be
 3 fair?
 4 A Yes.
 5 Q Would you be able to speak to the method used to value
 6 properties outside of New York City?
 7 A The methods would be the same outside New York City.
 8 Q So the methods that one would use in Miami, for
 9 instance, for a commercial property would be the same methods
 10 that would be employed in New York City; is that right?
 11 A Yes, an appraiser would use the cost approach, income
 12 approach or sales comparison approach.
 13 Q And to be clear, those are approaches would be the same
 14 regardless of whether you're valuing a property or appraising a
 15 property?
 16 A It's -- the names of valuation or the term "valuation"
 17 or "appraisal," you know, are used interchangeably. When an
 18 appraiser does an appraisal, it's an appraisal and we identify
 19 it as appraisers as an appraisal report.
 20 Q But when President Trump values his property, it is not
 21 an appraisal, correct?
 22 A Anybody valuing their properties can call it whatever
 23 they want.
 24 Q But when President Trump values his properties, it is
 25 not an appraisal, correct?

D. LARSON - CROSS(MR. FIELDS) Page 1616

1 MR. LADOV: Objection; asked and answered.
 2 THE COURT: I'm generally very liberal on asked and
 3 answered.
 4 MR. FIELDS: It is a yes-or-no question.
 5 THE COURT: Sorry, what?
 6 MR. FIELDS: It was a yes-or-no question.
 7 THE COURT: Is it a question or is it just
 8 something you're trying to tell us?
 9 MR. FIELDS: It is, Your Honor. The reason why is
 10 on direct examination, the witness testified and used the
 11 terms interchangeably and he has just testified that the two
 12 are different, that an appraisal is something that only an
 13 appraiser can do and when President Trump has financial
 14 statements that have values, that doesn't necessarily mean
 15 they are appraised numbers which this witness testified
 16 earlier that he had hoped they were.
 17 MR. LADOV: Objection. It misstates the prior
 18 testimony.
 19 THE COURT: Maybe we can all agree. We all know
 20 what an appraisal is. It is kind of official. It is
 21 formal. You have to be an appraiser, et cetera. The term
 22 "value," "valuation" is much looser. Somebody could use
 23 valuation to mean an appraisal and that's what the witness
 24 said, they're interchangeable. Somebody else could just
 25 say, well, the value of my property is X dollars. So I

D. LARSON - CROSS(MR. FIELDS) Page 1617

1 think that kind of sums it up. I don't know what else there
 2 is to say.
 3 Mr. Kise, do you agree or disagree?
 4 MR. KISE: I don't disagree. At least you and I
 5 don't disagree. I don't think Mr. Fields and I disagree.
 6 The problem is the witness won't say it. For whatever
 7 reasons, he's being evasive.
 8 MR. LADOV: Objection.
 9 MR. KISE: You can object all you want. It is
 10 pretty obvious only appraisers can do appraisals. They are
 11 the only licensed people that can do appraisals. That's it.
 12 It's a real simple answer. It is a yes-or-no question. He
 13 has refused to give yes-or-no answers and I would ask the
 14 Court to admonish the witness like every witness that has
 15 come here and say, "If you can answer it yes or no, answer
 16 it yes or no." But he is clearly being evasive. I don't
 17 know why because it is such a basic question.
 18 MR. LADOV: They are badgering the witness and they
 19 are misstating the testimony.
 20 THE COURT: What if we did this? Try to write on a
 21 clean slate somewhat. Ask the question. If it is yes or
 22 no, and I think it can be answered yes or no, I'll direct
 23 the witness to answer it yes or no unless he says he can't.
 24 MR. FIELDS: I apologize, but may I have a readback
 25 of my last question?

D. LARSON - CROSS(MR. FIELDS) Page 1618

1 THE COURT: Of course.
 2 (Whereupon, the requested portion of the record was
 3 read back.)
 4 A The terms are used interchangeably. So you can call it
 5 an appraisal. You can call it a valuation, whatever they want
 6 to call it. They're used interchangeably.
 7 Q All right. Mr. Larson, on direct examination, you were
 8 examined about several appraisals that you conducted for 40 Wall
 9 Street. Do you remember those?
 10 A Yes.
 11 Q And you appraised that property in 2011, 2012 and 2015;
 12 is that correct?
 13 A I don't know the exact dates.
 14 Q Well --
 15 A They sound approximately right.
 16 Q Okay. We'll walk through it, but you would agree that
 17 the appraisals that you conducted for 40 Wall Street were based
 18 on, as we've discussed, the income approach and also the sales
 19 comparable approach, correct?
 20 A Yes.
 21 Q And the income approach, there are two -- I'll call
 22 them sub-approaches and maybe you have a different terminology
 23 for them, but there is the discounted cash flow analysis and a
 24 direct capitalization analysis. Are you aware of what those
 25 are?

D. LARSON - CROSS(MR. FIELDS) Page 1619

1 A Yes.
 2 Q And generally, what is the discounted cash flow
 3 analysis?
 4 A Discounted cash flow analysis is typically a
 5 lease-by-lease analysis with assumptions for tenants on
 6 rollover. So it is a very detailed exercise.
 7 Q And what are you trying to discount or what are you
 8 trying to solve for?
 9 A You solve for a value of the property.
 10 Q Present or future?
 11 A It could be at a point. It could be a current value or
 12 a perspective value.
 13 Q And when you say "current value," you say -- do you
 14 mean a current market value?
 15 A Yes.
 16 Q That is different from a current investment value; is
 17 that right?
 18 A Yes.
 19 Q You're aware of what an investment value is?
 20 A Yes.
 21 Q What's the difference between an investment value and a
 22 market value?
 23 A A market value has a definition that state under
 24 certain conditions -- I'd have to look at the definition again.
 25 And an investment value are typically -- again, look -- without

D. LARSON - CROSS(MR. FIELDS) Page 1620

1 looking at the definition, it would be under certain assumptions
 2 that would be provided to you as an appraiser.
 3 Q And you've been an appraiser for how many years, Mr.
 4 Larson?
 5 A 30 years.
 6 Q Could you give me based on your 30 years experience
 7 your best understanding of what current market value is?
 8 A So it is a market value that's unbiased. A market
 9 value would be as of a certain date, you know, taking into
 10 account market conditions of the time. So I would have to look
 11 at a definition to be more exact.
 12 Q Would you agree with me that a market value is akin to
 13 a value today?
 14 A Right.
 15 Q And an investment value is a value upon a future date,
 16 correct?
 17 A It doesn't have to be.
 18 Q But it could be?
 19 A Could be.
 20 Q And as far as you are aware -- or withdrawn.
 21 Can an appraiser do an investment value appraisal?
 22 A Yes.
 23 Q Have you done those yourself?
 24 A I don't recall. I don't remember doing one.
 25 Q It's not something that you have done regularly; is

D. LARSON - CROSS(MR. FIELDS) Page 1621

1 that fair?
 2 A Yes, it is not a regular practice.
 3 Q Are there appraisers that specialize in doing
 4 investment value appraisals?
 5 A There could be. I don't -- I'm not sure.
 6 Q But you are aware that investment value appraisals are
 7 a thing for lack of a better term?
 8 A It -- yes. It's -- that -- that could happen.
 9 Q And would you agree with me that real estate developers
 10 generally request investment value appraisals to determine what
 11 the future value of their investment could be?
 12 A Just repeat that again, so I can answer it accurately.
 13 Q Would you agree with me that real estate appraisers
 14 often request investment value appraisals to determine what the
 15 value of their investment in the future will be?
 16 A So you're -- you're asking me if appraisers request
 17 investment value appraisals or the clients?
 18 Q Real estate developers.
 19 A Real estate developers. Yes, that could happen.
 20 Q That would be different than an appraisal that looks at
 21 the market value of a piece of property today, right?
 22 A That would be a different value, yes.
 23 Q Because it would be today's value?
 24 A Yes.
 25 Q And often the development value appraisals are based on

D. LARSON - CROSS(MR. FIELDS) Page 1622

1 assumptions into the future; is that fair?
 2 A I guess they could be.
 3 Q Now, to be clear, the appraisals that you signed in
 4 this case for 40 Wall Street were market value appraisals,
 5 right?
 6 A Yes.
 7 Q And the entities that hired you or retained you to do
 8 these appraisals were financial institutions, right?
 9 A Yes, they were lenders.
 10 Q Is that common in your industry to be hired to do
 11 lender appraisals?
 12 A The majority of our work is for lender appraisals, yes.
 13 Q When a lender -- withdrawn.
 14 When a lender retains you to conduct an appraisal on
 15 their behalf, your analysis is retrospective; is that fair?
 16 A We define, you know, the date of the appraisal, the
 17 date of the value, and it could be retrospective. It could be a
 18 market value as is or it could be a perspective value.
 19 Q The data that you rely on is data that you obtain from
 20 the past, right?
 21 A Yes, but we ask for the most current information.
 22 Q Isn't the general understanding in the industry that
 23 lender-ordered appraisals are intended to provide the bank with
 24 what the liquidation value of a particular property would be?
 25 A A liquidation value is a different definition.

Page 1624

1 than five or six times, okay.
 2 MR. FIELDS: I certainly won't.
 3 THE COURT: Can you ask it again or do you need a
 4 readback?
 5 MR. FIELDS: At the risk of annoying the court
 6 reporter, I'm going to ask for a readback with Your Honor's
 7 indulgence.
 8 THE COURT: They have a lot of patience.
 9 Read back, please.
 10 (Whereupon, the requested portion of the record was
 11 read back.)
 12 A The appraiser -- when we're asked to do an appraisal,
 13 it's requested to be either a market value as is. It could be a
 14 liquidation value. It could be other -- they would need to be
 15 identified in the engagement letter and difference between the
 16 market value as is or liquidation value, those are different
 17 types of values.
 18 (Continued on the next page.)
 19
 20
 21
 22
 23
 24
 25

D. LARSON - CROSS(MR. FIELDS) Page 1623

1 Q Do you understand what that means?
 2 A Yeah. I'd have to look at the definition again to be
 3 clear about it, but there is a value called liquidation value
 4 which has certain assumptions regarding marketing period and
 5 time to sell.
 6 Q What is your understanding of what a liquidation value
 7 is based on your 30 years of experience in the industry?
 8 A A liquidation value is potentially for a quick sale
 9 and, you know -- but the value would need to be defined and,
 10 you know, the marketing period would need to be addressed, the
 11 time of sale.
 12 Q So back to my original question, would you agree with
 13 me that it's commonly known in the industry that lender-ordered
 14 appraisals -- in lender-ordered appraisals, the lender is
 15 generally looking at liquidation value to know what they will
 16 get for the property in a quick sale?
 17 A They could be and they would request that value.
 18 Q But you as an appraiser know that when you're
 19 conducting an appraisal for a lender, that the lender is looking
 20 for a liquidation value, correct?
 21 MR. LADOV: Objection; asked and answered.
 22 THE COURT: Asked and answered. But again, not my
 23 favorite objection. So if there is a different answer,
 24 there is a different answer. Same answer, it is the same
 25 answer. You can ask it again without prejudice, not more

D. Larson - Plaintiff - cross (Fields) Page 1625

1 Q Whether the lender asks you for a liquidation value
 2 appraisal as an appraiser based on your experience, though, do
 3 you employ a concert of assumptions to assure the lender of a
 4 value they could get in a quick sale situation?
 5 A We would have to be asked to provide that analysis.
 6 Q Were -- to the best of your recollection, were you
 7 asked to provide that analysis for the 2011, 2012 and 2015 40
 8 Wall Street appraisals?
 9 A I would have to look at the appraisals and see what was
 10 requested and what values were provided.
 11 MR. FIELDS: All right. Let's turn to Plaintiff's
 12 Exhibit 1573 that's been admitted, I believe.
 13 Q Mr. Larson, does this look like the appraisal that you
 14 conducted for 40 Wall Street dated November 1, 2011?
 15 A Yes.
 16 Q And on the cover page it says it's prepared for Capital
 17 One Bank; correct?
 18 A Yes.
 19 MR. FIELDS: And if we can go to page three?
 20 Q Is this the transmittal letter?
 21 A That is correct.
 22 Q And this would be coming from you and directed to
 23 Capital One Bank; is that right?
 24 A Yes.
 25 Q If you look at the second full paragraph beginning with

D. Larson - Plaintiff - cross (Fields) Page 1626

1 this report, it says, "This report was prepared for Capital One
2 Bank and is intended only for its specified use. It may be
3 distributed to the client's attorneys, accountants, advisors,
4 investors, lenders, potential mortgage participants, and rating
5 agencies. It may not be distributed to or relied upon by other
6 persons or entities without written permission of Cushman &
7 Wakefield, Inc."
8 Do you see in the second line where it says "the
9 client?" "The client's attorneys?"
10 A Yes.
11 Q Who is the client?
12 A Capital One Bank.
13 Q So to be clear, this appraisal that you conducted was
14 prepared for Capital One Bank and that was your client; right?
15 A Yes.
16 Q And the appraisal explicitly notes that it's only
17 intended for Capital One Bank's specified use; is that right?
18 A As well as -- yes, that's correct.
19 Q And I think you were going to say as well as Capital
20 One Bank's attorneys, accountants, advisors, investors, lenders
21 potential mortgage participants, and rating agencies?
22 A Yes.
23 Q None of those individuals or entities that are
24 mentioned right there are the Trump Organization; correct?
25 A I don't see their name in there, no.

D. Larson - Plaintiff - cross (Fields) Page 1627

1 Q My question is based on this disclaimer would the Trump
2 Organization fall into any of these specified individuals or
3 entities?
4 A It doesn't appear to be, no.
5 Q And then at the bottom of page three you've identified
6 a "Market Value As Is" as of November 1, 2011 of \$200 million;
7 is that right?
8 A Yes.
9 MR. FIELDS: And if we can flip to the next page,
10 page four?
11 Q Here you identify a prospective market value of
12 \$270 million as of November 1, 2014; is that right?
13 A Yes.
14 Q And it says at the top "based on the agreed to scope of
15 work and as outlined in this report" -- excuse me -- "the
16 report, we have developed an opinion that the prospective market
17 value of a leasehold estate of a referenced property subject to
18 the assumptions, limit conditions, certifications and
19 definitions on November 1, 2014 will be \$270 million?"
20 A Yes.
21 Q And what are the assumptions that appraisers generally
22 employ to obtain a future value like this prospective value?
23 A It's -- using a prospective value is using today's
24 assumption -- today's information about the property in making
25 forecasts.

D. Larson - Plaintiff - cross (Fields) Page 1628

1 Q And in making a forecast you would agree with me that
2 an appraiser is -- is applying his or her professional judgment
3 to available data to arrive at a present or future value; is
4 that right?
5 A Yes.
6 Q And the -- and there is a wealth of available data that
7 appraisers can look at to value a particular property --
8 withdrawn.
9 And there is a wealth of available data appraisers can
10 look at to appraise a property on a present or future date; is
11 that right?
12 A Yes. The -- we're -- as appraisers you are projecting
13 a prospective value in the future certain assumptions need to be
14 made and -- but you need to start with the assumptions that you
15 know today and the market information about this -- about a
16 building today; the rent roll and expenses and other
17 information.
18 Q But even in terms of arriving at a present value an
19 appraiser has to make certain determinations based on available
20 data; right?
21 A Correct.
22 Q And the available data -- withdrawn.
23 Are these generally known as subjective factors that
24 appraisers look to to arrive at a present or future value?
25 A Yes.

D. Larson - Plaintiff - cross (Fields) Page 1629

1 Q And what are some of those subjective factors?
2 A Growth rates for income and expenses where changes in
3 cap rates and there is a variety of things you could -- you
4 would have to look at.
5 Q Sales comparables as well?
6 A The sales comparables you know what's transacting as of
7 your most current information.
8 Q But it's a factor? The recent sales --
9 A Factor to look at sales, yes.
10 Q Selection of markets is also a factor; correct?
11 A Yes.
12 Q Discount rates as well?
13 A Yes.
14 Q Determining the highest and best use of a particular
15 property as well?
16 A Correct.
17 Q Real estate cycles?
18 A Yes.
19 Q So would you agree with me then that appraisals are an
20 art not a science?
21 A That term has been used before, but it's -- it's a --
22 it's an estimate of market value by the appraiser based on
23 experience, knowledge of the market and their best estimate at
24 the time they're doing the appraisal.
25 Q But do you agree that an appraisal is an art not a

D. Larson - Plaintiff - cross (Fields) Page 1630

1 science?
 2 A I've heard that term before. I would probably agree
 3 with it, yes.
 4 Q Okay. And to give you an example, we're standing in
 5 this courthouse. Could two appraisers equally qualified
 6 appraise the value of this property they were standing in today
 7 based on the same exact data at two different numbers?
 8 A Yes.
 9 Q And is that because one appraiser may give a little bit
 10 more weight to some factors that the other appraiser may give a
 11 little less weight to?
 12 A Yes.
 13 Q And vice versa?
 14 A Correct.
 15 MR. FIELDS: All right. If we could flip to page
 16 five of the 2011 report, please?
 17 Q Could we establish, Mr. Larson, that your signature and
 18 the signature of Mr. Nardella and Mr. Papagianopoulos appear on
 19 the report; correct?
 20 A Yes.
 21 Q And Mr. Nardella at the time of this report was your
 22 supervisor; is that right?
 23 A Yes.
 24 Q And you worked closely with Mr. Nardella?
 25 A Yes.

D. Larson - Plaintiff - cross (Fields) Page 1632

1 A Yes.
 2 MR. FIELDS: And if we could move to page 20,
 3 please?
 4 Q In the middle of the page it says "intended use and
 5 users of the appraisal."
 6 Under "intended use," it says, "this appraisal is
 7 intended to provide an opinion of the market value of the
 8 leasehold interest in the property for loan underwriting and/or
 9 credit decisions. All other uses are unintended, unless
 specifically stated in the letter of transmittal."
 So would you agree with me that unless otherwise stated
 in the letter of transmittal that we just looked at at page
 three that the appraisal can only be used for loan underwriting
 and/or credit decisions?
 A Yes, that's what it says.
 Q But you would agree with me that what it says is that
 it can only be used for those two things; right?
 A Yes.
 Q And we just looked at the letter transmittal and we
 agree that the letter transmittal it didn't say anything about
 any other entity other than the lender or some of its affiliates
 from being able to use the appraisal; correct?
 A Yes.
 Q Under "intended user," it says "this appraisal report
 was prepared for the exclusive use of Capital One Bank and/or
 JCL

D. Larson - Plaintiff - cross (Fields) Page 1631

1 Q Do you have any reason to question Mr. Nardella's
 2 judgment?
 3 A No, not at all.
 4 MR. FIELDS: All right. If we could flip to
 5 page eight, please?
 6 Q So you see, Mr. Larson, at the top it says, "Income
 7 Capitalization Reports Discounted Cash Flow;" right?
 8 A Yes.
 9 Q This is the beginning of your discounted cash flow
 10 analysis for this property on this year; right?
 11 A Yes.
 12 Q And then if we could move to page ten in the middle of
 13 the page where it says "direct capitalization" in bold?
 14 This is now the direct capitalization analysis of this
 15 property; is that right?
 16 A Yes.
 17 Q So it would be separate from the discounted cash flow
 18 analysis but related?
 19 A Yes. It's -- it's one of the indications that you
 20 could -- that's used to value a property by the income approach.
 21 Q Do you use the direct capitalization method to double
 22 check your work on the discounted cash flow analysis?
 23 A Yes, commonly it's a secondary approach.
 24 Q And you chose a capitalization rate here of seven
 25 percent; right?

D. Larson - Plaintiff - cross (Fields) Page 1633

D. Larson - Plaintiff - cross (Fields)
affiliates. The intended function is for loan underwriting
and/or credit decisions by Capital One Bank and/or participants.
It may be distributed to the client's attorneys, accountants,
advisors, and investors. All other uses and users are
unintended. It may be distributed to the client's attorneys,
accountants, advisors and investors."
 After reading this do you have a different opinion or
 the same opinion as to who this appraisal is intended for and
 whether entities not affiliated with Capital One Bank could rely
 on it and use it?
 A The same.
 Q If we can move to page 38, please. The second
 paragraph beginning on the first line where it says "overall
 asking rents."
 "Overall asking rents have fallen \$0.28 per square foot
 to end the quarter at \$39.10 per square foot."
 Why is asking rents relevant to your analysis in this
 appraisal?
 A We look at both asking rents and taking rents.
 Q I'm sorry?
 A We look at both asking rents and taking rents.
 Q Taking?
 A Taking rents or leases that are actually signed.
 Q And what do you use the asking rent figure for as part
 of the appraisal?
 JCL

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D. Larson - Plaintiff - cross (Fields)

A It's additional data to look at.

Q Did you rely on the \$39.10 per square foot asking rent as part of this appraisal?

A It was part of the information we reviewed at the time of the appraisal.

Q But my question is did you rely on it?

A Yes, we relied on it.

Q And did the asking rents inform you when you project what a future value might be for that same property?

A Not necessarily.

Q So what information do you use when you project a future prospective value with an appraisal?

A We'll estimate market rents today based on information of asking rents, signed leases, interviews with brokers and surveys, and a variety of information and then inflate that to a prospective date.

Q Okay. So you said you estimate market rents today. In this specific appraisal was the estimate of market rents today \$39.10 per square foot?

A That was the asking rent as of the third quarter.

Q And my question is is that the figure that you used in determining the market rent for this appraisal?

A Yes.

Q And then when you value the property or appraise the property into the future the \$39.10 per square foot was your

JCL

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D. Larson - Plaintiff - cross (Fields)

base and you use that to then predict future value?

A As I said, the \$39.10 is an asking rent. We look at other things and then estimate what the market rent is based on all of this information in the appraisal, including the asking rents in the market.

Q But I think we just established that the market rent at this time was \$39.10, right?

A No, that's not correct.

Q Okay. So could you look at the appraisal then, please, and tell me what the market rent was at this time that you used in this appraisal?

A Sure. The market rents for office space on floors three through 22 is \$32 a foot or floors 23 through 33 was \$34 a foot. For floors 34 to 49, \$40 a foot and for floors 50 to 63, \$44 a foot.

Q And where are you reading from? What page on the bottom?

A 124 of 191.

Q Is it common for you to aggregate those numbers to determine what the entire -- what the market rent would be for the whole property or do you have to do it floor by floor?

A It's better to do it floor by floor because rents change in the building with height.

MR. FIELDS: All right. If we can move to page 43, please?

JCL

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D. Larson - Plaintiff - cross (Fields)

Q First sentence under "Conclusion" you write, "Downtown's recovery will continue in 2011 with positive job numbers and rising demand."

Would it be fair to say that in 2008 that the housing -- withdrawn.

Would it be fair to say in 2008 the commercial real estate market collapsed in New York?

A Yes.

Q And at this time in 2011 there was more positivity in the commercial real estate market; is that right?

A Yes.

Q In the last sentence of this paragraph you write: "Downtown is on pace to have a record year in leasing activity with high profile deals like Conde Nast's lease at One World Trade." Would it be fair to say, Mr. Larson, at the time you were conducting this appraisal that was a positive trend in the commercial real estate market?

A Yes, that's what that essentially says.

Q Things were looking up, not down; right?

A Correct.

MR. FIELDS: If we could turn to page 59?

Q In the middle of the page under the heading "Assessment Information" you note that in 2011, 2012, the total assessed value for this property was \$71 million; is that right?

A Yes.

JCL

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D. Larson - Plaintiff - cross (Fields)

Q And to be clear, you did not rely on the assessed value of the property in determining your appraisal number?

A We do rely on this as value.

Q But your appraisal figure was north of -- or 200 million; right?

A Right.

Q Not 71 million?

A Right. Those are two different things.

Q Completely different things?

A Correct.

MR. FIELDS: If we could move forward to page 104.

Q Under the heading "Occupancy Status" at the bottom. First sentence, "The property 40 Wall Street is currently 72.88 percent leased to 50 office tenants and four retail tenants." So at this time 40 Wall Street has an occupancy rate of approximately between 72 and 73 percent; correct?

A Yes.

Q And on page 108 you note in the middle of the page under "lease structure of the subject property," first sentence, that "the property is leased to nine major office tenants (defined as tenant spaces greater than 20,000 square foot.)"

So at this time there is nine major office tenants; correct?

A Yes.

Q And then if we back out to the third paragraph that

JCL

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D. Larson - Plaintiff - cross (Fields)
begins with "the nine major office tenants." "The nine major office tenants previously mentioned?"

A Yes, I see it.

Q One moment, if you don't mind.

So the first sentence says "the nine major office tenants previously mentioned represent over 40 percent of the property's total rentable area; correct?"

A Yes.

Q So at this point there is nine major tenants and those nine tenants represent 40 percent of the total rentable area of this property?

A Yes.

Q Now we can move forward to page 125 under heading "Office Market Rental Growth Rate."

You write: "Based on our recent survey, buyers' expectations in the downtown Manhattan real estate market anticipate rents to increase at CPI."

Is CPI the consumer price index?

A Yes.

Q "These changes in market conditions result in C&W's leasing brokerage group in downtown Manhattan to forecast the following rent growths."

And you state that in 2011 the rent growth is zero percent and thereafter it's three percent. You also note below that "we have assumed a growth rate of three percent

JCL

Page 1639

D. Larson - Plaintiff - cross (Fields)
beginning in 2012." What does this three percent growth rate represent?

A The growth and office market rents.

Q So would this represent a three percent growth beginning in 2012 of the asking rent in this jurisdiction?

A It's the rent growth assumption for market rent.

Q And --

A Not asking rents.

Q So the market rent figure would be the one that you read five minutes or so ago; is that right?

A Yes.

Q So you are assuming a three percent growth of that figure -- forgive me. Do you remember exactly what it was?

A I'd have to look again.

Q If you don't mind. Page 124, floors three through 22 is 32, floors 23 through 33 are \$34 a foot. Floors 34 to 49 are \$40 a foot and floors 50 to 63 are \$44 a foot.

So you're assuming a three percent growth rate from those figures to project future value; is that right?

A Yes.

Q And this growth rate would not start until the end of 2012 beginning of 2013; is that right?

A Yes.

Q So for 2011 and 2012, the growth rate would be zero?

A Yes.

JCL

Page 1640

D. Larson - Plaintiff - cross (Fields)

Q How did you arrive at this growth rate?

A How did I -- can you repeat the question?

Q How did you come up with this growth rate?

A Well, it's explained based on recent surveys, underwriting by buyers and leasing brokers. The assumption for growth rate was based on those factors.

Q But you used your independent professional judgment to arrive at that three percent growth rate; correct?

A You have to look at the data sources to make an estimate.

Q My question is did you use your independent professional judgment to arrive at that growth rate?

A Yes.

Q And would you agree with me that an equally qualified appraiser such as yourself could have arrived at a different growth rate?

A Yes.

Q And that equally qualified appraiser could have arrived at a growth rate that was higher than three percent; correct?

A Possibly, yes.

Q And in turn, that growth rate would have driven up the property value for those future years; correct?

A Yes, possibly.

THE COURT: Five-minute warning.

MR. FIELDS: All right. If we could go to

JCL

Page 1641

D. Larson - Plaintiff - cross (Fields)
page 140, please?

Q The lower third of the page there is "net operating income" in bold on the left. Do you see where it says "net operating income budgeted for 2011 total with \$6,236,273?"

A Yes.

Q And this is the net operating income that's used to divide by a capitalization rate to ultimately arrive at a property value; correct?

A Yes.

Q Net operating income and net income are two different concepts; correct?

A I know what net operating income is; net income, I'm not sure of that term.

Q So you don't know that you add interest and depreciation to net income to arrive at a net operating income?

A That sounds like more of an accounting, you know, calculation.

Q My question is are you familiar with that general terminology?

A Yes, I -- it's more of an accounting thing. We don't take into account, you know, net income or depreciation or appraisals.

Q But by saying that it's more of an accounting thing it seems like you understand generally what the concept is; correct?

JCL

Page 1642

D. Larson - Plaintiff - cross (Fields)

A I've heard of it before.

Q Okay. So you would agree then just to be clear that net operating income and net income are two different concepts; right?

A Yes, based on your definition of net income they're two different things.

Q Well, no. Not based on my definition. Based on what you've known for 30 years of appraising and known what accountants do?

A Yes, I'm not an accountant. I'm an appraiser and we utilize net operating income.

MR. FIELDS: If we go to page 173?

Q The fourth bullet point that begins with "The report." It says, "The report is to be used in whole and not in part."

Do you understand that to mean that you can't take out pages or subsections of a report? You must use the whole report?

A Yes.

Q "No part of the report shall be used in conjunction with any other analyses. Publication of the report or any portion thereof without the prior written consent of C&W is prohibited."

We discussed earlier, Mr. Larson, that the client for this engagement was Capital One Bank; correct?

A Yes.

JCL

Page 1643

D. Larson - Plaintiff - cross (Fields)

THE COURT: One minute.

Q Therefore, would you agree that the publication of this report or any portion thereof by Capital One Bank without the prior written consent of Cushman & Wakefield is prohibited?

A Yes.

Q And a couple of lines down you see in the middle where it says "No part of the report?"

A Yes.

Q "No part of the report shall be conveyed to the public through advertising or used in any sales, promotion, offering or SEC material without C&W's prior written consent."

This is what you wrote; correct?

A Yes. This is language that the company provides to put in our appraisal in that section of the report.

Q Because the company doesn't want their appraisal information to be handed out to the public; is that right?

A Yes.

THE COURT: Okay. Break time. Ten minutes. We'll see you in 15, but I'd like the attorneys to hold back and come on up here.

(Whereupon, there is a recess in the proceedings.)
Transcript continues on the following page....

JCL

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D. LARSON - CROSS (MR. FIELDS)

1 THE COURT OFFICER: All rise. Part 37 is back in
2 session. Please be seated and come to order.
3 THE COURT OFFICER: Witness entering.
4 THE COURT: Let's continue with the
5 cross-examination.
6 MR. FIELDS: Thank you, your Honor.
7 Q Good afternoon again, Mr. Larson. I would like to move
8 forward a year to November 2012 when you finalized an appraisal
9 for 40 Wall Street and I believe it's -- it is not in front of
10 you. It will be hopefully in a moment. It is Exhibit 121
11 that's been admitted in evidence.
12 MR. FIELDS: For the record, that's Plaintiff's
13 121.
14 Q Do you recall being asked this morning by counsel for
15 the government about this appraisal, Plaintiff's Exhibit 121?
16 A Repeat that again.
17 Q Do you recall having a discussion with counsel for the
18 government earlier in the day about this appraisal that you
19 finalized in November of 2012 or thereabouts?
20 A Yes.
21 Q This is your appraisal, right? If we can go to page
22 six. This is your signature on page six as well as the
23 signatures of Mr. Papagianopoulos and Mr. Nardella?
24 A Yes.
25 Q And for this appraisal in -- if we go to page four,

Page 1645

D. LARSON - CROSS (MR. FIELDS)

1 you identified or concluded that the market value as is as of
2 November 1, 2012 was \$200,000,000, correct?
3 A Yes.
4 Q And then on page five, you identified or concluded
5 perspective market value as of November 1, 2015 for \$240
6 million.
7 A Yes.
8 Q Is this the final appraisal that you submitted to the
9 client in November of 2012 or thereabouts?
10 A Yes.
11 MR. FIELDS: Let's bring up Plaintiff's 1435 that
12 has not been admitted in evidence. If we could go to page
13 five.
14 Q Is this your signature here, Mr. Larson, and also the
15 signatures of your colleagues?
16 A Yes.
17 Q And back to the first page, the cover page, again, this
18 is an appraisal for 40 Wall Street as of November 1, 2012
19 prepared for Capital One Bank and at the bottom, it is prepared
20 by Cushman & Wakefield, Inc., correct?
21 A Yes.
22 MR. FIELDS: If we could go to page three.
23 Q Is this an appraisal that you conducted for 40 Wall
24 Street in or about November of 2012?
25 A Repeat that. I couldn't hear you.

D. LARSON - CROSS (MR. FIELDS) Page 1646

1 Q Is this an appraisal that you did for 40 Wall Street in
2 or about November of 2012?
3 A Yes. The date of value is November 1, 2012, submitted
4 October 25, 2012.
5 MR. FIELDS: Your Honor, I move to admit
6 Plaintiff's 1435 in evidence.
7 THE COURT: Granted. It is in evidence.
8 (Whereupon, the Document was marked in evidence as
9 Plaintiff's Exhibit 1435.)
10 MR. FIELDS: All right. If we could put
11 Plaintiff's Exhibit 1435 and Plaintiff's 121 side by side.
12 Q We are looking at the cover pages of both of these
13 appraisals and they are both dated November 1, 2012, correct?
14 A Yes.
15 Q They're both for the same property?
16 A Yes.
17 Q And prepared for the same client, Capital One Bank?
18 A Yes.
19 Q Finally they, are both prepared by Cushman & Wakefield?
20 A Correct.
21 Q If we can go to page three on both of the documents and
22 again, this is a transmittal letter for both of these
23 appraisals, correct?
24 A Yes.
25 Q And it is dated October 25, 2012?

D. LARSON - CROSS (MR. FIELDS) Page 1647

1 A Yes.
2 Q And again, it's directed to Capital One Bank?
3 A Yes.
4 Q And this letter is coming from you to the client,
5 Capital One Bank, correct?
6 A Yes.
7 Q At the bottom of Plaintiff's 121, the market value as
8 is as of November 1, 2012 is \$200 million, correct?
9 A Yes.
10 Q You testified a minute ago that that was the final
11 appraisal that you transmitted to Capital One Bank, correct?
12 A Yes. Those have our signatures on it, yes.
13 Q And then if we look at Plaintiff's 1435, the market
14 value as is as of November 1, 2012 is \$220 million, correct?
15 A Yes.
16 Q Those are two different numbers, the same appraisal of
17 the same property as of the same date, correct?
18 A Yes.
19 Q Why is that?
20 A There could have been an adjustment that was made and
21 we're always working on copies. So I'm not sure which one was
22 submitted to the bank as a final.
23 Q Is it possible both of these were submitted to the bank
24 as a final?
25 A I don't know.

D. LARSON - CROSS (MR. FIELDS) Page 1648

1 Q Is it possible that the bank asked you to revise your
2 appraised value after you had sent them the initial copy?
3 A It's possible. They have a review department
4 internally that reviews the appraisal and we typically get
5 questions or comments back.
6 Q So it is possible that the bank was unhappy with the
7 value and asked you for a new one, correct?
8 A I don't know. It could have been some assumptions that
9 were used or something in the appraisal that was caught during
10 the review. I don't know.
11 Q Well, do you know if you sent the bank the one with
12 \$220 million first or the one with \$200 million first?
13 A I don't know.
14 Q So you potentially sent the \$220 million version first
15 and they wanted a lower number for a liquidation value, correct?
16 A It doesn't say anything about liquidation value here.
17 Q Well, is it possible that the bank was looking for a
18 lower figure to know what they could liquidate the property in a
19 worse case scenario?
20 A If we were to provide a liquidation value, we would
21 identify that in the appraisal as a liquidation value.
22 Q But suffice it to say as you sit here today, you're not
23 sure which of these two is the final version?
24 A No, I don't know.
25 Q All right. Mr. Larson, we're going to move through

D. LARSON - CROSS (MR. FIELDS) Page 1649

1 this appraisal a little quicker than we did like the first one
2 because we've already discussed some of these topics, but I do
3 want to highlight a couple of things for you.
4 MR. FIELDS: So in Plaintiff's 1435, if we can go
5 just full screen to 1435.
6 Q As we've discussed, page three, you arrived at a
7 November 1, 2012 as is value of \$220 million?
8 A Yes.
9 Q And on the next page, page four, your perspective
10 market value for the property as of November 1, 2015 is \$260
11 million?
12 A Yes.
13 MR. FIELDS: And just for purposes of the record,
14 in Plaintiff's 121, if we can put that side by side for a
15 second.
16 Q On page five, your perspective market value in
17 Plaintiff's 121 is \$20 million less at \$240 million?
18 A Yes. In terms of which one is the final, you'd have to
19 ask the bank.
20 Q Sir, you're the appraiser that signed this property.
21 Aren't you supposed to know what the final appraised value is?
22 A This report is from 2012. Can't -- I can't recall. I
23 would have to --
24 Q Just so the record is clear -- I'm sorry.
25 A I said you'd have to ask the bank. I can't recall.

D. LARSON - CROSS (MR. FIELDS) Page 1650

1 Q But just so the record is clear, you are an appraiser
2 that signed an appraisal and there's two competing appraisals
3 for the same property as of the same dates and you cannot
4 testify here under oath which is the correct one?
5 A Capital One Bank requirement is to provide final
6 appraisals. It could be subject to a review.
7 THE COURT: Let me just say are you asking for the
8 correct one, what you just said, or the final, official one
9 which is what I think you probably really mean?
10 MR. FIELDS: Your Honor, either of the two.
11 THE COURT: Well, let's distinguish between them.
12 Q As you sit here today, Mr. Larson, can you testify if
13 Plaintiff's 121 or Plaintiff's 1435 is the correct or final
14 appraisal for this year?
15 A No, not sitting here I cannot.
16 Q Is it possible that you made an error in finalizing the
17 appraisal for this year for this property?
18 A I don't know. It -- we see value changes before the
19 final frequently and then this is why we have so many reviewers
20 going through these appraisals, to make sure that the very final
21 is accurate, so I wouldn't know.
22 Q Wouldn't know if you made an error where you had two
23 competing appraisals for the same date; is that your testimony?
24 A I don't remember the six.
25 Q But is it possible you made an error?

D. LARSON - CROSS (MR. FIELDS) Page 1651

1 A It's possible.
2 Q If we could go to page ten in the bottom half of the
3 page, there's direct capitalization in bold letters. Do you
4 recall that in 2011 you used the capitalization rate of seven
5 percent for this property?
6 A Which -- which -- this is -- what appraisal is this?
7 Q This is 2012. My question was do you recall that in
8 the one that we looked at half-hour or so ago from 2011, that
9 the capitalization rate was seven percent?
10 A Which appraisal from 2012? The first one or the second
11 one?
12 Q Well --
13 A Or the -- is --
14 Q I suppose that's a question only you can answer
15 respectfully, Mr. Larson. Do you know if it is the first or the
16 second?
17 A Not sitting here, I don't.
18 Q Okay. My question was as of 2011, at the appraisal we
19 looked at earlier, the capitalization rate was seven percent,
20 correct?
21 A Yes, I remember that.
22 MR. FIELDS: If we can pull up side by side
23 Plaintiff's 1435 and Plaintiff's 121. 1435, we can keep
24 where it is. Plaintiff's 121, let's look at page 11.
25 Q Can you see both the competing appraisals on the screen

D. LARSON - CROSS (MR. FIELDS) Page 1652

1 here?
2 A Yes.
3 Q And in Plaintiff's 121, which is on the right, you see
4 that there's a capitalization rate of seven percent, correct?
5 A Yes.
6 Q And Plaintiff's 1435, there's also a capitalization
7 rate of seven percent, right?
8 A Yes.
9 Q So you kept the capitalization rate the same from 2011
10 to 2012, correct?
11 A Yes.
12 Q Plaintiff's 1435, page 20. We looked at this earlier,
13 Mr. Larson, in 2011, but this is standard language that was used
14 in the prior appraisal relating to intended use and intended
15 user, correct?
16 A Yes.
17 Q You have any reason to believe that this has changed
18 from the one we looked at earlier in 2011 to this one?
19 A No, it looks pretty much the same.
20 Q If we could move to page 39 of Plaintiff's 1435, you
21 see at the first line, it says, "Overall asking rents have
22 fallen 12 percent per square foot to end the quarter at \$40.06
23 per square-foot? You see that?
24 A Yes.
25 Q And do you recall from our discussion in 2011 that the

D. LARSON - CROSS (MR. FIELDS) Page 1653

1 asking rent then was \$39.10 per square-foot?
2 A I can't remember the exact number.
3 Q Do you have reason to doubt the number or would you
4 like me to confirm it with you? I'm happy to.
5 MR. FIELDS: If we could pull up Plaintiff's 140,
6 page 38.
7 Q So in 2011, overall asking rents have fallen \$0.28 per
8 square-foot, ten and a quarter at \$39.10 per square-foot?
9 A Yes, I see it.
10 Q So the asking rents have come up a little bit, correct?
11 A Yes.
12 Q Approximately a dollar or so?
13 A Yes.
14 Q But the next sentence in Plaintiff's 1435, we can keep
15 it side by side, says, "Overall asking rents should remain over
16 \$40 per square-foot this year with strong demand. It was feared
17 that after the financial crisis, the downtown market would
18 languish for several years as the financial tenants with the
19 largest footprint in the area suffered during the fallout. As
20 mentioned earlier, media and technology tenants have been the
21 biggest dealmakers recently and have been the biggest drivers of
22 midtown south's improvement. As Midtown South's vacancy
23 declines, tenants have expanded their search to midtown and
24 downtown. The overflow from midtown south should add healthy
25 demand."

D. LARSON - CROSS (MR. FIELDS) Page 1654

1 Is this your -- withdrawn. Are you indicating here
2 that there's positive sentiment in the market for the downtown
3 area at this time?
4 A Yes, looks like it's starting to get better.
5 Q So there's a potential trend that's showing an upward
6 trend; is that fair?
7 A Yes. In comparison with the prior appraisal or rent of
8 39.10 a foot versus 40.06. It's very moderate between that
9 period of time.
10 Q At the bottom of page 39 on 1435, under the heading,
11 "leasing activity," you write that, "Leasing activity is down
12 from a year ago. Downtown had its best year in a decade in 2011
13 in terms of leasing activity, so it is hard to compare."
14 Would it be fair to say that 2011 was a record year for
15 leases in downtown New York City?
16 A It says downtown as best year in a decade since 2011.
17 Q And you continue. "However, there have been many
18 renewals this year and these do not count towards statistics.
19 Morgan Stanley alone signed a 1.2 million square-foot renewal in
20 the second quarter. It is this sort of activity that has kept
21 the market healthy this year. As tenants look to downtown with
22 midtown south filling up, demand for space will grow. Downtown
23 will not match last year's totals, but the market will continue
24 to improve in 2012 because of greater demand."
25 Again, just to be clear, this is indicating that there

D. LARSON - CROSS (MR. FIELDS) Page 1655

1 is a positive sentiment in the market at this time, correct?
2 A Yes.
3 Q How does a positive market sentiment affect your
4 analysis?
5 A We would view the trends in the market and we would
6 look at changes in market rents, changes in assumptions. We
7 look at all of the assumptions between these two appraisals.
8 Q Positive market sentiment could affect a capitalization
9 rate, correct?
10 A Yes, it could.
11 Q And we've established that you kept the same
12 capitalization rate from 2011 to 2012, correct?
13 A Yes.
14 Q A similarly situated, reasonable appraiser with your
15 experience could have arrived at a different capitalization
16 rate, correct?
17 A Yes.
18 Q In fact, it could have -- he or she could have arrived
19 at a lower capitalization rate, correct?
20 A It's possible.
21 Q I mean, a similarly situated appraiser could have put
22 more stock into the positive sentiment in the market at this
23 time to rely upon a lower capitalization rate?
24 A It's possible. That's possible an appraiser could be
25 higher or lower.

D. LARSON - CROSS (MR. FIELDS) Page 1656

1 Q And if an appraisal is -- withdrawn.
2 If a capitalization rate is lower than seven percent,
3 that means the property value would go up, correct?
4 A Yes, unless there's additional capital or some other
5 change in the property that would offset that.
6 Q Keeping everything equal, eliminating those variables,
7 if all of that is the same, all the information is the same
8 except a different capitalization rate, namely a lower one, that
9 would result in a higher property value?
10 A Yes.
11 MR. FIELDS: Page 107 on the 1435, if we could go
12 to page 107 on the 1435 and if we could put side by side
13 Plaintiff's 1573, page 104.
14 Q So on the right, Mr. Larson, we have 1573 which is the
15 2011 appraisal and on the left, we have 1435 which is one of the
16 2012 appraisals. Does that seem accurate?
17 A You are telling me 2011 -- just repeat that, please.
18 Q So 2011 is on the right and one of the 2012s is on the
19 left.
20 A Okay.
21 Q Okay. In 2011, the occupancy status was 72.88 percent,
22 correct?
23 A Yes.
24 Q And in 2012, in 1435, the occupancy status was
25 81.65 percent, correct?

D. LARSON - CROSS (MR. FIELDS) Page 1657

1 A Yes.
2 Q So the occupancy status in one year has gone up almost
3 ten percent, correct?
4 A Yes. It looks like the addition of four new office
5 tenants.
6 Q I'm sorry. I didn't hear that last part.
7 A It looks like the addition of four new office tenants,
8 50 to 54.
9 Q Right. So there's an additional four office tenants in
10 the 2012 appraisal. The occupancy rate also affects your
11 analysis in arriving at an appraised value, correct?
12 A Yes.
13 Q And the occupancy rate can affect both the net
14 operating income for a property, correct?
15 A Yes.
16 Q And it also could affect the capitalization rate for a
17 property, correct?
18 A Can you repeat that?
19 Q The occupancy status of a property -- withdrawn.
20 The capitalization rate applied to an appraisal could
21 go up or down depending on the occupancy -- occupancy status of
22 that property, correct?
23 A That could be one of the variables or it could be
24 market conditions, but we would determine that based on
25 research.

D. LARSON - CROSS (MR. FIELDS) Page 1658

1 Q But would it be fair to say that it would be more
 2 likely for a property that's 81 percent leased than 72 percent
 3 leased to have a lower capitalization rate because it's more
 4 occupied?
 5 A It's possible. We would have to examine that during
 6 the appraisal.
 7 Q But an appraiser can come to that conclusion, correct?
 8 A It's possible.
 9 Q Can the occupancy rate also affect the discount rate?
 10 A A discount rate is based on risk, so that's possible,
 11 too.
 12 Q And a discount rate you would presume is lower where a
 13 building is more occupied than less occupied, correct?
 14 A Yes, but there's other factors and risks that you have
 15 to look at, all of the information on the property, and how it's
 16 operating. So there are a variety of things that we look at
 17 other than just occupancy.
 18 Q Agreed. But Mr. Larson, there are a whole host of
 19 subjectivities that an appraiser looks at when arriving at his
 20 or her appraised value, right?
 21 A Yes.
 22 Q And these that we are discussing now, cap rate discount
 23 rate and the like, are just a number of these subjectivities
 24 that you're relying on as an appraiser, right?
 25 A These are all components or part of a valuation or

Page 1659

1 appraisal.
 2 (Continued on the next page.)
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D. Larson - Plaintiff - cross (Fields) Page 1660

1 Q But different appraisers exercising their judgment can
 2 arrive at different conclusions based on these same
 3 subjectivities; correct?
 4 A Just repeat that one more time.
 5 Q Different appraisers, similarly situated appraisers
 6 relying on their independent judgment could arrive at different
 7 conclusions based on the same data or subjectivities available
 8 to them?
 9 A Yes.
 10 MR. FIELDS: All right. Let's move to 1435, page
 11 111. And put next to it, please, 1573, page 108.
 12 Q All right. So, again, on the left it's 2012; on the
 13 right, 2011. Under the heading "lease structure of the subject
 14 property," let's start with 2011. "The property is leased to
 15 nine major office tenants" in the first sentence; correct?
 16 A Yes.
 17 Q And if we could then back out and look at the third
 18 paragraph beginning with the nine major office tenants.
 19 And the nine major office tenants represent over 40
 20 percent of the property's total rentable area; right?
 21 A Yes.
 22 Q And if we look now at the 2012 appraisal, the number of
 23 office tenants has gone up to 11 which now represents 50 percent
 24 of the property's total rentable area; correct?
 25 A Yes.

D. Larson - Plaintiff - cross (Fields) Page 1661

1 Q So there's been two additional tenants in the last --
 2 major tenants in the last year and the percentage has gone up
 3 from 40 to 50 percent of the total rentable area?
 4 A Correct.
 5 Q Again, this is a factor a subjectivity that as an
 6 appraiser you look at to determine your appraisal value;
 7 correct?
 8 A Yes, this is one of the variables we would look at.
 9 MR. FIELDS: If we could go to 127 on 1435 and put
 10 that next to 125 of 1573.
 11 Q Okay. Mr. Larson, so here the heading is "Office
 12 Market Rentable Growth Rate" and you've identified again the
 13 rent growth at three percent in both years; correct?
 14 A Yes.
 15 Q On the right in 2011, the growth rate begins in 2012
 16 and we agreed earlier that's at the beginning of the 2013 year;
 17 right?
 18 A Yes.
 19 Q And then if we look at the left -- excuse me -- the
 20 rent growth rate is three percent and that begins in 2012?
 21 A Yes, that's what it says.
 22 Q And both instances that would be beginning in the 2013
 23 calendar year; right?
 24 A No. It says we assumed growth in 2012 on both, both
 25 appraisals. So -- so the growth rate would begin in 2012 for

D. Larson - Plaintiff - cross (Fields) Page 1662

1 both appraisals.
 2 Q But does it begin at the end of 2012 or the beginning
 3 of 2013?
 4 A With the growth rate assumptions applied as the
 5 effective date of value, whatever they are in, whatever
 6 appraisal we do.
 7 Q So as -- but my question is as you look at these two
 8 does it begin in the beginning of 2013 or the beginning of 2012?
 9 A I know what it says. It says three percent beginning
 10 in 2012.
 11 Q Okay. So just to be clear, in 2012, the occupancy for
 12 major tenants has gone from 40 to 50 percent and there's been
 13 two additional major tenants. The occupancy as a whole has gone
 14 up approximately ten percent to about 81 percent, but you're
 15 still relying on the same growth rate; correct?
 16 A Yes, it looks like it.
 17 Q And you would agree with me the similarly situated
 18 appraiser could have applied a different rent growth rate;
 19 correct?
 20 A Yes, another appraiser can come up with their own
 21 assumptions.
 22 MR. FIELDS: Okay. If we could move to
 23 Plaintiff's 1435, page 163.
 24 Q All right. On Plaintiff's 1435 --
 25 MR. FIELDS: We can just go full screen to 1435.

D. Larson - Plaintiff - cross (Fields) Page 1663

1 Thank you.
 2 Q We've established, Mr. Larson, that you applied a seven
 3 percent cap rate in this appraisal; right?
 4 A Yes.
 5 Q And you see at the top that it has "downtown Manhattan
 6 office building sales terminal capitalization rate summary."
 7 Are these capitalization rates that you derived from
 8 these properties based on recent sales?
 9 A Yes.
 10 Q So, for instance, the 180 Water Street was a six
 11 percent capitalization rate; right?
 12 A Yes. Terminal capitalization rate to clarify.
 13 Q And the -- so -- withdrawn.
 14 The average capitalization rate based on these
 15 comparables that you identify was 5.81 percent; correct?
 16 A Yes.
 17 Q And the high capitalization rate was six percent? The
 18 highest one in the list?
 19 A Yes.
 20 Q And you applied a seven percent capitalization rate;
 21 correct?
 22 A Like I said, these are terminal capitalization rates.
 23 So in the future on a discounted cash flow what you showed me
 24 before -- can you correct me and show me what you showed me
 25 before?

D. Larson - Plaintiff - cross (Fields) Page 1664

1 Q I'm sorry?
 2 A Can you show me what the seven percent represents?
 3 Q Sure.
 4 MR. FIELDS: If we could go to Plaintiff's 1435,
 5 page ten?
 6 THE COURT: Mr. Fields, any chance of finishing
 7 with this witness today? You have 15 minutes basically.
 8 I'll give them one minute for redirect.
 9 MR. FIELDS: Unlikely, Your Honor.
 10 MR. KISE: Mr. Roberts, and I have a question or
 11 two, Your Honor.
 12 THE COURT: All right. I hope you move things
 13 along apace.
 14 Q So Plaintiff's 1435, page ten, this is a direct
 15 capitalization rate that you applied; correct?
 16 A Yes, this is a going in capitalization rate.
 17 Q Okay. And if we back out this, zoom in and if we go a
 18 little bit higher to the middle of the page where it says
 19 "terminal capitalization rate six percent;" correct?
 20 A Yes.
 21 Q So then if we go back to page 163, the terminal
 22 capitalization rate that you applied was the highest, six
 23 percent from that list?
 24 A Yes, it was higher than the average, correct --
 25 THE COURT: Highest is always going to be higher

D. Larson - Plaintiff - cross (Fields) Page 1665

1 than the average, right, or should I go back to high school?
 2 MR. FIELDS: Well, Your Honor, that's why I went to
 3 law school because I'm very bad with math.
 4 Q It's higher than the average and higher than the
 5 highest value there; correct -- sorry.
 6 It equals the highest value and it's higher than the
 7 average; right?
 8 A So we selected the six percent terminally future
 9 terminalization cap rate. So these are the statistics from the
 10 sales. So they show your highlighted six percent high and
 11 average of 5.81 percent.
 12 Q And the value you chose is higher than the average;
 13 correct, the terminal capitalization rate that you chose for
 14 this property in this appraisal was higher than the average of
 15 5.81 percent?
 16 A Yes, we selected six percent.
 17 MR. FIELDS: If we could go to Plaintiff's 1435,
 18 page 172?
 19 Q All right. Mr. Larson, is this now a direct
 20 capitalization method being employed based on comparables?
 21 A Yes, this is the direct capitalization method
 22 stabilized as of November 1, 2015 and we cite downtown overall
 23 capitalization rates.
 24 Q The overall capitalization rates that you cite here are
 25 from between 3.62 to 6.74 percent; correct?

D. Larson - Plaintiff - cross (Fields) Page 1666

1 A Yes.
 2 Q And the capitalization rate that you use was seven
 3 percent; correct?
 4 A Yes.
 5 Q So the capitalization rate that you used was above the
 6 average and above the highest of the comparables that you
 7 selected; correct?
 8 A Yes.
 9 Q And finally if we could go to page 176 fourth bullet
 10 point. I won't read it again, but do you have any reason to
 11 believe that this language is any different than the language we
 12 looked at in the 2011 appraisal about limitations about the
 13 appraisal's use?
 14 A No, it looks similar.
 15 Q Therefore, the same restrictions on the use of the 2012
 16 appraisal as the ones that apply would be the same as the ones
 17 that apply to the 2011 appraisal; correct?
 18 A Yes.
 19 MR. FIELDS: All right. Let's move to
 20 Plaintiff's 118, which has been admitted in evidence. It's
 21 the 2015 appraisal of 40 Wall Street. Page two is where the
 22 appraisal --
 23 Your Honor, may I have a moment? Judge, may I have
 24 a moment, please?
 25 (Whereupon, there is a pause in the proceedings.)

D. Larson - Plaintiff - cross (Fields) Page 1668

1 A Yes.
 2 Q And in comparison to the 2012 appraisal or appraisals,
 3 do you recall that the values were approximately 200 million or
 4 220 million, depending on which appraisal was the final one?
 5 A Yes.
 6 Q And so would it be fair to say that from 2012 to 2015
 7 the appraised value of this property has gone up considerably?
 8 A Yes.
 9 MR. FIELDS: Page Roman Numeral VI top.
 10 Q Okay. Mr. Larson, so in the middle of the page the
 11 terminal capitalization rate that you use now is five and a
 12 quarter; correct?
 13 A Yes.
 14 Q And do you recall within the 2012 that you used a six
 15 percent terminal capitalization rate?
 16 A That's correct.
 17 Q And if we can back that out and at the bottom of the
 18 page under the "direct capitalization" heading, the
 19 capitalization rate that you used here was 4.25 percent; right?
 20 A Yes.
 21 Q And as I recall in 2012, you used a seven percent
 22 direct capitalization rate; right?
 23 A Right.
 24 Q So it's considerably lower?
 25 A Yes.

D. Larson - Plaintiff - cross (Fields) Page 1667

1 Q All right. Mr. Larson, on the screen is
 2 Plaintiff's 118, page 8. This is the 2015 appraisal for 40 Wall
 3 Street that you did; correct?
 4 A Yes, this is the appraisal prepared for Ladder Capital
 5 prepared by Cushman & Wakefield.
 6 Q And if we could go to the page and the Bates 2006 --
 7 well, I have a different version so let's go to the transmittal
 8 page, please.
 9 Again, this is the transmittal letter from you to
 10 Ladder Capital Finance; correct?
 11 A Yes.
 12 Q Dated June 25, 2015?
 13 A Yes.
 14 Q And in the second paragraph the -- we see the same or
 15 very similar language regarding the use of this appraisal being
 16 limited to Ladder Capital Finance; correct?
 17 A Yes.
 18 MR. FIELDS: All right. If we could go to the next
 19 page.
 20 Q Again, this was signed by you, Mr. Larson, and
 21 similarly signed by Mr. Papagianopoulos and Mr. Nardella?
 22 A Yes.
 23 Q Let's go to page Roman Numeral IV, top Roman Numeral
 24 IV. In the middle here, Mr. Larson, we see that you arrived at
 25 an as is value of \$540 million?

D. Larson - Plaintiff - cross (Fields) Page 1669

1 Q The net operating income under the direct cap method is
 2 approximately \$23,203,000; correct?
 3 A Yes, with adjustments for free rent.
 4 Q I'm sorry?
 5 A With adjustments for free rent.
 6 Q Right. And so the indicated value is approximately
 7 \$538 million that you rounded to \$540 million; right?
 8 A Yes.
 9 MR. FIELDS: All right. If we could go to page 87
 10 at the top under the heading "Occupancy Status."
 11 Q This is still 2015. You write that the property 40
 12 Wall Street is currently 95.02 percent leased to 72 office
 13 tenants and four retail tenants.
 14 Do you recall from the 2012 appraisal that the
 15 occupancy rate was approximately 82 percent, give or take?
 16 A Yes, it increased dramatically.
 17 Q I'm sorry?
 18 A It increased dramatically.
 19 Q Are you familiar with the term "rent stabilization?"
 20 A That's a residential term.
 21 Q Can -- is it -- can a commercial property be
 22 stabilized? Have you ever heard that term used?
 23 A A commercial -- no. You'd have to clarify that with
 24 me.
 25 Q Is it not true that a property that is occupied over

D. Larson - Plaintiff - cross (Fields) Page 1670

1 approximately 93 or 92 percent is considered a stabilized
 2 property?
 3 A Stabilize -- the definition of stabilization is based
 4 on comparables, you know, how it's perceived in the market.
 5 There could be -- it could be financially stabilized, it could
 6 be, you know, free rent. You know, there is a lot of things to
 7 consider when looking -- when calling something stabilized.
 8 Q Was 40 Wall Street stabilized in this year at a
 9 95.02 percent occupancy rate?
 10 A You would have to compare it to occupancy levels of
 11 other buildings, but it would probably be close to stabilized or
 12 at stabilization. I'm not sure without reviewing the report.
 13 Q But in 2012 it had not yet reached stabilization. Is
 14 that fair?
 15 A That would be fair to say.
 16 THE COURT: Five-minute warning.
 17 MR. FIELDS: All right. The top of page 91,
 18 please.
 19 Q Here, we're talking about the lease structure of the
 20 subject property and you note that the property is leased to 24
 21 major office tenants; correct?
 22 A Yes.
 23 THE COURT: I just want to point out that New
 24 Yorkers are very familiar with the term "rent stabilization"
 25 and it only applies I'm 99 percent sure to residential

D. Larson - Plaintiff - cross (Fields) Page 1671

1 properties. In Florida, there may be a different system,
 2 different law, different terminology, but I will say,
 3 Mr. Fields, you have to be really careful when you say rent
 4 stabilization: In New York or they'll jump all over you. I
 5 understand that you are using stabilization in a different
 6 context, a different way.
 7 Q Okay. Mr. Larson, so there is 24 major office tenants
 8 as of 2015 and, as you'll recall, in 2012, there were 11 major
 9 office tenants; correct? Does that sound right?
 10 A Sounds approximately right.
 11 Q It went from nine to 11 and now it's at 24; right?
 12 A Yes.
 13 MR. FIELDS: And if we can go to the top of
 14 page 96, last paragraph at the bottom.
 15 Q You write "downtown average asking rents continue to
 16 increase as direct asking rents rose to \$58.71 per square foot,
 17 up 17 percent from one year ago. Downtown overall asking rents
 18 reached \$57.58 per square foot, the highest quarterly level ever
 19 recorded in this market."
 20 So as of the time of this appraisal, Mr. Larson, the
 21 asking rent had reached \$57.58 per square foot; correct?
 22 A Yes, that's what it says.
 23 Q It had gone up from the prior appraisal that you had
 24 done in 2012; right?
 25 A From three years ago, yes.

D. Larson - Plaintiff - cross (Fields) Page 1672

1 Q So in 2012, does it -- do you recall that the market
 2 asking rent was approximately \$40.06? Does that sound right?
 3 A It sounds approximately right.
 4 Q So if it was approximately \$40.06, it's now \$57.58, you
 5 would agree with me that that's approximately a 44 percent
 6 increase in three years?
 7 A Without doing the math, that sounds about right.
 8 That's a pretty big increase.
 9 MR. FIELDS: Your Honor, would you like me to --
 10 THE COURT: Break? We're sort of officially over,
 11 but we're going to stay on the record to just do some
 12 scheduling matters. Will you be continuing your cross
 13 tomorrow?
 14 MR. FIELDS: Yes, Your Honor, and it should be very
 15 brief. Just request an admonishment to the witness not to
 16 discuss his testimony.
 17 THE COURT: I hereby admonish the witness.
 18 Mr. Larson, do not discuss this case with anybody until your
 19 testimony is over tomorrow.
 20 (Whereupon, the witness is excused from the witness
 21 stand.)
 22 MS. GREENFIELD: Just really quickly. I know we're
 23 going to finish with Mr. Larson tomorrow, then I assume
 24 there will be some redirect?
 25 MR. WALLACE: I think minimal.

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1 MS. GREENFIELD: And who is after Mr. Larson?
 2 MR. KISE: We'll have some cross tomorrow of
 3 Mr. Larson as well.
 4 MR. WALLACE: Then it will be Mr. McArdle -- no.
 5 I'm sorry. Actually, what we will do is -- I apologize.
 6 The witness, Jack Weisselberg, has some availability, so we
 7 would start with him as the next witness after Mr. Larson
 8 and then we would move on to Mr. McArdle followed by
 9 Mr. Flores.
 10 MS. GREENFIELD: Do you think you are going to get
 11 to Mr. McArdle tomorrow or is it going to be a full day with
 12 Mr. Weisselberg?
 13 MR. WALLACE: I don't think we will take a full day
 14 on direct.
 15 MS. GREENFIELD: Are you going to be crossing
 16 Mr. Weisselberg?
 17 MR. KISE: I don't think so, but I don't know yet.
 18 MS. GREENFIELD: So potentially three witnesses
 19 tomorrow?
 20 MR. WALLACE: Correct. And I would just add that
 21 potentially if -- Mr. Weisselberg no longer lives in the
 22 jurisdiction, so might have to return. We can discuss it at
 23 a sidebar but we might need to -- if you were to carry over
 24 for some reason, we might need to interrupt his testimony.
 25 But our expectation would be that it would be the

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1 continuation of Mr. Larson, Mr. Weisselberg and then
 2 Mr. McArdle tomorrow.
 3 THE COURT: I suggest we call him Jack so there is
 4 no confusion. Somebody out there in the gallery is going to
 5 oh, Mr. Weisselberg. So we're talking about Jack.
 6 MR. WALLACE: Jack W. would be our next witness
 7 tomorrow.
 8 MR. KISE: And Friday is still Robertson and
 9 Orowitz?
 10 MR. WALLACE: Correct.
 11 MR. KISE: One other thing. Do we have any further
 12 update on Mr. Cohen's status at all?
 13 THE COURT: No. We're still operating under the
 14 assumption that Monday at the earliest and we hope Monday.
 15 MR. KISE: Did he ever provide --
 16 THE COURT: We did get a fairly extensive doctor's
 17 note.
 18 MS. HABBA: Your Honor, I guess now is a good time
 19 since it came up anyway. I do have an argument on the Carro
 20 case on Monday in the Appellate Division, just so you know.
 21 So I would prefer if Michael Cohen was not on Monday, if
 22 possible.
 23 THE COURT: Can we make him Tuesday or --
 24 MR. WALLACE: Let us go back and work through our
 25 Rolodex and we'll let everyone know if we can accommodate

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1 that.
 2 THE COURT: I'd appreciate it, of course.
 3 MR. KISE: And one other thing, Your Honor. Again,
 4 we've worked these things out, but I was informed this
 5 morning that President Trump has conflicts, pretty
 6 significant ones, right before November 7th is Election Day
 7 so I know we're off then, but the 1st, 2nd, 3rd, and 8th, I
 8 know we were talking about -- and that may work out. It
 9 still may work out fine, there is no problem but I just want
 10 to note that that he may have significant conflicts the 1st,
 11 2nd, 3rd and 8th.
 12 MR. WALLACE: I want to make sure I have those
 13 dates correct. It was November.
 14 MR. KISE: 1st, 2nd, 3rd, and 8th. We're off the
 15 7th, Election Day and not the 6th.
 16 MS. GREENFIELD: We're also off the 10th. We're
 17 also off the 10th.
 18 MR. KISE: I know we're off the 10th. Mr. Roberts
 19 would like to have the whole week off personally. That's a
 20 whole other issue.
 21 THE COURT: I'm sure he's not the only one.
 22 MR. KISE: Well, okay. Ten o'clock tomorrow.
 23 MR. WALLACE: Thank you, Your Honor.
 24 Proceedings are adjourned to Wednesday, October
 25 18th, 2023 at 10:00 a.m.

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RECEIVED NYSCEF: 11/15/2023
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NYSCEF DOC NO 1637
**NYS Attorney General v.
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RECEIVED NYSCEF: 11/15/2023
**Donna Kluder, Douglas Larson
 October 17, 2023**

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In The Matter Of:
PEOPLE OF THE STATE OF NEW YORK v.
DONALD J. TRUMP, et al

DOUGLAS LARSON, JACK WEISSELBERG
October 18, 2023

NICOLE C. ROBINSON

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1 SUPREME COURT OF THE STATE OF NEW YORK
 2 COUNTY OF NEW YORK : CIVIL TERM : PART 37
 3 ----- X
 4 PEOPLE OF THE STATE OF NEW YORK, BY
 5 LETITIA JAMES, ATTORNEY GENERAL OF
 6 THE STATE OF NEW YORK,
 7
 8 Plaintiff,
 9
 10 Index No.
 11 -against- 452564/2022
 12 DONALD J. TRUMP; DONALD TRUMP, JR.; ERIC TRUMP;
 13 IVANKA TRUMP; ALLEN WEISSELBERG; JEFFREY MCCONNEY;
 14 THE DONALD J. TRUMP REVOCABLE TRUST; THE TRUMP
 15 ORGANIZATION, INC.; TRUMP ORGANIZATION, LLC;
 16 DJT HOLDINGS, LLC; DJT HOLDINGS MANAGING MEMBER;
 17 TRUMP ENDEAVOR 12, LLC; 401 NORTH WABASH VENTURE,
 18 LLC; TRUMP OLD POST OFFICE, LLC; 40 WALL STREET,
 19 LLC.; AND SEVEN SPRINGS, LLC,
 20
 21 Defendants.
 22 ----- X
 23 Supreme Courthouse
 24 60 Centre Street
 25 New York, New York
 October 18, 2023

B E F O R E:
 HONORABLE ARTHUR F. ENGORON,
 Justice, Supreme Court

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 (Appearances continued on the next page.)

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D. LARSON - CROSS (MR. FIELDS)

1 Senior Court Reporters
 2 THE COURT OFFICER: All rise. Part 37 is now in
 3 session. The Honorable Arthur Engoron presiding. Make sure
 4 all cellphones are on silent. Laptops and cellphones will
 5 be permitted but only to members of the press. There's
 6 absolutely no recording or photography of any kind allowed
 7 in the courtroom. Now, be seated and come to order.
 8 THE COURT: Okay. Ready or not, we're going to let
 9 in the photographers and the videographer.
 10 (Whereupon, there was a pause in the proceedings.)
 11 THE COURT: One quick housekeeping matter.
 12 Yesterday, I received a letter from the Attorney General
 13 about an evidentiary question and will the defendants be
 14 submitting something? And if so, can we have that by
 15 tomorrow at noon?
 16 MR. KISE: Yes, Your Honor. Can we say tomorrow
 17 evening just because we're on trial tomorrow?
 18 THE COURT: Yes, for sure.
 19 MR. KISE: Thank you.
 20 THE COURT: And OAG, do you have another
 21 housekeeping matter of some sort?
 22 MS. FAHERTY: Good morning. Yes, Your Honor. Just
 23 to clean up the record a bit, yesterday my colleague Mr.
 24 Haren introduced an Exhibit PX 618. It was during the
 25 testimony of Donna Kidder, Ms. Kidder did testify that she
 received from Sonja Talesnik regarding page 20 and 28
 modifications. Unfortunately, apologies, we did not move to
 admit, but we would like to do so now.
 MS. HABBA: I spoke with Colleen about this,
 Obviously, with our standing objection on statute of
 limitations, we have no problem. Thank you.
 MS. FAHERTY: Thank you.
 THE COURT: It is in with the statute of
 limitations, objection noted.
 MS. FAHERTY: Thank you, your Honor.
 (Whereupon, the Document was marked in evidence as
 Plaintiff's Exhibit 618.)
 THE COURT: Let's get the witness back.
 THE COURT OFFICER: Witness entering.
 DOUGLAS LARSON, a witness called by the Plaintiff,
 after having been previously duly sworn by the Clerk of the
 Court, took the witness stand and testified as follows:
 THE COURT: I will remind the witness, as I always
 do, that he's still under oath.
 And Mr. Fields, would you like to continue the
 cross-examination?
 MR. FIELDS: Yes, Your Honor. Thank you.
 25 CROSS-EXAMINATION

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D. LARSON - CROSS (MR. FIELDS)

1 Q Good morning, Mr. Larson.
 2 A Hi.
 3 Q You recall yesterday we were discussing competing
 4 appraisals from 2012 for 40 Wall Street, correct?
 5 A Yes.
 6 MR. FIELDS: Okay. I'm going to ask that we hand
 7 up to the witness what has not been admitted, but has been
 8 marked as Plaintiff's 3208.
 9 Q Mr. Larson, do you generally recall that your testimony
 10 was you are unsure which of the two appraisals was the final
 11 appraisal?
 12 A Yes.
 13 Q Okay. I'd like, if you could, please look at page two
 14 of 3208.
 15 First of all, do you recognize this as an e-mail that
 16 you sent to Mr. Carias?
 17 A Yes.
 18 Q And this is dated November 13, 2012?
 19 A Yes.
 20 Q The subject line is 40 Wall Street?
 21 A Correct.
 22 Q Okay. And you say to Mr. Carias, "Attached, please
 23 find the final appraisal". And then if we could go back to page
 24 one, Mr. Carias responds the next day at one o'clock in the
 25 afternoon, "Please call me when you have a moment to discuss
 this report." Do you recall this e-mail with Mr. Carias?
 A I'm seeing it now, yes; but it is an e-mail from Rick
 Carias to myself.
 Q As you sit here today, do you recall having a phone
 conversation with him to discuss the report?
 A I don't recall that.
 Q If we could go higher up on the e-mail, you respond
 November 14, 2012, approximately 24 hours later with the final
 revised appraisal, correct?
 A Yes.
 Q If we could go to page six of the document. Again, Mr.
 Larson, the transmittal letter is October 25, 2012?
 A Yes.
 Q And the as is value as of November 1, 2012 is
 \$220 million and on the next page, the as is market -- I'm
 21 sorry, I'm sorry. The appraisal as of November 1, 2015 was
 22 \$260 million.
 23 THE COURT: I think you added a word to this,
 24 subject line that says, "Please find the revised appraisal".
 25 It doesn't say "final" where you were directing his answer.
 Q Mr. Larson, was this the final appraisal?
 A Could I see the e-mail again?
 Q It's right in front of you, sir.
 A Yes. It says, "Please find the revised appraisal."

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D. LARSON - CROSS (MR. FIELDS) Page 1680
1 Street. Are you aware of any other appraisals other than the two we discussed here in court?
2 Q No, I'm not.
3 Q And just so the record is clear, this exhibit that I'm showing you now, 3208, and if we could go to page six shows that this is the final value for 2012 as of November 1st that you came up with that you appraised for 40 Wall Street, correct?
4 A Yes, that's what it says on the appraisal.
5 Q So in 24 hours, your appraised value went up \$20 million, correct as of November 1st?
6 A Yes, this is different from the -- a prior appraisal that was submitted.
7 Q And in 24 hours, the appraised value as of November 1, 2012 went up \$20 million, correct?
8 A I believe the number -- the value previously was 200 million.
9 Q So that would be a \$20 million increase in 24 hours based on this e-mail communication we just looked at correct.
10 A That would be called a \$20 million difference, yes.
11 THE COURT: Hold on.
12 Mr. Kise.
13 MR. KISE: Your Honor, could we get an instruction to this witness, this happened all day yesterday, if he could answer yes or no, he should answer yes or no? He keeps answering in sentences or two and you were concerned about time. So if he could answer yes or no, which he could have easily done the last four or five questions. He should just simply answer yes or no.
14 MR. LADOV: Objection. To be clear, yesterday we had a lot of questions that did not necessarily get a yes-or-no answer.
15 THE COURT: Let's not go back to yesterday.
16 Mr. Kise, granted.
17 Mr. Larson, if there is a yes-or-no question and you can answer it yes or no, please just answer it yes or no without any follow-up or commentary, et cetera. If you can't, that's something different. We'll deal with it.
18 Q Mr. Larson, as far as you are aware, there is no explanation in this appraisal why you added \$20 million to the appraised value in 24 hours; is that correct?
19 A Yes.
20 Q And as you can see on page six here, the transmittal date is October 25, 2012, which would have been the original transmittal date of the \$200 million appraisal, correct?
21 A Could you repeat that again?
22 Q Sure. Do you recall yesterday that we discussed that the prior appraisal for \$200 million, the transmittal date was also October 25, 2012?
23 A Yes.

D. LARSON - CROSS (MR. FIELDS) Page 1681
1 to Mr. Carias on or about November 14, 2017 based on this e-mail in Plaintiff's 3208?
2 A Yes.
3 Q So based on this transmittal date and this e-mail, you backdated an appraisal for an additional \$20 million to a date -- October 25th was not the real transmittal date of the final appraisal, correct?
4 A That is likely a typo.
5 Q Or you failed to change the transmittal date; fair?
6 A The date that the appraisal is sent out, that should be the date of that report. That would be a typo.
7 Q Just to ask you, Mr. Larson, with regard to this appraisal, is it fair to say that Mr. Carias probably asked you to revise the figure in the appraisal?
8 A Discussions are typically with the appraisal representatives at the banks to review assumptions or to make correction.
9 Q And it is standard practice for you to have those discussions with the client and to ultimately revise the value, if needed, correct?
10 A Yes.
11 Q So the clients have input in the appraisal process, correct?
12 A Yes. The reviewer does at the bank.
13 Q So you would agree, then, that it is a collaborative process between you as the appraiser and the client?
14 A It's our value, but we allow opportunities to review our work.
15 Q And to collaborate on your work, correct?
16 A I'm not sure I would call it collaboration because it is our value.
17 Q But the client can have input on what your ultimate value is, correct?
18 A They review our appraisals.
19 Q My question is can they have input as to what the ultimate value is in your appraisal?
20 A They can have their own opinions, yes.
21 Q But my question is can they have input as to what the ultimate value in the appraisal is?
22 A Yes.
23 Q And there's nothing sinister about that, correct?
24 A No.
25 Q All right.
MR. FIELDS: Excuse me. I move into evidence Plaintiff's Exhibit 3208.
THE COURT: Granted. It's in.
(Whereupon, the Document was marked in evidence as Plaintiff's Exhibit 3208.)
Q Mr. Larson, we left off yesterday discussing a 2015

D. LARSON - CROSS (MR. FIELDS) Page 1682
1 few final questions about that.
2 MR. FIELDS: If we could pull up Plaintiff's 118, page 136.
3 Q You recall, Mr. Larson, we discussed yesterday that the growth rate that you used for the '11 and '12 appraisals was three percent, correct?
4 A Yes.
5 Q And in '15, you're using the same growth rate, three percent, yes?
6 A Yes.
7 MR. FIELDS: Now, if we could pull up page 171.
8 Q At the top of the page, do you see that there is an NOI plus year one free rent and the figure is 23,203,919?
9 A Yes.
10 Q This is the net operating income that you used for the direct capitalization method in this appraisal for 2015, correct?
11 MR. FIELDS: In the 2012 appraisal that we just looked at, we can pull it up side by side, Plaintiff's 1435, page 173. Could we go to 172. I'm sorry. If we can go to 172 on Plaintiff's 1435.
12 Q So Mr. Larson, on the right is your 2012 appraisal for 40 Wall Street and at the top, you see where it says, "direct capitalization valuation method upon achieving stabilized occupancy as of November 1, 2015. You see that?
13 A Yes.
14 Q Okay. So if we could go to the next page, 173, there's a net operating income of approximately \$18,000,334,523, correct?
15 A Could you repeat what I'm looking at --
16 A Sure.
17 A -- so I can follow?
18 Q So on the right-hand side, you got your 2012 appraisal and we just looked at the fact that this is your projected for 2015, projected net operating income for 2015, the \$18 million figure, correct?
19 A Yes.
20 Q So to be clear, in 2012, you are projecting into the future as of November 1, 2015 assuming that there's occupancy stabilization that the net operating income will be 18 million and change?
21 A Yes. The 18 million is also based on the cash flow into the future based on assumptions as of the date of value.
22 Q I just want to make sure we are in agreement that this is a projected figure into the future, correct?
23 A Yes.
24 Q Okay. And if we can look on the left at Plaintiff's 118, Plaintiff's 118, page 171 has a \$23 million and change figure. But would you agree with me that this is the actual net

D. LARSON - CROSS (MR. FIELDS) Page 1683
1 capitalization method?
2 A Yes.
3 Q So I'm not going to -- I'll give you the round numbers and if you would like to do the calculations yourself, you can do them. But I'll represent to you that if you subtract 23 million, the figure there, from 2015 from the \$18 million figure in 2012, the difference is about \$4.8 million, 4,869,396. Does that generally look about right?
4 A Yes. Can -- what is the date of the 2015 NOI that has been adjusted for free rent, so it is clear?
5 Q Do you have Plaintiff's 118 in front of you?
6 A If you look at page on the bottom, page 170 to 171 is the relevant section for the direct capitalization method. So that net operating income of 23,203,000 is as of 2015.
7 Q Correct.
8 A Okay.
9 Q So back to my original question, if you subtracted the two values, the actual versus the projected, it gets to about \$4.8 million, correct?
10 A Yes.
11 Q So there was a \$4.8 million difference between what you projected and what the actual net operating income was in the year that you projected?
12 A Yes. As of 2015 for the \$23.2 million, the net operating income was not stabilized which it looks like because of some free rent associated with leasing, so it needed to be adjusted.
13 Q Your testimony is that in 2015, the 95 percent occupancy was not stabilized?
14 A There was free rent associated with the leasing that had been done.
15 Q So is it your testimony, then, that if you -- that you have to take out the free rent in order to determine a stabilization rate?
16 A You need to apply a market cap rate to a stabilized net operating income.
17 Q But be that as it may, the difference between these two figures is about 4.8 correct?
18 A Yes.
19 Q And in 2015, you used a four and a quarter capitalization rate, correct?
20 A Yes.
21 Q So if you divided the four and a quarter capitalization rate from the \$4.8 million, that gets you to about \$114.5 million difference in value does that seem about right?
22 A I can't do those numbers in my head.
23 MR. FIELDS: Fair enough. So just for the record, what I'll ask the Court to take judicial notice of is that \$486,930,096 divided by four and a quarter capitalization

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1 THE COURT: Seeing no objections, I will take
 2 judicial notice of that mathematics, yes.
 3 Q Mr. Larson, would it be fair to say, then, that you
 4 undervalued 40 Wall Street to the tune of approximately 114
 5 and-a-half million dollars based on the conservative figures
 6 that you used in your 2012 appraisal?
 7 A No, we did not.
 8 Q You did not what?
 9 A We did not undervalue the -- this property based on
 10 what -- based on the assumptions that were used here.
 11 Q Okay, but your projections were wrong, right?
 12 A We apply those -- the net operating income of
 13 \$18,300,000 is a projected number and the 23,000,200 was an as
 14 is number as of the current date. So the best we can do is use
 15 the projections that we knew as of 2012.
 16 Q But my question is, your projection was off by about
 17 \$4.8 million, correct?
 18 A Yes.
 19 Q And when you convert that into an actual value for the
 20 property, you short-changed, according to the actual data in
 21 2015, the property value by approximately \$114.5 million,
 22 correct?
 23 A No. We based, again, our assumptions on what we knew at
 24 the time and the projections that we knew. So if the
 25 performance of the building changes, then we recognize that.
 Q Sir, my question, though, is if you knew in 2012 that
 the actual net operating income would have been 23,203,919, you
 would have used that number, correct?
 A We would have.
 Q So your projection was wrong and, therefore, the
 resulting value for 40 Wall Street was wrong to the tune of
 approximately \$114 million?
 A Our values were not wrong, no. The values were not
 wrong. It's what we knew at the time.
 Q Mr. Larson, you valued 40 Wall Street in 2012 for a
 projected of November 1, 2015 at \$260 million, correct?
 A Yes.
 Q So if in fact you undervalued 40 Wall Street by 114
 and-a-half million dollars, the actual value that you should
 have had in your appraisal in November of 2012 as of November 1,
 2015 would have been approximately \$374 million, correct?
 MR. LADOV: Objection, Your Honor, I know you
 don't like this, but this question has been asked and
 answered twice already.
 THE COURT: Asked and answered.
 MR. LADOV: Twice already.
 THE COURT: Twice already.
 MR. KISE: It hasn't been answered. First of all,
 it hasn't been asked.

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1 wasn't asked.
 2 THE COURT: I will give him a little leeway. I
 3 understand.
 4 Q Sir, my question is very simple. If you undervalued 40
 5 Wall Street by approximately \$114 million projected for 2015,
 6 and the value you used in 2012 projected for 2015 was
 7 \$260 million, then undervalued 40 Wall Street and the
 8 appropriate value should have been \$374 million give or take;
 9 isn't that true?
 10 A If that was the net operating income, that would have
 11 been the value at that time.
 12 Q Thank you.
 13 Then the last question I'd like to ask you is on page
 14 179 of the 2015 which is Plaintiff's 118.
 15 MR. FIELDS: We can pull 1435 off. So Plaintiff's
 16 118, page 179, please.
 17 Q Mr. Larson, I asked you questions yesterday about the
 18 fourth bullet point relating to the use of the report. Do you
 19 recall those questions?
 20 A Yes.
 21 Q Do you have any reason to believe that the language in
 22 this 2015 appraisal is any different than the 2012 and 2011
 23 appraisals that we've discussed with regard to the limitations
 24 of its use?
 25 A No, it's not different.
 Q So your conclusions about the use of this 2015
 appraisal would be the same as the ones that you stated
 yesterday regarding 2011 and 2012?
 A Yes.
 MR. FIELDS: If we could pull up Plaintiff's 3184,
 that's been admitted in evidence, please.
 Q Mr. Larson, in the middle of the page here, there is an
 e-mail from Mr. McConney to you on August 5, 2013 and Mr.
 McConney writes, "Hi, Doug. Hope you are well. It's that time
 of year again."
 What did you understand Mr. McConney's e-mail "it's
 that time of year again" to mean?
 A Jeff McConney would call me periodically, not very
 frequently, but to talk about sales and market conditions.
 Q You understood his e-mail to be his desire to talk to
 you about sales and market conditions; is that fair?
 A Yes.
 Q And your understanding of why Mr. McConney was calling
 you to ask about sales and market conditions was because he was
 doing some sort of valuation of the Trump properties; is that
 correct?
 A I don't recall that exactly, no.
 MR. WALLACE: Objection, Your Honor, at this point,
 Can the defendant please stop commenting during the witness'

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1 THE COURT: I don't -- I wouldn't stop them from
 2 talking to each other softly, so that no one else can hear.
 3 What do you think has been happening?
 4 MR. WALLACE: I believe it's exultations that are
 5 audible over on this side of the courtroom as well as the
 6 witness is answering questions.
 7 THE COURT: Okay. I'm asking everyone to be quiet
 8 while the witness is testifying, particularly if it's meant
 9 to influence the testimony.
 10 Q So Mr. Larson, Mr. McConney continues, "Would you be
 11 able to send me a current report similar to the one attached for
 12 midtown class A buildings and also one for downtown class A
 13 buildings (like 40 Wall Street). Thanks in advance, Jeff."
 14 You understood this to be Mr. McConney requesting
 15 market information from you, correct?
 16 A Yes.
 17 Q Specifically relating to 40 Wall Street, correct?
 18 A That's what it appears to be, yes.
 19 Q And this e-mail in 2013 is after you've done an
 20 appraisal in 2011, an appraisal in 2012 for 40 Wall Street,
 21 correct?
 22 A Yes.
 23 Q If we can go to the response e-mail above,
 24 approximately 7:53, you respond, "Attached, please find the
 25 sales. I hope all is well. Thanks, Doug." Correct?
 A Yes.
 Q You didn't say, "Mr. McConney, why do you need this
 market information for 40 Wall Street because I already did
 appraisals, correct?"
 A No. This is a request by many clients to provide
 market information.
 Q And it is standard practice for many climates to ask
 you to provide them market information, correct?
 A Yes.
 Q And there's nothing sinister about that, is there?
 A No.
 Q You sent this information to Mr. McConney because you
 knew that he was valuing the Trump properties, didn't you?
 A I don't recall that.
 Q And just for purposes of the record, if we could go to
 page five of the exhibit, is it fair to say that you attached
 certain spreadsheets to this exhibit that if you have it in
 front of you, Plaintiff's 3184, you sent to Mr. McConney,
 correct?
 A If that is the exhibit, yes.
 Q Well, you have it in front of you, 3184. You see that
 you attached spreadsheets and sent them to Mr. McConney and that
 they are behind that cover e-mail?
 A Yes.

D. LARSON - CROSS (MR. FIELDS) Page 1687

1 and put on the screen Plaintiff's 109. It has not yet been
 2 admitted in evidence.
 3 Q Mr. Larson, does this appear to be another e-mail chain
 4 between you and Mr. McConney and others?
 5 A Yes.
 6 Q I move to admit Plaintiff's 109.
 7 THE COURT: Granted. It's in evidence.
 8 (Whereupon, the Document was marked in evidence as
 9 Plaintiff's Exhibit 109.)
 10 (Continued on the next page.)
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1 Q At the bottom of the page on September 15, 2014 you ask
2 -- withdrawn.
3 At the bottom of the page, September 15, 2014,
4 Mr. McConney writes to you: "Doug, sorry to bother you. If we
5 have a property with a ground lease that expires in 2079 in one
6 case and 2206 in another, would that effect the cap rate in any
7 way?" That's what he writes to you; correct, Mr. Larson?
8 A Yes.
9 Q Do you recall receiving this e-mail?
10 A I see it now, yes.
11 THE COURT: That's not the question.
12 A Yes -- no, I do not recall receiving it.
13 Q You do not recall receiving the e-mail.
14 If we go up a little bit more, Mr. McConney writes to
15 you again, the following day, September 16, 2014, "Doug, I hate
16 to be a pest, but the accountants are coming in tomorrow to go
17 over my valuations. Any chance you can answer my question
18 below? Sorry for the last minute question. Thanks, Jeff."
19 Do you see that?
20 A Yes.
21 Q You hadn't responded to Mr. McConney so he sent you a
22 follow-up e-mail; correct?
23 A Yes.
24 Q And he told you the accountants are coming in tomorrow
25 to go over, quote, "my valuations," meaning Mr. McConney's

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1 valuations; correct?
2 A Yes.
3 Q So at the time you knew that what Mr. McConney wanted
4 from you was market information so that he could do his
5 valuations; correct, Mr. Larson?
6 A Yes, at the time.
7 Q Just so the record is clear, you knew you were
8 providing market information to Mr. McConney so that he could
9 use it to compile his valuations; correct?
10 A Yes, at the time.
11 MR. FIELDS: So if we could pull up yesterday's
12 transcript at page -- side by side, page 1595, lines 15 to
13 17.
14 Q Line 15: "Did you work with Mr. McConney in 2013 to
15 determine the cap rate that he used to value this property?"
16 "ANSWER: No, I did not."
17 You lied yesterday, Mr. Larson?
18 MR. KISE: Your Honor --
19 A No, I did not at the time.
20 MR. KISE: Before the witness answers that question
21 because there may be more questions of this nature, we may
22 want to take a break. This witness has rights and there is
23 an argument --
24 MR. WALLACE: Objection, Your Honor.
25 MR. KISE: Let me finish and then you can object

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1 all you like.
2 This witness has rights. He has a lawyer in the
3 room. He needs --
4 MS. FAHERTY: This is witness intimidation, Your
5 Honor. He is on the stand --
6 MR. KISE: We can have a sidebar then.
7 THE COURT: Let's.
8 MR. KISE: This witness has rights and he has a
9 right to consult with his counsel before he --
10 THE COURT: Officer, can you escort the witness out
11 just so we can talk outside of the presence of the witness?
12 (Whereupon, the witness is excused from the witness
13 stand.)
14 THE COURT: All right. Let's all calm down.
15 And Mr. Kise, I don't understand. He's on the
16 witness stand. He's answering the questions.
17 MR. KISE: He's on the witness stand.
18 THE COURT: And he can --
19 MR. KISE: Yesterday, he testified unequivocally
20 "no, I did not." There is more of these. In response to
21 the prosecution's questions he testified that he didn't
22 participate, he didn't work with them and now we've got
23 documents which the government has had that they know
24 they've seen that he's communicated with Mr. McConney about
25 valuations, he's communicated with Mr. McConney about cap

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1 rates. This directly contravenes his testimony from
2 yesterday.
3 THE COURT: So what.
4 MR. KISE: I think he needs to be advised as to
5 potential perjury. He has sat on the witness stand in
6 response to their questions without any hesitation and said
7 no, no, no, no, and he has left the distinct impression with
8 this Court and in this room that he had nothing to do with
9 any of this and this was all made up by Mr. McConney in his
10 head. And so this evidence demonstrates fully that he
11 hasn't -- and I just want this witness to be aware of his
12 Fifth Amendment rights not to incriminate himself because he
13 perjured himself yesterday, in my opinion.
14 So that's what I -- why I hesitated because the
15 minute Mr. Fields asked that question I thought we're
16 getting into dangerous territory and rather than have the
17 witness comprise his rights, I want to bring it to the
18 Court's attention. That's what I think and I think the
19 record supports that.
20 THE COURT: Indeed.
21 MR. WALLACE: I'm not even sure this impeaches his
22 testimony, honestly.
23 MR. KISE: We have a distinct difference of
24 opinion, clearly we do.
25 MR. WALLACE: This is some kind of performance I'm

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1 taking it for the press that is now attending to now say
 2 that they're getting some perfect -- we asked if he worked
 3 with him to prepare the cap rate. The fact that he got an
 4 e-mail saying I'm preparing the cap rate doesn't necessarily
 5 indicate anything of any event.
 6 Dramatic. Your Honor, this witness has rights, he
 7 should go talk to his attorney? If they're impeaching his
 8 testimony, they can impeach his testimony if they think he
 9 wasn't clear. Yesterday, they can show he wasn't clear.
 10 I'm not sure they even want him to go talk to a lawyer --
 11 MR. KISE: I do because unlike the government I
 12 take those rights seriously.
 13 MR. WALLACE: Come on. At some point -- you guys
 14 are sitting here insulting us.
 15 MR. KISE: If I had pulled what they just did
 16 yesterday you know what they would do. They would run
 17 around here with their heads, you know, asking for
 18 sanctions. I got sanctioned for making legal arguments and
 19 so now when they do something that is really borderline, in
 20 my opinion, and frankly it is borderline. They have these
 21 e-mails, they know this -- they left the courtroom with the
 22 distinct impression that this gentlemen had nothing to do
 23 with it. And whether they're concerned about his rights or
 24 not, I certainly am because I don't think that he
 25 understands exactly what's going on here. Frankly, that's

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1 what I think.
 2 MR. LADOV: Well, I will just note also that in
 3 looking at the e-mail we were just discussing the question
 4 that we have up on the screen says, "Did you work with
 5 Mr. McConney in 2013 to determine the cap rate that he used
 6 to value the property?"
 7 "No, I did not."
 8 The e-mail that apparently impeaches him is from
 9 2014, so the fact that they're creating a bit of a mess of a
 10 set of testimony does not mean that the witness is in some
 11 kind of peril. It also doesn't mean -- I was reacting --
 12 the government doesn't care about this witness's Fifth
 13 Amendment rights. This is a performance. If they want to
 14 create a record that says you had some e-mails in '14 that
 15 may be different from your testimony in '13, as I said, I
 16 don't actually think it's impeachment. They're free to do
 17 that, but this all -- like what we've just been doing with
 18 the witness out of the room, I've never seen anyone do
 19 anything like this. I think it is a performance for the
 20 press sitting behind us and not a real legal issue.
 21 THE COURT: Last words?
 22 MR. KISE: It is not a performance. There is
 23 e-mails from 2013 that we went over. There is e-mails in
 24 2014. What these e-mails demonstrate is there is a
 25 continuing course of communication and this isn't some

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1 attempt by Mr. McConney to simply -- there isn't some
 2 attempt by Mr. McConney to simply make up his interactions
 3 with this witness and that is the distinct impression that
 4 was left by the testimony. I think it was misleading and I
 5 don't know that the witness understands. I don't know that
 6 the witness understands that these communications exist.
 7 If we want to continue and everyone is satisfied,
 8 then fine. It's not a performance, though. I take this
 9 very seriously and I'm sorry that Mr. Wallace either thinks
 10 that I don't or doesn't himself.
 11 MR. WALLACE: Thank you for the dig at the end.
 12 MR. KISE: You're welcome.
 13 MR. WALLACE: Mr. Larson's attorney is here and at
 14 this point having been ripped off the stand and told he has
 15 Fifth Amendment problems, Nicole Gueron would like to speak
 16 to him before he returns to the stand. Given what has now
 17 transpired, I'm happy to have her address the Court.
 18 THE COURT: I'll let her address the Court. My
 19 feeling about all of this is, first of all, Mr. Kise, it's
 20 your own lawyer that's asking questions. My role here is to
 21 get witnesses to testify. If he's perjured himself
 22 yesterday or perjuring himself today, and I'm not drawing
 23 any conclusions at all, I don't care. I just want him to
 24 testify. The fewer disruptions to that, the better.
 25 But all right, there is a lawyer here, we like

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1 lawyers. I'll let the lawyer speak.
 2 Go ahead. What's your position on this? And
 3 you'll identify yourself and your role.
 4 MS. GUERON: Thank you, Your Honor. Nicole Gueron.
 5 Clarick Gueron Reisbaum. I'm counsel to Mr. Larson. He has
 6 now seen quite a display here. I had been directed not to
 7 speak to him between yesterday's testimony and today, which
 8 is, of course, the norm. He has now been fundamentally
 9 accused of perjury on the stand. I'd like the opportunity
 10 to have --
 11 THE COURT: So what. He's accused of perjury on
 12 the stand. So what.
 13 MS. GUERON: Well --
 14 THE COURT: If he's perjuring himself, he's
 15 perjuring himself.
 16 MS. GUERON: He is not.
 17 THE COURT: Well, then if he's not, you have
 18 nothing to worry about.
 19 MS. GUERON: Very well, if that's the Court's
 20 instruction.
 21 THE COURT: The Court's instruction is to get the
 22 witness back here as quickly as possible and continue the
 23 examination now without further interruption.
 24 THE COURT OFFICER: Witness entering.
 25 (Whereupon, the witness enters the courtroom and

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1 approaches the witness stand.)
 2 THE COURT: Let's continue with the questioning.
 3 Are we in the middle of a question and answer?
 4 MR. FIELDS: I think we're in the middle of a
 5 question. If the Court would indulge a read back?
 6 THE COURT: Sure. If you can find it.
 7 (Whereupon, the requested portion of the
 8 proceedings was read back by the court reporter.)
 9 MR. LADOV: The question misstates the testimony.
 10 He's asking about testimony concerning 2013 and showing him
 11 an e-mail that is not related to the testimony in question.
 12 MR. FIELDS: It's cross examination, Your Honor.
 13 If the witness wants to answer that, he'll answer that.
 14 We'll talk about it.
 15 THE COURT: Witness understand what's this whole
 16 year business, '13, '14?
 17 THE WITNESS: Could you repeat that? What -- can
 18 you repeat that? I'm sorry.
 19 THE COURT: I'll consider the last question
 20 withdrawn. The last question you were on -- I like
 21 questions to be short, but please give him the information
 22 that you're working with.
 23 Q Mr. Larson, Plaintiff's 3184.
 24 MR. FIELDS: Let's keep this on the screen, please.
 25 Q Plaintiff's 3184 should be in front of you. We just

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1 discussed it a moment ago. There was an e-mail from 2013 where
 2 Mr. McConney says: "It's that time of year again" and your
 3 testimony about five minutes ago you knew he was using your
 4 market information that you provided him to value his
 5 properties; correct?
 6 A Yes.
 7 Q And you testified yesterday under oath subject to the
 8 penalty of perjury, did you work with Mister -- strike that.
 9 Under oath, subject to the penalty of perjury, the
 10 question was: "Did you work with Mr. McConney in 2013 to
 11 determine the cap rate that he used to value this property?"
 12 Your answer, "No, I did not."
 13 You lied yesterday, Mr. Larson?
 14 MR. LADOV: Objection.
 15 Mr. Larson, please.
 16 Objection because you are -- the witness is being
 17 accused of lying.
 18 MR. FIELDS: It's a court of law, Your Honor.
 19 MR. LADOV: Your Honor, he's being shown testimony
 20 asking whether he worked with Mr. McConney to determine a
 21 cap rate. He's allegedly being impeached by an e-mail in
 22 which Mr. McConney is asking questions about ground leases
 23 and how they might affect property values one way or
 24 another. There is -- I mean, there is no inconsistency
 25 between his testimony and the e-mails, but there is no basis

D. Larson - Plaintiff - cross (Fields) Page 1698

1 for the question that's being asked right now.
 2 MR. KISE: Your Honor --
 3 THE COURT: Wait. Do we need to take the witness
 4 out again?
 5 MR. KISE: No. I was just going to say now we're
 6 on to speaking objections. There it is. Would they like to
 7 write out the answer for Mr. Larson?
 8 MS. FAHERTY: We learned from the best.
 9 MR. KISE: Apparently.
 10 THE COURT: Let's avoid speaking objections or
 11 anything that could sway the witness. I think I'll just let
 12 it be subject to redirect and -- or if the witness doesn't
 13 understand the question or whatever he wants to do.
 14 A This is what I knew at the time and I don't recall, you
 15 know, seeing this before.
 16 Q Seeing what before?
 17 A Before today.
 18 Q Seeing what before?
 19 A This e-mail about the valuation.
 20 Q Does it have an exhibit sticker of 3184 at the bottom?
 21 A Yes.
 22 Q Okay. Just to be clear on this e-mail that you have in
 23 front of you, 3184, you testified a minute ago that you
 24 understood Mr. McConney was asking for your market information
 25 to do his valuations; is that correct?

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1 A That's what it says in the e-mail, that's what it
 2 appears at the time that I knew, yes.
 3 Q And you responded to Mr. McConney with sales. You
 4 said, "Attached please find the sales. I hope all is well."
 5 And you attached several spreadsheets, isn't that
 6 correct?
 7 A Yes.
 8 Q And those spreadsheets that you attached have
 9 capitalization rates, isn't that true?
 10 A Yes.
 11 Q And you knew that Mr. McConney was using the
 12 capitalization rate to figure out a value for the Trump
 13 properties, didn't you?
 14 A Yes, I must have because he says that in his e-mail
 15 about valuations.
 16 Q And you knew that in 2013; correct?
 17 A I must have because he says that there are valuations
 18 he's performing.
 19 Q So that's a yes?
 20 THE COURT: Well, let him decide whether it's a yes
 21 or a no.
 22 A I'm not sure. It's a long time ago.
 23 Q Sir, my question is in 2013 this e-mail in front of you
 24 you sent him market information that included cap rates. You
 25 knew in 2013 that Mr. McConney was using the information that

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1 you sent him; namely, the cap rates to value the Trump
 2 properties, did you not?
 3 A I did.
 4 Q And you testified yesterday that you did not work with
 5 Mr. McConney to determine any cap rate that he used to value
 6 this property, didn't you?
 7 A This is my -- from my deposition four years ago?
 8 Q No, sir. This was yesterday in this courtroom.
 9 A Okay.
 10 THE COURT: Maybe the -- hold on. Maybe the
 11 confusion is what does it mean to work with and what does it
 12 mean to determine. I don't see an inconsistency here.
 13 MR. FIELDS: Your Honor, respectfully, may the
 14 witness answer the question, please?
 15 THE COURT: Sure.
 16 MR. KISE: I'd like to --
 17 MR. FIELDS: And I will address that, Your Honor.
 18 I certainly will. I will.
 19 A Well, the question says, "to determine a cap rate he
 20 can come up with his own cap rate based on the data that we gave
 21 him.
 22 Q And his cap rate can be the same that you would use or
 23 a different one that he would use; correct?
 24 A That is correct.
 25 Q Because it's his valuations, not yours?

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1 A That is correct.
 2 Q And the valuations that Mr. McConney was using in the
 3 supporting spreadsheets that you've been shown here today and
 4 the ones that you were shown in 2019 at your examination under
 5 oath were all Mr. McConney's valuations; correct?
 6 A That is correct.
 7 Q And they were based on information that you were
 8 providing to Mr. McConney, isn't that correct?
 9 A Yes.
 10 Q And the information that you provided to Mr. McConney
 11 were cap rates and comparables for the market failure, isn't
 12 that true?
 13 A Yes.
 14 Q And Mr. McConney is free to choose whatever cap rate he
 15 wants from the value -- or from the information that you sent
 16 him, isn't that true?
 17 A Yes.
 18 Q That doesn't necessarily mean that it's your valuation
 19 or Cushman's valuation, does it?
 20 A It does not.
 21 MR. FIELDS: If we could move to Plaintiff's 719,
 22 the 24 supporting spreadsheet -- 2014 supporting
 23 spreadsheet. I'm sorry. Rows 148 to 152, please.
 24 Actually, if we could scroll all the way up to the top,
 25 please, just to show the date.

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1 Q So this is a Statement of Financial Condition
 2 supporting spreadsheet as of June 30, 2014. Do you see that?
 3 A Yes.
 4 MR. FIELDS: And if we could scroll to Row 148 and
 5 just scroll up a little bit just so we can show what
 6 property it is.
 7 Q You see in Row 118, Mr. Larson, it says 40 Wall Street?
 8 A Yes.
 9 Q And then in columns G and H there are dates June of
 10 2013 and June of 2014. Do you see that?
 11 A Yes.
 12 MR. FIELDS: Okay. If you can scroll down to
 13 Row 148.
 14 Q So in June 30, 2014, Mr. McConney writes "Information
 15 provided by Doug Larson of Cushman & Wakefield Incorporated?"
 16 So you would agree that you provided information to
 17 Mr. McConney; correct?
 18 A Yes.
 19 Q It goes on to say "Only one similar size Class A
 20 building sold in the downtown area in the last year (110 William
 21 Street) with a cap rate of 4.97 percent. There was one Class B
 22 building sold recently (61 Broadway.) The cap rate for this
 23 building is 4.46 percent. According to Doug, the spread between
 24 Class A and Class B buildings is typically 50 to 100 bases
 25 points. To be conservative, we reduced the cap rate of 75 basis

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1 points to 3.71 percent. We used the average of these two
 2 rates."
 3 Isn't it true, Mr. Larson, that the information
 4 Mr. McConney's relying on here is from discussions he had with
 5 you and also the market information that you were routinely
 6 sending to him?
 7 A Most likely, yes.
 8 Q And that doesn't necessarily mean that the valuations
 9 methods that he's using are your valuation methods; correct?
 10 A Correct.
 11 Q They're his own valuation methods, but it's based on
 12 information that you are providing to him; correct?
 13 A Yes.
 14 MR. FIELDS: If we could pull up Plaintiff's 730,
 15 please?
 16 Q Mr. Larson, you were shown by government counsel the
 17 Statement of Financial Condition -- withdrawn.
 18 You were shown a Statement of Financial Condition by
 19 government counsel yesterday. Do you generally recall seeing a
 20 document that looked like this?
 21 A Yes.
 22 Q And the one that we have up on the screen is
 23 Plaintiff's 730 dated June 30, 2014. Do you see that?
 24 A Yes.
 25 Q On page three of the PDF I'll represent to you that the

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1 submission date of this document is November 7, 2014, okay?
 2 A Yes.
 3 Q Do you see that? So this spreadsheet corresponds --
 4 I'm sorry -- withdrawn.
 5 This Statement of Financial Condition corresponds to
 6 the supporting spreadsheet that we just looked at a minute ago,
 7 okay?
 8 A Okay.
 9 MR. FIELDS: All right. If we could go to page
 10 four and if we could highlight the first two paragraphs.
 11 I'm sorry. Page six.
 12 Q You see under the subheading or the heading "Basis of
 13 Presentation." Do you see that?
 14 A Yes.
 15 Q It says, "The accompanying Statement of Financial
 16 Condition consists of the assets and liabilities of
 17 Donald J. Trump." You understand that to mean that this
 18 statement pertains to the assets and liabilities of President
 19 Donald Trump; correct?
 20 A Yes.
 21 Q They're not your assets and liabilities or Cushman &
 22 Wakefield's; correct?
 23 A Yes.
 24 Q It says, "Assets are stated at their estimated current
 25 values and liabilities at their estimated current amounts using

D. Larson - Plaintiff - cross (Fields) Page 1705

1 various valuation methods. Such valuation methods include, but
 2 are not limited to, the use of appraisals, capitalization of
 3 anticipated earnings, recent sales and offers, and estimates of
 4 current values as determined by Mr. Trump in conjunction with
 5 his associates and, in some instances, outside professionals."
 6 Do you see that?
 7 A Yes.
 8 Q Okay. You see the use of the appraisals; correct?
 9 A Yes.
 10 Q You also see the use of capitalization of anticipated
 11 earnings, that's the direct cap method; right?
 12 A Yes.
 13 Q You see recent sales and offers, that would be a sales
 14 comp method; correct?
 15 A Yes, it would.
 16 Q And estimated current -- sorry.
 17 And "estimates of current values as determined by
 18 Mr. Trump in conjunction with his associates and, in some
 19 instances, outside professionals."
 20 Do you understand this to mean that in not in every
 21 instance do they have to use valuations in conjunction with his
 22 associates?
 23 A That's what it appears to read.
 24 Q So in some valuations it could be in conjunction with
 25 his associates and in other valuations it could not be in

D. Larson - Plaintiff - cross (Fields) Page 1706

1 conjunction with his associates; correct?
 2 A That's what it appears to say, yes.
 3 Q It continues: "Considerable judgment is necessary to
 4 interpret market data and develop the related estimates of
 5 current value. Would you agree with me that there is
 6 considerable judgment necessary to value a property?
 7 A Yes.
 8 Q Because appraisers can come up with different values
 9 and appraise different numbers for the same property on the same
 10 day; correct?
 11 A Yes.
 12 Q "Accordingly, the estimates presented herein are not
 13 necessarily indicative of the amounts that could be realized
 14 upon the disposition of the assets or payment of the related
 15 liabilities. The use of different market assumptions and/or
 16 estimation methodologies may have been a material effect on the
 17 estimated current value amounts."
 18 Had you read this disclaimer clause? Had the
 19 government ever showed you this disclaimer clause?
 20 MR. LADOV: Objection.
 21 MR. FIELDS: I'll withdraw it.
 22 Q Had the government ever shown you this disclaimer
 23 clause?
 24 MR. LADOV: Objection.
 25 THE COURT: Ground?

D. Larson - Plaintiff - cross (Fields) Page 1707

1 MR. LADOV: This isn't a disclaimer clause.
 2 THE COURT: Sustained.
 3 Q Withdrawn. Very good point.
 4 Had government ever shown you you this clause?
 5 A Yes.
 6 Q They had shown it to you?
 7 A I've seen this, yes.
 8 Q Where have you seen it?
 9 A I saw it -- I saw it on Monday.
 10 Q Where did you see it on Monday?
 11 A At the AG's office.
 12 Q You met with the Attorney General on Monday?
 13 A Yes.
 14 Q The attorney -- the deputy attorney generals, the
 15 assistant attorney generals?
 16 A Yes.
 17 Q Did you meet with the Attorney General herself?
 18 A No.
 19 Q What did you discuss with at the Attorney General's
 20 Office on Monday?
 21 A We reviewed or was reviewed to me discussions about the
 22 information.
 23 Q Is it your understanding from your discussions with the
 24 government that the government's theory is that your valuations
 25 are the ones represented in the statements of financial

D. Larson - Plaintiff - cross (Fields) Page 1708

1 condition and the supporting spreadsheets?
 2 A Just repeat that again.
 3 Q Isn't it true that your understanding of what the
 4 government's theory is is that your numbers are reflected in
 5 these supporting spreadsheets and these statements of financial
 6 condition. Isn't that true?
 7 MR. LADOV: Objection. I just want to -- I'm
 8 sorry. I just want to make clear that -- just with the
 9 additional "isn't that true," I just want to make clear that
 10 the question is to Mr. Larson's understanding, not to the
 11 government's theory.
 12 MR. FIELDS: It's his understanding of the
 13 government's theory based on his meeting on the government
 14 on Monday and prior meetings and prior interviews with the
 15 government.
 16 THE COURT: I'll let the witness answer if he can
 17 answer.
 18 A I think anybody could interpret this to mean, you know,
 19 that is -- I am stating as an outside professional that's what's
 20 implied and it's subject to interpretation.
 21 Q So please tell me where you see your name there?
 22 A I don't see my name.
 23 Q Okay. You're not stated there; correct?
 24 A No.
 25 Q And it says that in some instances they were allowing

Page 1710

1 "Hi, Doug. I hope you are well. Would you be able to send me
 2 current reports for midtown and downtown Class A office
 3 buildings;" correct?
 4 A Yes.
 5 Q And you responded on the next page within a few hours
 6 on the bottom, "please see attached. Let me know if you need
 7 anything else;" correct?
 8 A Yes.
 9 Q So you, again, sent him market information and reports
 10 and this is 2017; right?
 11 A Yes.
 12 Q Then Mr. McConney responds on the 28th: "Doug, I'm
 13 looking at the information for 1221 Avenue of the Americas,
 14 which has a cap rate of 2.9 percent. The building is in the
 15 process of being modernized. Building 1290 was recently
 16 modernized for a comp. I'd like to use the cap rate of 1221,
 17 but since we are fully modernized can we reduce the cap rate of
 18 2.9 percent?"
 19 Then on March 1st you respond, "please call me when you
 20 have a chance to discuss."
 21 Do you recall this call with Mr. McConney March 1st of
 22 2017 or thereabouts?
 23 A No, I don't recall it.
 24 Transcript continues on the following page....
 25

D. Larson - Plaintiff - cross (Fields) Page 1709

1 outside professionals; correct?
 2 A Yes.
 3 Q Not all the time?
 4 A I don't know.
 5 Q Well, it says "in some instances," so that means not
 6 all the time; correct?
 7 A That's what that would mean, correct.
 8 Q So you are making the assumption that you included in
 9 this paragraph; correct?
 10 A Yes.
 11 Q But be that as it may, whether you're included in this
 12 paragraph or not, the values and the statements of financial
 13 condition and the supporting spreadsheets are Mr. McConney's
 14 values, not yours; correct?
 15 A That is correct.
 16 MR. FIELDS: If we could pull up Plaintiff's 115
 17 that has not been admitted.
 18 Q I'm showing you what's been marked, Mr. Larson, as
 19 Plaintiff's 115. Do you recognize this to be another e-mail
 20 chain between you and Mr. McConney?
 21 A Yes.
 22 Q And on Tuesday, February 28, 2017 -- withdrawn.
 23 MR. FIELDS: If you can go to page two of the
 24 exhibit, please?
 25 Q Mr. McConney writes to you on February 27th of 2017:

D. LARSON - CROSS(MR. FIELDS) Page 1711

1 Q Do you have any reason to despite that you actually had
 2 the call?
 3 A I do not.
 4 MR. FIELDS: All right. If we pull up -- sorry,
 5 Your Honor. May I move into evidence Plaintiff's 115?
 6 THE COURT: Granted. It's in evidence.
 7 (Whereupon, the Document was marked in evidence as
 8 Plaintiff's Exhibit 115.)
 9 MR. FIELDS: If we could pull up Plaintiff's 742.
 10 Go all the way to the top.
 11 Q So this is the supporting spreadsheet as of June 30,
 12 2016 and I'll represent to you that the Statement of Financial
 13 Condition for 2016 was finalized on March 10th of 2017, okay.
 14 So that would have been about nine days after or thereabouts
 15 your phone call with Mr. McConney, okay.
 16 A Okay.
 17 THE COURT: We don't know it was a phone call. He
 18 said he didn't remember it. He said it might have happened.
 19 MR. FIELDS: He said that he didn't dispute that it
 20 happened.
 21 THE COURT: I stand corrected. We still don't
 22 really know that it happened, but he is not disputing it.
 23 So let's assume it happened.
 24 MR. FIELDS: Fair enough.
 25 Q It was common practice for you and Mr. McConney

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1 whenever -- it was common -- was it common practice for you
 2 and Mr. McConney to speak over the phone when he requested
 3 information from you and you responded please call me?
 4 A I can't recall, but sometimes there were phone calls
 5 after, yes.
 6 Q Okay. So if we could go to lines 801 and 802, please.
 7 It says, "June 30, 2016, 1290 based on information provided by
 8 Doug Larson of Cushman & Wakefield which reflects a cap rate of
 9 2.9 percent for a comparable office building". All right. So
 10 if you have plaintiff's -- if we could keep this on the screen,
 11 please, but if you have Plaintiff's 115 in front of you, Mr.
 12 Larson, it is a two-page exhibit. You see in the middle that
 13 Mr. McConney asks you if he can reduce the capitalization rate
 14 because 1290 is fully modernized. Do you see that?
 15 A Yes.
 16 Q Then you have -- you ask him to have a discussion with
 17 him and you don't recall exactly if this discussion happened,
 18 but in the actual supporting spreadsheet at line 801, he uses a
 19 capitalization rate of 2.9 percent, correct?
 20 A Yes.
 21 Q So the capitalization rate was not lower as he was
 22 initially hoping, correct?
 23 A You'd have to refresh me. What was the prior --
 24 Q Sure. So Plaintiff's 115, he said he was looking for a
 25 cap rate lower than 2.9 percent, correct?

D. LARSON - CROSS(MR. FIELDS) Page 1713

1 A Yes.
 2 Q And here, he used a 2.9 percent cap rate?
 3 A Okay. Yes.
 4 Q So isn't it possible that you and Mr. McConney
 5 discussed over the phone that a 2.9 percent cap rate was the
 6 better cap rate to use?
 7 MR. LADOV: Objection.
 8 MR. KISE: What's the objection?
 9 MR. LADOV: The witness has already testified that
 10 he doesn't recall a phone conversation much less the
 11 contents of that phone conversation.
 12 MR. KISE: He testified to a lot of things and now
 13 he is recalling a lot more today.
 14 MR. FIELDS: The question was was it possible, Your
 15 Honor.
 16 MR. LADOV: The objection stands.
 17 THE COURT: It is speculation, I guess, but I'll
 18 overrule the objection. Don't worry. Not that you would
 19 ever worry. Do you need the question read back? Do you
 20 remember it? Do you want --
 21 Q Is it possible that you and Mr. McConney discussed on
 22 the phone that the 2.9 percent cap rate was the better cap rate
 23 to go with and not a lower cap rate like Mr. McConney wanted?
 24 A It's typically not my practice to, you know, provide a
 25 point estimate for a cap rate. It's, you know -- you would

D. LARSON - CROSS(MR. FIELDS) Page 1714

1 have or suggest, make a suggestion like that. We do usually
 2 talk in ranges. These are, you know, similar conversations that
 3 we had with, you know, over professionals, so when discussing
 4 certain sales or whatever. So I don't remember the
 5 conversation. So I don't -- I don't remember suggesting a
 6 certain cap rate on this building. I don't remember a
 7 conversation like that, but he could have used whatever he
 8 wanted to.
 9 Q Fair enough. Is it possible that you provided him a
 10 range and he chose within that range or chose outside that
 11 range?
 12 A Yes.
 13 Q You could have said between 2.8 and 3 is the good range
 14 and he chose the middle number? That's possible, correct?
 15 A Sure, but it -- it would be in rounded figures. 25
 16 base points or something like. It wouldn't be that exact
 17 typically.
 18 Q And just so we're clear, Mr. Larson, you did an
 19 appraisal that we discussed. I think you discussed with
 20 government counsel yesterday Plaintiff's 1824 which has been
 21 admitted in evidence. I'm not going to ask you a lot of details
 22 about it, but you did an appraisal for 1290 Avenue of the
 23 Americas prepared for Deutsche Bank as an agent, correct?
 24 A Yes.
 25 Q And that was as of November 1, 2012, correct?

D. LARSON - CROSS(MR. FIELDS) Page 1715

1 A Yes.
 2 Q And we would just -- we were just having a discussion
 3 about information that you were providing to Mr. Larson in
 4 approximately 2016 or 2017, correct, about 1290 Avenue of the
 5 Americas?
 6 A Yes.
 7 Q So this would be approximately four, give or take, five
 8 years after you did an appraisal for that same property?
 9 A Just repeat that, so I understand the dates.
 10 Q Sure. So the discussion that we were just having about
 11 the supporting spreadsheet from June 30th of 2016 was
 12 approximately four years after the appraisal. You did for that
 13 same property in 2012?
 14 A Yes.
 15 Q And at no point did you advise Mr. McConney that the
 16 correct capitalization rate to use was the one that you actually
 17 used in your appraisal, correct?
 18 A I don't remember having that discussion.
 19 Q But there would have been no need for you to have that
 20 discussion because you can use whatever capitalization rate he
 21 sees fit, right?
 22 A That is correct.
 23 Q All right. Just the record is clear, this 1290 Avenue
 24 of the Americas appraisal contains the same or -- withdrawn.
 25 If you can go to page 189 of this report, please. You

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1 see the fourth bullet point. Does it appear to have the same
 2 limitation of use language that the other appraisals have had
 3 that we've looked at?
 4 A Yes.
 5 Q So this appraisal would have been limited to the use of
 6 the client for which you did the appraisal for?
 7 A Yes.
 8 Q If we could go to page three. And just for purposes of
 9 the record, the second full paragraph, the first sentence.
 10 "This report was prepared for Deutsche Bank as agent Bank of
 11 China, UBS Securities, L.L.C. and Goldman Sachs Mortgage Company
 12 and is intended only for its specified use." So this appraisal
 13 could not have been used by the Trump Organization, correct?
 14 A Yes.
 15 MR. FIELDS: Your Honor, may I have one moment,
 16 please?
 17 THE COURT: Sure.
 18 (Whereupon, there was a pause in the proceedings.)
 19 MR. FIELDS: No further questions for me, Your
 20 Honor. Thank you.
 21 THE COURT: Then let's take a break now then, I
 22 guess. Will there be --
 23 MR. ROBERT: I have questions so after the break is
 24 fine.
 25 THE COURT: One of these days, I'll remember that.

D. LARSON - CROSS(MR. ROBERT) Page 1718

1 A Yes.
 2 Q You testified this morning that you met with the
 3 government on Monday, correct?
 4 A Yes.
 5 Q And how many Assistant Attorney Generals did you meet
 6 with on Monday? More than one?
 7 A Yes.
 8 Q More than two?
 9 A Approximately four or five.
 10 Q Basically, you can fit on this table the number of
 11 assistant attorney generals you met with on Monday, correct? It
 12 is an easy question, sir. Yes?
 13 A Not the entire table, no.
 14 Q Well, there are four people here and you said you met
 15 with four or five people, true?
 16 A Yes.
 17 Q And they showed you documents while you were meeting
 18 with them, correct?
 19 A Yes.
 20 Q And the purpose of that meeting was to prepare you for
 21 today, true?
 22 A What do you mean by "prepare"?
 23 Q Did they ask you about your family?
 24 A No.
 25 Q Did they want to know about your hobbies?

D. LARSON - CROSS(MR. ROBERT) Page 1717

1 MR. ROBERT: It is okay. I'm easy to forget, Your
 2 Honor.
 3 THE COURT: No, you are a not. We will take the
 4 usual 10-minute-break over the next 15 minutes.
 5 (Witness exits the stand.)
 6 (Whereupon, a recess was taken.)
 7 THE COURT OFFICER: All rise. Part 37 is back in
 8 session. Be seated and come to order.
 9 THE COURT: Just one word to counsel. As you know,
 10 we have one reporter at a time taking this all down. So
 11 please wait until the other person is finished before you
 12 start talking. No talking over each other. Okay. Witness.
 13 We're getting Mr. Larson back.
 14 THE COURT OFFICER: Witness entering.
 15 THE COURT: Okay. Let's start with the
 16 cross-examination by Mr. Robert.
 17 MR. ROBERT: Thank you, Your Honor.
 18 CROSS-EXAMINATION
 19 BY MR. ROBERT:
 20 Q Good morning, Mr. Larson.
 21 A Hi.
 22 Q I'm going to ask you questions and as Your Honor has
 23 said earlier, I'm going to ask you to answer them yes or no.
 24 And if you feel you can't, tell me and I will try to rephrase
 25 the question. Fair enough?

D. LARSON - CROSS(MR. ROBERT) Page 1719

1 A No.
 2 Q Did they want to talk about sports and current events?
 3 A No.
 4 Q Did they want to talk about the presidential election?
 5 A No.
 6 Q Although, I know that came up a little. Withdrawn.
 7 Sir, they met with you to prep you?
 8 MR. LADOV: Objection.
 9 MR. ROBERT: What's the objection?
 10 MR. LADOV: The question was --
 11 THE COURT: The objection is withdrawn, right?
 12 Q They met with you to prep you, to prepare you for
 13 testifying here today in court against President Trump and his
 14 company, correct?
 15 A What do you mean by "prepare"?
 16 Q They went over with you the questions and themes they
 17 were going to ask you today, correct?
 18 A Yes.
 19 Q And they spent considerable time with you going over
 20 that, right?
 21 A Yes, for a few hours.
 22 Q Your lawyers were with you in the meeting, correct?
 23 A Yes.
 24 Q And I think you have three lawyers here today. They
 25 were all with you, right?

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1 A They were not all there.

2 Q You at least had one lawyer there, correct?

3 A Yes.

4 Q And sir, prior to you meeting with them on Monday, when

5 was the last time you met with them?

6 A At deposition.

7 Q Between the deposition and the time you met with them

8 two days ago, isn't it true that your lawyers have had

9 conversations with members of the Attorney General staff; yes or

10 no?

11 A Yes, there's been some communication.

12 Q And sir, as part of the stuff that they showed you and

13 I'll use the word "stuff," they showed you those massive

14 spreadsheets that you testified about at length yesterday to Mr.

15 Ladov's questions, correct?

16 A Yes, I saw those spreadsheets.

17 Q And they showed you specifically where your name was

18 referenced every time Jeff McConney said in words or substance

19 he consulted and got information from you, correct?

20 A Yes, I saw some of that information.

21 Q The same type of information that Mr. Ladov questioned

22 you about yesterday, about where your name would be there and it

23 will be about a conversation that you had with Jeff McConney,

24 correct? Yes or no, sir?

25 A I don't recall all of the topics.

D. LARSON - CROSS(MR. ROBERT) Page 1721

1 Q I'm not asking you --

2 A Could you restate that, please.

3 Q Sorry, sir?

4 A Could you restate that, please.

5 Q As part of the meeting you had -- withdrawn.

6 As part of the prep session that you had with the

7 Attorney General's office on Monday, was part of what they

8 showed you the back-up spreadsheets to the Statement of

9 Financial Condition; yes or no?

10 A I believe so.

11 Q You believe so? Withdrawn.

12 Was the first time you saw them when Mr. Ladov put them

13 on the screen yesterday?

14 A No, I saw those at my deposition.

15 Q And you also saw them on Monday, true?

16 A I believe so.

17 Q You don't know definitively?

18 A There was a lot of information to look at, but most

19 likely.

20 Q They showed you a lot of information on Monday, right?

21 A Yes.

22 Q They showed you document after document after document,

23 correct?

24 A Yes.

25 Q But they didn't show you the two documents that my

D. LARSON - CROSS(MR. ROBERT) Page 1722

1 colleague spoke to you about this morning about the

2 conversations you had with Jeffrey McConney, did they?

3 A No, I haven't seen those.

4 Q All I want is a yes or no, sir. If I want more, I'll

5 ask you, or I'll ask His Honor to ask you to give me more. The

6 answer is they didn't show it to you, did they?

7 A No.

8 Q They spent time --

9 THE COURT: Wait. Wait. I advise all attorneys

10 not to ask questions in the negative. "They didn't do that,

11 did they?" No or yes could be interpreted either way.

12 it's -- I'm changing what I said before. It is somewhat

13 ambiguous.

14 MR. ROBERT: I will rephrase the question.

15 THE COURT: Ask questions in the positive, if

16 possible.

17 Q Sir, when you met with members of the Attorney

18 General's office on Monday, were you shown the documents that

19 Mr. Fields showed you this morning, specifically Plaintiff's

20 Exhibit 109 and 3184, which show the back and forth between you

21 and Jeff McConney?

22 A No.

23 Q Because the first time you saw them was today?

24 A Correct.

25 Q So with all of the preparation with the Attorney

D. LARSON - CROSS(MR. ROBERT) Page 1723

1 General's office, they never decided to show you these two

2 documents, did they?

3 A No, I did not see those documents.

4 Q So in all of their prep about your interaction with Mr.

5 McConney, they never attempted to refresh your recollection with

6 these documents, did they; yes or no?

7 A No.

8 Q They let you come here and testify yesterday and give

9 the illusion that you had no interaction with Mr. McConney with

10 regard to the cap rates, correct?

11 MR. LADOV: Objection.

12 THE COURT: Can we get a readback on that one?

13 (Whereupon, the requested portion of the record was

14 read back.)

15 THE COURT: That's cross-examination. I'll allow

16 it.

17 Q Answer the question, sir, please.

18 MR. ROBERT: Do you want it read back with Your

19 Honor's permission? We will read it back to the witness.

20 THE COURT: We will have it read back one more

21 time.

22 MR ROBERT: Thank you.

23 (Whereupon, the requested portion of the record was

24 read back.)

25 A What do you mean by "illusion"?

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D. LARSON - CROSS(MR. ROBERT) Page 1724

1 Q You sat here yesterday. You swore under oath as Mr.
 2 Fields showed you to that question and answer and we can go
 3 through the whole thing again, but I'm trying to save time. And
 4 you intimated in words or substance that you did not speak to
 5 Mr. McConney about cap rates. Do you remember that?
 6 MR. LADOV: Objection.
 7 THE COURT:
 8 A But I did --
 9 THE COURT: Is that withdrawn or not?
 10 MR. LADOV: I object because it misstates the
 11 testimony.
 12 MR. ROBERT: You can fix it however best you can.
 13 THE COURT: I can't hear you.
 14 MR. LADOV: There is no foundation for the
 15 question, Your Honor.
 16 MR. ROBERT: Your Honor, it is cross-examination.
 17 MR. LADOV: I understand that it is
 18 cross-examination, but that's my objection.
 19 MR. ROBERT: They don't like where this is going.
 20 I want to do it as quickly, which is what you said, try to
 21 be efficient as possible. I think he remembers what
 22 happened an hour ago. I certainly hope he does.
 23 THE COURT: Please read back the question.
 24 (Whereupon, the requested portion of the record was
 25 read back.)

D. LARSON - CROSS(MR. ROBERT) Page 1725

1 THE COURT: Objection overruled.
 2 A You want me to answer?
 3 Q Yes.
 4 THE COURT: Yes.
 5 Q I want you to answer truthfully.
 6 A Yes.
 7 Q Yes. When you testified yesterday for the Attorney
 8 General, the question was asked by Mr. Ladov when the name on
 9 one of the McConney spreadsheets said Robert Farwell. Do you
 10 remember that?
 11 A Yes.
 12 Q And there was a question that was asked of you what was
 13 your reaction when you saw that. Do you remember that?
 14 A Yes.
 15 Q Isn't it a fact that you gave Robert Farwell's name to
 16 Jeff McConney?
 17 A Most likely.
 18 Q So there was no surprise when you saw the name, right?
 19 A No, I know him.
 20 Q You know him because you gave the name to Mr. McConney,
 21 correct?
 22 A No. I know him I've worked with him for many years.
 23 MR. ROBERT: Can we recall Plaintiff's
 24 Exhibit 3184. If you could hand it to the witness, please.
 25 Q This is one of these two documents the Attorney General

D. LARSON - CROSS(MR. ROBERT) Page 1726

1 didn't show you on Monday. Let's go to page two, please.
 2 "Jeff" -- you see that, sir?
 3 A Yes.
 4 Q "Attached are the New York City sales. Please reach
 5 out to Robert Farwell for San Francisco cap rates." Do you see
 6 that?
 7 A Yes.
 8 Q You were specifically giving Mr. McConney the name of
 9 Mr. Farwell, so that Mr. McConney could obtain cap rates for the
 10 San Francisco property, true?
 11 A Yes.
 12 Q You know, this morning you were also questioned about
 13 differences between your 2012 appraisals and your 2015
 14 appraisal. Do you remember that, sir?
 15 A Yes.
 16 Q Okay.
 17 MR. ROBERT: And let's call up Plaintiff's
 18 Exhibit 3208 for a second, please. Let's turn to page 6 of
 19 215.
 20 Q I want to make sure I understood something correct.
 21 When Mr. Fields asked you if you backdated this document, your
 22 answer was what?
 23 A It would have been a typo.
 24 Q Let's answer my question. Was it backdated; yes or no?
 25 A That would have been very unlikely because --

D. LARSON - CROSS(MR. ROBERT) Page 1727

1 Q That's not my question, sir, please.
 2 MR. ROBERT: Your Honor, it is a yes-or-no
 3 question.
 4 Q Did you backdate it; yes or no?
 5 A No.
 6 Q So you didn't backdate it and your answer today is,
 7 "Well, I must have just made a mistake," correct; yes or no?
 8 A The --
 9 Q Yes or no, sir?
 10 THE COURT: If he can't answer it yes or no.
 11 A I cannot.
 12 Q Do you have a problem understanding what I'm saying,
 13 sir?
 14 A What I'm telling you --
 15 Q Yes or no?
 16 A No.
 17 Q So your position is that this was a typo, right, yes or
 18 no, under oath?
 19 A It most likely would have been a typo, yes.
 20 Q Was it also a typo that you changed the number by
 21 \$23 million in a 24-hour period?
 22 A No.
 23 Q That was intentional, right?
 24 A Yes. And to make it clear because --
 25 Q Sir, it was intentional, correct? They're going to get

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1 a chance to get up and ask you whatever questions they want.

2 Answer my question. It was intentional, true? You did it

3 deliberately, true? It wasn't a typo, true?

4 A Not that I can recall, no.

5 Q So it was intentional. I'm not ascribing ill motive

6 yet, but you went and changed it, correct?

7 A The date of --

8 Q Yes or no --

9 A Deliberately needs to coincide with the date --

10 Q Sir, that's not my question and we are off the dates

11 sir. I'm talking about the money. You changed it by

12 \$20 million, correct?

13 A Yes.

14 Q You did that after speaking to your client, correct?

15 A Yes.

16 Q So after your conversation with the client who retained

17 you to give an independent appraisal, you changed the amount of

18 the appraisal by ten percent, correct?

19 A By \$20 million, yes.

20 Q Which is ten percent.

21 A Correct.

22 Q And there's nothing wrong with that, is there?

23 A Not at all.

24 Q Because valuations can be subjective, true?

25 A Yes.

D. LARSON - CROSS(MR. ROBERT) Page 1729

1 Q In 2012 you had prepared two appraisals, the ones we're

2 talking about and at that time, you have had made a projection

3 as to what the income capitalization conclusion would be three

4 years later for 2015. Do you remember that, sir?

5 A Yes.

6 Q And back in 2012 on your two appraisals, on one of

7 them, you had a conclusion that it would be worth, and this is

8 40 Wall Street, \$240 million, correct?

9 A Could you show me again, so I --

10 Q Sure.

11 MR. ROBERT: If we could show the witness

12 Plaintiff's Exhibit 121, page 174, please.

13 Q While these are coming up, sir, 40 Wall is a beautiful

14 building, is it not?

15 A Yes.

16 Q At one point, it was the tallest building in New York,

17 wasn't it?

18 A I'm not sure.

19 Q Well, it was -- it went from there to the Chrysler

20 Building to the Empire State Building. You're not aware of the

21 progression of the tallest building in New York?

22 A I know of the tallest.

23 Q Can you agree with me that it is right next to the New

24 York Stock Exchange in lower Manhattan?

25 A It is.

D. LARSON - CROSS(MR. ROBERT) Page 1730

1 Q It is an iconic building, correct?

2 A How do you define "iconic"?

3 Q We're not talking about Maiden Lane. Wall Street is a

4 known street in the world; fair statement?

5 A Yes.

6 Q And a building on Wall Street is something the world

7 knows it is a building on Wall Street, correct?

8 A Yes.

9 Q Let's go back to the exhibit. Do you have it in front

10 of you now, sir? Is it up on the screen?

11 MR. ROBERT: No. We want the whole page, please.

12 THE COURT: Chris, I told you you'd learn about New

13 York.

14 MR. KISE: Very good.

15 MR. ROBERT: He's learning it from me, not the

16 witness, but that's okay.

17 Q You see that, sir, at the bottom?

18 MR. ROBERT: Keep going down, please.

19 Q 240 million, do you see that?

20 A Yes. That's --

21 Q Yes or no?

22 THE COURT: It is a yes or no.

23 A Yes.

24 Q And then in the subsequent appraisal after you changed

25 the \$20 million after talking to your client, the lender, that

D. LARSON - CROSS(MR. ROBERT) Page 1731

1 number increased to \$260 million, correct? And I can show it to

2 you.

3 A Please, do. Thank you.

4 Q Sure.

5 MR. ROBERT: If we can show the witness Plaintiff's

6 1435, page 173.

7 Q It is 260 million, correct?

8 A Yes, correct.

9 Q And then in 2015 when you did a valuation of 40 Wall,

10 you came up with a number of \$540 million, correct?

11 A Yes.

12 Q Now, I'm not good in math, so I'm not going to ask you

13 to take judicial notice of percentages, but can we agree that

14 that's more than a quarter of a billion dollars?

15 A Yes.

16 Q That's the amount the Attorney General is seeking from

17 my client, right?

18 A I don't know anything about the case.

19 Q Sir, you were off by a quarter of a billion dollars,

20 correct?

21 A No.

22 Q So which appraisal is wrong, this one or the one from

23 2015, or is it that appraisals are subjective?

24 A They're both correct and they're -- they're

25 subjective.

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D. LARSON - CROSS(MR. ROBERT) Page 1732

1 Q And they are subjective because you are allowed great
2 latitude in the conclusions you make as a professional, correct?
3 A Yes. Can I elaborate?
4 Q No. I'm sure they're going to have a lot of questions
5 on this.
6 But at the end of the day, let me ask you this
7 question. Did the market in lower Manhattan on Wall Street
8 increase by 100 percent between 2012 and 2015?
9 A I can't speak to Wall Street, but I can tell you there
10 are --
11 Q Do you -- sir, is there any market in New York
12 City --
13 MR. ROBERT: Sorry, Your Honor. Okay. I tried to
14 get a yes or no. I will withdraw the question. I'll ask it
15 a different way.
16 THE COURT: Okay.
17 Q Are you aware of any market in New York City
18 commercially that increased 100 percent in value from 2012 to
19 2015; yes or no?
20 A Yes.
21 Q And is this one of those?
22 A I don't know.
23 Q Nonetheless, we are a quarter of a billion dollars off,
24 correct?
25 A Yes.

D. LARSON - CROSS(MR. ROBERT) Page 1733

1 Q Sir, even in 2015, your number was \$540 million,
2 correct? I can show it to you if you want.
3 A Yes. I remember.
4 Q Okay. And you also remember Mr. Fields showing you
5 that the taxable value by the New York City Tax Assessor was 65
6 million. Do you remember that?
7 A I don't remember the exact number.
8 Q Okay. So let's help refresh your recollection.
9 MR. ROBERT: If we could pull up Plaintiff's
10 Exhibit 118, number 63 of 213. If I could walk over to show
11 them the page.
12 THE COURT: Yes.
13 Q I'm actually going to show it to you as Plaintiff's
14 Exhibit 1177. It is the same document. Is that the page you're
15 looking at, sir?
16 A This must be a different document.
17 Q I'll ask you to look at the one on the screen, sir. Do
18 you see that the assessed taxable value is \$65 million?
19 A Yes.
20 Q And you testified yesterday that the tax assessed value
21 and the appraised value are two different things, correct?
22 A Yes.
23 Q And the fact that your number is eight times greater
24 than that doesn't mean that you attempted to mislead anyone,
25 correct?

D. LARSON - CROSS(MR. ROBERT) Page 1734

1 A That is correct.
2 Q And the fact that your number is eight times greater
3 than the assessed value is no evidence of fraud by you, correct?
4 THE COURT: Calls for a legal conclusion, I
5 believe.
6 A Could you repeat that?
7 MR. ROBERT: I withdraw the question.
8 Q Even though you increased the value by a quarter of a
9 billion dollars, sir, from 2012 to 2015, your appraisal doesn't
10 take into account the fact that the higher floors in that
11 building could be converted to condos, does it; yes or no?
12 A No, it does not.
13 Q And, sir, you know that there is a market in New York
14 City for developers to convert office buildings into condominium
15 use, correct?
16 A Correct.
17 Q And you know especially in 2015 and 2016, that was a
18 pretty hot thing to do, correct?
19 A Yes.
20 Q You know, and I'll state the obvious, but my clients
21 are developers, correct?
22 A Yes.
23 Q And that's the kind of thing developers do?
24 A Yes.
25 Q They look prospectively as to what they could do with a

D. LARSON - CROSS(MR. ROBERT) Page 1735

1 property, correct?
2 A Yes.
3 Q And that's different from a lender, correct?
4 A It could be.
5 Q Well, sir, you testified yesterday that most of your
6 business comes from working for lenders, correct?
7 A Yes.
8 Q And to be clear, you're not a builder, correct?
9 A No.
10 Q You're not a developer?
11 A No.
12 Q You're not an accountant either, right?
13 A No.
14 Q You're an appraiser?
15 A Correct.
16 Q As an appraiser, most of your business comes in from
17 working for banks, correct?
18 A Yes.
19 Q Would you agree with me, sir, that banks tend to be
20 very conservative in their values; yes or no, sir?
21 A Not always.
22 Q Well, sir, when a bank is appraising a property, the
23 bank is appraising the property to make sure that in an
24 emergency, they can get out, right?
25 A Yes.

Page 1736

1 Q They don't have the same view that my clients do when
 2 they're looking at a property of what can I turn this into in
 3 five or ten or fifteen years, right?
 4 A Yes.
 5 Q What's my exit strategy tomorrow if there is a default
 6 and I have to get out, right?
 7 A Yes.
 8 (Continued on the next page.)
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D. Larson - Plaintiff - cross (Robert) Page 1737

1 Q You testified yesterday that an appraisal is more art
 2 than science. Do you remember that?
 3 A Yes.
 4 Q So would you agree with me, sir, that the truest best
 5 indication of value is what someone will pay for something;
 6 right?
 7 A Yes, that's a definition of market value.
 8 Q The actual closing of a transaction shows what someone
 9 was willing to pay; correct?
 10 A Yes.
 11 Q And I forgot, you've been doing this for more than,
 12 what was it, 20 or 30 years? I don't remember.
 13 A 30.
 14 Q And in your 30 years, sir, you have certainly seen
 15 instances where properties sold for much higher than what you
 16 had appraised them for; correct?
 17 A Yes.
 18 Q Sir, were you aware -- withdrawn.
 19 Did the Attorney General share with you in the prep
 20 session that there was an appraisal done in 2020 for the Trump
 21 Old Post Office for \$222 million for the bank and less than two
 22 years later the Trump Organization sold that property for
 23 \$389 million. Were you aware of that? Yes or no?
 24 MR. WALLACE: Objection. Relevance.
 25 MR. ROBERT: Relevance? I want to see if he was

D. Larson - Plaintiff - cross (Robert) Page 1738

1 aware of it. I don't know what you guys talked about in
 2 your meetings.
 3 THE COURT: Overruled.
 4 A Could you repeat the question?
 5 MR. ROBERT: Could I have it read back, Your Honor?
 6 THE COURT: Read back, please.
 7 MR. ROBERT: Thank you.
 8 (Whereupon, the requested portion of the
 9 proceedings was read back by the court reporter.)
 10 A No.
 11 Q But it doesn't surprise you that an asset was sold for
 12 higher than an appraised value; correct?
 13 A Does not surprise me.
 14 Q Because certain assets can be valued in different ways;
 15 correct?
 16 A Could you be more specific?
 17 Q Well, when you're evaluating a particular asset there
 18 are many factors you need to look at, particularly in real
 19 estate; correct?
 20 A Yes.
 21 Q So yesterday, when Mr. Ladov was questioning you, you
 22 were asked questions about Niketown. Do you remember that?
 23 A Yes.
 24 Q Did you know that Niketown is situated on one side by
 25 Tiffany & Co? Did you know that?

D. Larson - Plaintiff - cross (Robert) Page 1739

1 A I did.
 2 Q And on the other side it's IBM. Did you know that?
 3 A Yes.
 4 Q So would you agree with me that both of those stores
 5 are landlocked and Niketown is what is in between them?
 6 A Yes.
 7 Q And sir, when a business is landlocked it and wants to
 8 expand isn't it true in many instances even if the value is high
 9 they will overpay by exponential numbers to be able to acquire
 10 the land?
 11 A It all depends.
 12 Q Well, sir, there is only one 57th Street and Fifth
 13 Avenue in the world; true?
 14 A Yes.
 15 Q That's truly the Tiffany location, no pun intended,
 16 because Trump Tower is there and Tiffany & Co is there; right?
 17 A Yes.
 18 Q And the mere fact that you have a marquee location adds
 19 value, doesn't it?
 20 A Typically, yes.
 21 Q The mere signage on Trump Tower that says "Trump Tower"
 22 has value on it, doesn't it?
 23 A Could you repeat that?
 24 Q The mere presence of the name Trump Tower in those big
 25 letters in front of the building has a value, doesn't it?

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1 A Naming rights have value.
 2 Q They do.
 3 And sir, there -- when you have a unique property such
 4 as Niketown at 57th and Fifth, there is no cookie cutter
 5 valuation method, is there; yes or no?
 6 A Please repeat.
 7 Q When you have a marquee --
 8 THE COURT: Wait. Ask it in the positive, though.
 9 You keep asking negative questions.
 10 Q Would you agree with me, sir, that a unique, unicorn
 11 trophy property, whatever you want to name it, there are unique
 12 characteristics to the property, valuation is subjective; true?
 13 A Correct.
 14 Q You were asked questions about the statements of
 15 financial condition and my colleague, Mr. Fields, held -- showed
 16 one to you earlier today and Mr. Ladov showed one to you
 17 yesterday. Do you remember that?
 18 A Yes.
 19 Q And you had said that you had remember having seen it;
 20 correct?
 21 A The best of my recollection.
 22 Q Was that one of the documents that the Attorney
 23 General's Office showed you on Monday?
 24 A Yes.
 25 MR. ROBERT: Can we call up Plaintiff's

D. Larson - Plaintiff - cross (Robert) Page 1741

1 Exhibit 729, please? And go to page four? I'm sorry, page
 2 six of 26. I'm looking at the -- and let's go to the second
 3 paragraph.
 4 Q And this morning Mr. Fields was drawing your attention
 5 to the third line -- let's start from the beginning. You see
 6 where it says, "Such valuation methods include?" The beginning,
 7 sir?
 8 A Yes.
 9 Q And then we go down three lines and it says "and in
 10 some instances outside professionals?"
 11 A Yes.
 12 Q But if you could read the last sentence into the
 13 record, sir.
 14 MR. WALLACE: Objection. These aren't his words.
 15 Counsel should be reading it into the record.
 16 THE COURT: I'm not sure my colleagues would agree
 17 with me, but I don't think you have an absolute right to
 18 make him read something. You can read it if you want.
 19 MR. ROBERT: I'm happy to read it.
 20 Q Are you able to read the words, sir?
 21 A Yes.
 22 Q Would you please read them with Your Honor's
 23 permission?
 24 THE COURT: If he wants to read them, he can read
 25 them.

D. Larson - Plaintiff - cross (Robert) Page 1742

1 Q Aloud, sir.
 2 A "The use of different market assumptions and/or
 3 estimation methodologies may have a material impact" --
 4 THE COURT: That doesn't say "impact."
 5 A "Effect on the estimated current value amounts."
 6 MR. ROBERT: May I should have read it. I should
 7 have listened to Your Honor's admonition before.
 8 Q So sir, what it says is the use of different --
 9 withdrawn.
 10 This is something that is contained in President
 11 Trump's Statement of Financial Condition; correct?
 12 A Yes.
 13 Q And the language says "the use of different market
 14 assumptions and/or estimation methodologies may have a material
 15 effect on the estimated current value amounts." Do you see
 16 that?
 17 A Yes.
 18 Q You agree with that, sir, don't you? Yes or no?
 19 A I agree on what it says.
 20 Q And you agree that the use of different market
 21 assumptions or estimation methodologies may have a material
 22 effect on estimated current values, don't you? Yes or no?
 23 A Can you clarify the question? Are you asking --
 24 Q Sir, earlier you testified that you didn't make a
 25 mistake in theory in your 2012 appraisals; correct? Even though

D. Larson - Plaintiff - cross (Robert) Page 1743

1 we are now seeing that you are off by a quarter of a billion
 2 dollars; correct?
 3 A No, I did not make a mistake.
 4 Q You stand by it even though you're off by a quarter of
 5 a billion dollars? That's your testimony?
 6 A I would need to elaborate to answer.
 7 Q I'm sure Mr. Ladov is going to have plenty of questions
 8 for you, sir, but what I'm asking you there is a delta of a
 9 quarter of a billion dollars?
 10 A There was a delta of that.
 11 Q And through your testimony you have said that different
 12 market assumptions can make differences in valuations; correct?
 13 A Yes.
 14 Q Just like a different cap rate can affect the value of
 15 property; correct?
 16 A Yes.
 17 Q Mr. Fields this morning took you through an analysis of
 18 how I think it was like a hundred million dollar difference
 19 because based on what the cap rate would be based on the net
 20 operating income. Do you remember that?
 21 A Yes.
 22 Q So, sir, at the end of the day, different market
 23 assumptions and/or estimation methodologies can materially
 24 affect a value; correct?
 25 A Yes.

D. Larson - Plaintiff - redirect (Ladov) Page 1744

1 MR. ROBERT: Just a moment, Your Honor.
 2 THE COURT: Sure.
 3 MR. ROBERT: I have no further questions at this
 4 time.
 5 THE COURT: Will there be any redirect?
 6 MR. LADOV: Yes, Your Honor.
 7 THE COURT: Please proceed with the redirect.
 8 MR. LADOV: Thank you, Your Honor.
 9 REDIRECT EXAMINATION
 10 BY MR. LADOV:
 11 Q So Mr. Larson, during cross examination the defendant
 12 shows you a couple of documents and suggested that you had not
 13 seen them in time in conversations with the Attorney General's
 14 Office before, so I just want -- I'm not asking whether you
 15 recall that or not. I just want to show you a couple of those
 16 documents and discuss it with your prior testimony.
 17 MR. LADOV: So I'd like to bring up Plaintiff's
 18 Exhibit 109.
 19 MR. ROBERT: That mischaracterizes the testimony,
 20 Your Honor. He wasn't shown that on Monday. If he would
 21 have seen it years ago I don't think the witness -- the
 22 whole point is when he met with them on Monday to prep him,
 23 they hid these documents from him. The fact that he may
 24 have seen them --
 25 THE COURT: So you think there is a -- the question

D. Larson - Plaintiff - redirect (Ladov) Page 1745

1 was improper because it assumes something not correct?
 2 MR. ROBERT: It assumes something that was not
 3 clear, that was not part of the cross examination and
 4 redirect. It assumes something that was not part of the
 5 cross examination because redirect is limited to the cross.
 6 The point was that the Attorney General did not share the
 7 document with him on Monday when they prepped him.
 8 THE COURT: Did Mr. Robert convince you that there
 9 is an improper assumption there that you're
 10 mischaracterizing the testimony? That's a yes or no.
 11 MR. LADOV: No, but I'm happy to ask a different
 12 question.
 13 THE COURT: Okay. It could be -- I assume it's
 14 going to be related?
 15 Q Mr. Larson, may I show you a document?
 16 A Yes.
 17 Q Okay. So I'd like to show you Plaintiff's Exhibit 109
 18 and as you can see in the middle of the screen there, there is
 19 an e-mail from Jeff McConney to yourself dated September 16,
 20 2014. And it says, "Doug, I hate to be a pest, but the
 21 accountants are coming in tomorrow to go over my valuations.
 22 Any chance you can answer my question below? Sorry for the last
 23 minute question." Do you see that?
 24 A Yes.
 25 Q So I'd like to do --

D. Larson - Plaintiff - redirect (Ladov) Page 1746

1 MR. LADOV: Can you do side by side with page 57?
 2 Q So I'd like to show you some of your prior testimony
 3 from the investigative hearing that you referenced earlier.
 4 This was essentially a deposition taken in -- on October 29,
 5 2019?
 6 MR. ROBERT: Objection.
 7 THE COURT: What's the ground of the objection?
 8 MR. ROBERT: Improper bolstering of the witness's
 9 testimony. He already testified he didn't remember it, he
 10 didn't know it and he wasn't shown it on Monday. So what's
 11 the point of showing something from three years ago to try
 12 to bolster his credibility? Improper.
 13 MR. WALLACE: Considering the defendants have
 14 accused him of perjury I think showing him his testimony is
 15 consistent with his prior statements is entirely
 16 appropriate.
 17 MR. KISE: The time to have done that was when they
 18 had him on direct. That would have been the time to make
 19 the record clear.
 20 THE COURT: I tend to be very liberal in what I
 21 allow in terms of cross, redirect, but if you attack his
 22 credibility they're allowed to rehabilitate him.
 23 MR. KISE: But not with the attempts that they had
 24 in their possession on Monday. They can't now bolster his
 25 testimony and attempt to create a scenario that didn't

D. Larson - Plaintiff - redirect (Ladov) Page 1747

1 exist. We ask --
 2 MR. LADOV: Your Honor, I don't know how to argue
 3 this because it's simply wrong. They accused him of
 4 perjury. We want to show that his testimony has been
 5 consistent. I honestly can't figure out what the legal
 6 objection is here.
 7 MR. KISE: To be clear, Your Honor, I never accused
 8 the witness of perjury. What I said is that the government
 9 didn't have any regard for this witness's rights and that's
 10 why I wanted to make sure they were covered. I did not
 11 accuse the witness of anything. In fact, I think the
 12 witness is frankly in the middle here.
 13 THE COURT: I think what you said was they're
 14 trying to get him to commit perjury which is different from
 15 saying that he perjured himself. I agree. I think this is
 16 totally fair game. You can ask the question. Objection
 17 overruled. Your question in the testimony, he's allowed do
 18 this. I'll give you a recross later.
 19 Go ahead.
 20 MR. LADOV: Thank you, Your Honor.
 21 Q So if I can direct you to line 17 of page 57, the
 22 question is, "Do you see that Mr. McConney writes I hate to be a
 23 pest, but the accountants are coming in tomorrow to go over my
 24 valuations."
 25 And I just want to show you is it correct that the

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1 highlighted language on the left hand side from your prior
 2 testimony and the highlighted language on the right hand side
 3 from the e-mail that you looked at earlier are the same?
 4 A Yes.
 5 Q So this is -- so during that testimony you were being
 6 asked about this same e-mail; correct?
 7 A Yes.
 8 Q Okay. So I just want to read the rest of your
 9 testimony there.
 10 MR. ROBERT: Objection, Your Honor.
 11 THE COURT: Ground?
 12 MR. ROBERT: The EUO is inadmissible and can only
 13 be used for impeachment purposes, not for bolstering
 14 purposes.
 15 THE COURT: But it's rehabilitation. Overruled.
 16 Q So the next testimony says, "do you remember reading
 17 that?"
 18 "ANSWER: I remember reading it now. I don't
 19 remember back then. I don't remember this e-mail."
 20 And it says:
 21 "QUESTION: Were you aware of McConney preparing
 22 valuations that his accountants would then review?
 23 "ANSWER: I wouldn't know that.
 24 "QUESTION: You don't know anything about
 25 valuations that Mr. McConney" --

D. Larson - Plaintiff - redirect (Ladov) Page 1749

1 MR. KISE: Your Honor, objection. He's just simply
 2 testifying at this point. He's just reading something into
 3 the record something that's clearly hearsay and
 4 inadmissible. That's not refreshing the witness's
 5 recollection. Refreshing the witness's recollection is
 6 showing it to him and saying do you recall this. This is
 7 not rehabilitation. He's simply reading in something from
 8 years ago that's clearly hearsay. He's just reading hearsay
 9 into the record. There is no question here at all. He's
 10 just reading questions and answers. This is extraordinarily
 11 improper. Extraordinarily improper.
 12 THE COURT: Could you finish reading?
 13 MR. LADOV: I have not finished reading.
 14 THE COURT: Were you going to ask a question at the
 15 end of the reading?
 16 MR. LADOV: I was going to ask a question.
 17 THE COURT: Overruled.
 18 MR. KISE: But the question is going to be do you
 19 remember this from three years ago now that I've read it
 20 into the record. That's improper. That's not refreshing
 21 recollection.
 22 THE COURT: It's fair game. It's rehabilitation.
 23 Overruled.
 24 MR. LADOV: I guess I would like to start again
 25 without interruption, please.

D. Larson - Plaintiff - redirect (Ladov) Page 1750

1 THE COURT: Yes.
 2 Q So page 57 at the bottom, line 25?
 3 THE COURT: Give me one more second.
 4 MR. LADOV: Yes, sorry.
 5 THE COURT: I'm sorry for the continuing
 6 interruption. Read whatever you want but as long as there
 7 is a question.
 8 MR. LADOV: There will be a question.
 9 Q So on line 25 of page 57:
 10 "QUESTION: Were you aware of McConney preparing
 11 valuations that his accountants would then review?
 12 "ANSWER: I wouldn't know that.
 13 "QUESTION: You don't know anything about
 14 valuations that Mr. McConney prepared?
 15 "ANSWER: No. That would be beyond me. I wouldn't
 16 know anything about that.
 17 "QUESTION: You never advised Mr. McConney on how
 18 to make certain valuations of his properties?
 19 "ANSWER: We get calls from a lot of clients asking
 20 about cap rates, market information, in this case a ground
 21 lease, you know, what the impact of the cap rate would be.
 22 So this is very common. What the client does with that
 23 information is up to them."
 24 So my question, Mr. Larson, is was the testimony
 25 that you gave in -- sworn testimony in 2019 consistent with

D. Larson - Plaintiff - redirect (Ladov) Page 1751

1 the testimony that you gave today under oath?
 2 THE COURT: Well, I think the record will have to
 3 speak for itself whether it's consistent.
 4 MR. KISE: Again, he's just reading that into the
 5 record in an attempt -- now who is reading things for the
 6 press, right? He's just reading that into the record so
 7 that he can attempt to bolster this witness's testimony.
 8 His testimony was here in court. That's why we're here in
 9 court. We don't read hearsay into the record on a regular
 10 basis. This is extraordinarily improper and that question
 11 at the end was a completely bogus question "oh, is that
 12 right? Is that what you said three years ago?" That's
 13 completely improper.
 14 MR. LADOV: Your Honor, New York Evidence Rule 8.31
 15 says that "prior consistent statements are admissible when
 16 offered to rebut an express or implied claim of recent
 17 fabrication." I would say "express" even though I know
 18 Mr. Kise disagrees and says "implied." I think it clearly
 19 applies here.
 20 THE COURT: The objection is still overruled or
 21 overruled again.
 22 MR. LADOV: Can I get a read back on the question,
 23 Your Honor?
 24 THE COURT: Not the whole --
 25 MR. LADOV: Just the --

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D. Larson - Plaintiff - redirect (Ladov) Page 1752

1 THE COURT: Just the question part?
 2 MR. LADOV: I can just ask it.
 3 Q Mr. Larson, was that your testimony?
 4 A Yes.
 5 MR. LADOV: Let's move forward.
 6 Q I would like to turn right now to Plaintiff's
 7 Exhibit 115. And, again, if you look in the middle of this
 8 page, this was a document that you were asked to review today.
 9 This is an e-mail from Jeff McConney to yourself from 2017 and
 10 in the middle it says, quote, "Our building, 1290, was recently
 11 completely modernized. For a comp I'd like to use the cap rate
 12 for 1221, but since we are fully modernized can I reduce their
 13 cap rate of 2.90 percent."
 14 Now, I want to look at your prior testimony at
 15 page 139. And if we turn to line ten, it says:
 16 "QUESTION: So Mr. McConney says to you," quote,
 17 "our building, 1290, was recently completely modernized.
 18 For a comp I'd like to use as a cap rate for 1221, but since
 19 we are fully modernized can I reduce their cap rate of," end
 20 quote, "2.90 percent?" Is this the same language in both
 21 documents?
 22 MR. KISE: Same objection, Your Honor. Just
 23 reading hearsay into the record. They could have done this
 24 on Monday with him on his prep session. If they wanted the
 25 truth in the record, they certainly could have put it in

D. Larson - Plaintiff - redirect (Ladov) Page 1754

1 "QUESTION: Would you have provided an answer to
 2 his question on that phone call?
 3 "ANSWER: I don't think you can just look at the
 4 building and apply a 2.9 cap rate. A typical response would
 5 be -- a typical discussion with a client would be to talk
 6 about ranges of cap rates, the market, the building, etc.,
 7 what other trades have been in the market or sales have been
 8 in the market, what cap rates do those apply. So that would
 9 be a typical conversation I would have with a client. I
 10 don't remember this call."
 11 So Mr. Larson, was this your testimony from four
 12 years ago?
 13 MR. KISE: Again, Your Honor, this is beyond
 14 absurd. I mean, he just read an entire page of the
 15 transcript. All this demonstrates is that they knew
 16 yesterday this man's testimony was false. That's all that
 17 demonstrates. They had this in their possession and they're
 18 reading hearsay into the record. They're trying to
 19 improperly bolster his testimony. It's inappropriate. It's
 20 just -- it's hearsay. There is no exception to the hearsay
 21 rule and this is not rehabilitation. The prior consistent
 22 statements are limited to the witness's statements, not
 23 their leading questions, not all of their leading questions
 24 that are built in there. They're reading their own leading
 25 questions which is inappropriate on direct or redirect into

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1 there. This is improper hearsay.
 2 THE COURT: I have a different issue with this. So
 3 ask him to read B and then say is that the same as A, either
 4 if is or it isn't.
 5 MR. LADOV: Sorry, Your Honor.
 6 THE COURT: So I'll sustain my own objection.
 7 Q I will represent to you, however, that his testimony --
 8 the question shows it was a question based on the document that
 9 you were shown earlier today. So I'd like to move forward and
 10 read back to you -- read back to you your answer there --
 11 actually, the rest of the question is "do you remember this
 12 document?"
 13 "ANSWER: I saw this the other day when I came in.
 14 "QUESTION: -- you replied, quote, "please call me
 15 when you have a chance to discuss. Do you remember a phone
 16 call after this e-mail exchange?
 17 "ANSWER: No, I don't remember the phone call.
 18 "QUESTION: McConney is asking here if he can
 19 reduce a cap rate of 2.9 percent in valuing a property; is
 20 that right?
 21 "ANSWER: That's what it says, yes.
 22 "QUESTION: He asks that question to you.
 23 "ANSWER: He asked the question, yes.
 24 "QUESTION: And you say please call?
 25 "ANSWER: Yes.

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1 the record and then parroting his answers back and asking
 2 him "is this correct, is this what's in front of you." This
 3 is highly improper. There is no basis or foundation at all.
 4 MR. WALLACE: I believe Mr. Kise's objections is he
 5 does not like his testimony.
 6 MR. KISE: No. The objection is this is hearsay
 7 and we stick to the rules, at least we do on this side of
 8 the table.
 9 MR. WALLACE: I'll try to keep it to a minimum,
 10 Your Honor. It's a prior consistent statement. If he wants
 11 to go back and brief this issue, it's a bench trial. He is
 12 free to. I see him --
 13 THE COURT: Let Mr. Wallace finish.
 14 MR. WALLACE: He's offering a prior consistent
 15 statement. He just said that the witness testified falsely.
 16 In clarifying his statements have been consistent over years
 17 is perfectly reasonable to rehabilitate testimony, and as an
 18 exception to the hearsay. And I will leave it there.
 19 MR. KISE: Your Honor, the witness's statements
 20 might under other circumstances qualify as prior consistent
 21 statements. Here, 90 percent of what they're reading are
 22 their own leading questions which would never be allowed in
 23 this courtroom. I mean, all of it is a question and then at
 24 the end if they want to read just his answers back -- a
 25 prior consistent statement is, you know, I said four years

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1 ago the light was green and today I made a mistake and now I
 2 want to rehabilitate him saying four years ago the light was
 3 green. That's simple. It's not, like, pages and pages of
 4 their question-and-answer series. They're bringing in
 5 hearsay. They're bringing in a hearsay transcript which
 6 Your Honor ruled was not admissible. Other than for
 7 impeachment, I gather they're not impeaching their own
 8 witness, and at this point, at this point if they want to
 9 rehabilitate him with his own statements, that's one thing.
 10 But here they're just reading their questions into the
 11 record and they're creating it -- and the only question at
 12 the end is "is that right."
 13 MR. LADOV: Can I brief --
 14 THE COURT: Don't we need to hear the questions so
 15 that we know the context of the answers?
 16 MR. KISE: We did. We're still on that one
 17 question where he read a page or so of transcript and then
 18 said "isn't this what you said a few years ago." I mean,
 19 that's preposterous.
 20 THE COURT: I don't think it's preposterous.
 21 Objection overruled.
 22 MR. KISE: Prior consistent statements are one at a
 23 time "did you say this on this date, did you say this on
 24 this date" but not all of this question-and-answer series.
 25 THE COURT: Everybody just give me a moment.

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1 (Whereupon, there is a pause in the proceedings.)
 2 THE COURT: I'm looking at 8.31, Prior Consistent
 3 Statement in Fact. I'll read it, if Mr. Kise won't object.
 4 MR. KISE: No.
 5 THE COURT: "A statement of a witness made before
 6 the witness's testimony at a time when there was no motive
 7 to fabricate" how do we decide that "and which is consistent
 8 with that testimony is admissible to aid in establishing the
 9 witness's credibility when a party creates the inference of
 10 or directly characterizes the testimony of a witness as a
 11 recent fabrication. That's set forth," blah, blah, blah.
 12 Objection overruled. You can ask what you want. Read what
 13 you want, ask what you want, but I'll be following
 14 carefully.
 15 MR. KISE: Again, I just want to be on the record,
 16 Your Honor, his statements are what are referenced in the
 17 questions. So it's just a continuing objection?
 18 MR. LADOV: Can you please admonish Mr. Kise to
 19 stop speechifying for the press or whatever it is he's
 20 doing?
 21 MR. KISE: No, I'm not. I'm just trying to stop
 22 them from muddling the record. It's pretty simple and they
 23 don't like it and it's obvious they're accusing me of all
 24 sorts of bad things.
 25 THE COURT: I'm not accusing of you anything. I'm

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1 just overruling your objections.
 2 MS. FAHERTY: Sorry.
 3 THE COURT: Again, maybe other judges will do this.
 4 I tend to be somewhat liberal. We can go back and forth and
 5 back and forth and I'll do the best can I can.
 6 Okay, go ahead.
 7 MR. LADOV: Thank you, Your Honor.
 8 Q I believe, Mr. Larson, the question was was this your
 9 prior testimony?
 10 A Yes. This is what I could remember four years ago --
 11 Q Okay. I -- I'm sorry.
 12 A -- at that time, yes.
 13 Q I think the only other question I had you had been
 14 asked questions about 40 Wall Street earlier.
 15 Do you know one way or the other whether Mr. Trump
 16 currently retains the legal right to convert 40 Wall Street into
 17 condos?
 18 A I don't know.
 19 MR. LADOV: No further questions, Your Honor.
 20 THE COURT: Any recross?
 21 MS. HABBA: One second.
 22 (Whereupon, there is a pause in the proceedings.)
 23 Hash.
 24 MS. HABBA: Your Honor, we'll be brief.
 25 THE COURT: Okay.

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1 MR. ROBERT: May I proceed, Your Honor?
 2 THE COURT: Please proceed with the recross.
 3 Q Just to be clear, after that whole back and forth we
 4 had here the fact still remains during your prep session on
 5 Monday, the Attorney General did not show you these two
 6 documents; correct? Yes or no?
 7 A No, I don't recall.
 8 Q And they didn't discuss them with you either because if
 9 you had you would have committed perjury yesterday; right --
 10 withdrawn.
 11 MR. LADOV: Objection.
 12 THE COURT: Next witness? I assume there is no
 13 re-redirect?
 14 MR. LADOV: We are done, Your Honor. Thank you.
 15 THE COURT: We have about 20 minutes left. Let's
 16 get the next witness.
 17 Transcript continues on the following page....

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1 MS. FAHERTY: Good afternoon, Your Honor. Colleen
 2 Faherty here for the People. We call Jack Weisselberg to
 3 the stand, please.
 4 THE COURT: Let's get him ASAP.
 5 MS. FAHERTY: Thank you.
 6 THE COURT OFFICER: Witness entering.
 7 JACK WEISSELBERG, a witness called by the
 8 Plaintiff, after having been first duly sworn by the Clerk of
 9 the Court, took the witness stand and testified as follows:
 10 THE COURT OFFICER: Please state your full name and
 11 either home or business address on the record.
 12 THE WITNESS: Jack Weisselberg. 9079 Dye Cabins,
 13 Drive, Park City, Utah.
 14 THE COURT: I'm going to ask the witness, like I
 15 ask everybody else, to speak directly into the microphone as
 16 close as you can.
 17 Let's proceed with the direct examination.
 18 MS. FAHERTY: Thank you, your Honor.
 19 DIRECT EXAMINATION
 20 BY MS. FAHERTY:
 21 Q Good afternoon, Mr. Weisselberg. I'm going to ask you
 22 a few introductory questions first, okay.
 23 So can you, please, just describe your educational
 24 background for me?
 25 A Sure. I went to Penn State University; graduated in

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1 2000.
 2 Q And which campus did you graduate from, sir?
 3 A University Park.
 4 Q Did you have any concentrations or majors from
 5 Pennsylvania State University?
 6 A Yes, in real estate.
 7 Q Any other concentration or particular focuses of study?
 8 A Focused on finance.
 9 Q Anything else?
 10 A No.
 11 Q Do you have any postgraduate degrees beyond college?
 12 A No.
 13 Q Do you hold any professional certifications or
 14 licenses?
 15 A No.
 16 Q After 2000, once you graduated from Penn State
 17 University, can you, please, generally describe for me your work
 18 experience?
 19 A I began working at UBS Investment Bank in 2000, May of
 20 2000. Then in 2005, we left UBS, stayed within UBS, but started
 21 a hedge fund called Dillon Read Capital Management which was a
 22 subsidiary of UBS. In 2007 when the subprime crisis happened,
 23 we went back to UBS and I was there for a year until 2008 and
 24 then I began working at Ladder Capital in 2008 and I've been
 25 there since.

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1 Q So starting with the time when you were at the first
 2 position at Dillon Read, what title did you hold there?
 3 A Well, my first position was at UBS and I was an
 4 associate director.
 5 Q Did you hold any other titles when you were at UBS?
 6 A I don't recall if I became director at UBS or it was at
 7 Dillon Read, but it was around that time.
 8 Q Okay. At any point, were you identified as an analyst
 9 in your job positions?
 10 A Yes. When I was an associate, I was an analyst.
 11 That's where I began.
 12 Q And what are your responsibilities as an analyst?
 13 A Well, I was an analyst within with the origination
 14 group, so I supported four originators that were bringing loans
 15 into UBS.
 16 Q Can you describe for me what that means?
 17 A So when packages would come in, I would enter the data
 18 into an underwriting model, look at pictures, go through
 19 property, market information, and you know, figure out if a deal
 20 would -- could make sense for us to do.
 21 Q When you say "packages would come in," what does that
 22 reference to the word "packages"?
 23 A So when somebody wants a new loan, they'll send us an
 24 offering memorandum which is just a book that contains all the
 25 information necessary to find out if they can get a loan which

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1 will include pictures, it will include rent rolls, operating
 2 statements, some market information, and sometimes some
 3 sponsoring information as well.
 4 Q So you're gathering information to size up loans; is
 5 that a fair characterization?
 6 A Yes.
 7 Q Okay. And you and I both use the same word "size" or
 8 "sizing." Can you explain for me what that means, please?
 9 A Sure. It is an underwriting Excel spreadsheet and it
 10 is we're analyzing the cash flow of the property for the
 11 property and analyzing the numbers to see if they make sense.
 12 Q Okay. And we've also used the term "origination" or
 13 "originators." Can you describe for me what an originator is?
 14 A Sure. A loan originator is someone who is out looking
 15 for deals and trying to bring in new loans for the company to
 16 do.
 17 Q Okay. And the general responsibilities of a loan
 18 originator, I heard you just say bring in new deals, but can you
 19 drill down a little bit more on what those responsibilities are?
 20 A Yes. It's finding new business and then the client
 21 relationship is really through the originator. And then when a
 22 loan is actually signed up, they're managing the process and
 23 making sure everything is going smoothly.
 24 Q Almost like on the sales end of the business?
 25 A Yeah, you could say that.

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1 Q Okay. At any point in your career, did you hold the
2 title of an originator?
3 A Yes.
4 Q When did that occur?
5 A I was a junior originator at UBS when I was an analyst
6 and I was able to bring in my own deals. Took a few years for
7 that to occur, but probably 2004/2005 I started to bring in my
8 own deals.
9 Q And for how long did you serve as a junior originator?
10 I know you said it started in 2004 at UBS.
11 A My entire time at UBS including Dillon Read.
12 Q When did you leave UBS?
13 A May of 2008.
14 Q You maintained the same job title that whole time
15 between 2004 and May 2008, right?
16 A I'm not exactly sure when I was promoted to director,
17 but somewhere around there. Until 2008, yes.
18 Q Still the same originator responsibilities, though?
19 A Originator, yes.
20 Q Okay, great. In 2008, remind me where did you go after
21 that?
22 A In October of 2008, I joined Ladder Capital.
23 Q Okay. Any particular reason for the gap between May
24 2008 and October 2008 between your job at UBS and joining Ladder
25 Capital?

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1 A Yes. There were layoffs at UBS and across the entire
2 industry in 2008 and I raised my hand for the next round. I
3 just had a child and figured I would have a few months to spend
4 with her before Ladder Capital was set up and ready to go.
5 Q Okay. And any significance attached to that particular
6 date of October 2008 when you joined Ladder Capital?
7 A That's when Ladder Capital was started.
8 Q Okay. And who started Ladder Capital?
9 A Brian Harris is our CEO along with a few other people.
10 Q Who were those other individuals?
11 A Greta Guggenheim (ph), Pamela McCormack (ph) and Robert
12 Pearlman (ph).
13 Q And did you know all four of those individuals?
14 A Yes.
15 Q How did you know those four individuals?
16 A We all worked together at UBS.
17 Q Is it a fair characterization that they brought you
18 from UBS along with them to join Ladder Capital?
19 A Yes.
20 Q Okay. Anybody in particular bring you along with them
21 to join the Ladder Capital group in 2008?
22 A I mean, Greta Guggenheim is who I was a junior
23 originator for when we were at Dillon Read, so she was probably
24 the spearhead, but I think all of them.
25 Q So you reported to Greta Guggenheim at your prior

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1 position before Ladder, fair?
2 A Well, no, because when I went back into UBS for that
3 one year, she had left to begin the process of starting Ladder
4 Capital. So there was a one-year gap in there, but yes, I
5 reported to her prior.
6 Q Could you remind me about the time period when you
7 returned back to UBS when was that?
8 A That was in 2007.
9 Q And why in 2007 did you return back to UBS?
10 A Because of the subprime crisis, we decided to shut down
11 UBS decided to shut down Dillon Read Capital Management.
12 Q What was it about you in particular, if you
13 know, was the reason you were able to return to UBS?
14 A At the time, they gave an option to a lot of us, not
15 everybody, and I was one of the people that was offered the
16 opportunity to come back into UBS, so I took it.
17 Q Did you have any particular relationships or loans that
18 you were working on that made it a reasonable offer to bring you
19 back into the fold at UBS?
20 A I'm not sure that was the reason for it. I was working
21 on loans, but I don't think that was the reason why they brought
22 me back in.
23 Q Were you organizing on any loans with an entity named
24 or associated with the title "The Trump Organization" in or
25 around 2007?

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1 A Yes.
2 Q And was there a particular Trump Organization loan in
3 2007 that was included in the transactions that you worked on
4 when you returned to UBS in 2007?
5 A Yes.
6 Q Which loan was that?
7 A That was for Trump Park Avenue.
8 Q I want to go back to just our discussion a moment ago
9 about sizing a loan and help me as to the basics go down here.
10 Can you give me the factors that you would include on sizing a
11 loan?
12 A Well, we look at a rent roll.
13 Q Okay.
14 A We look at operating statements, historical, including
15 a trailing 12 statement as well as a pro forma budget, and then
16 we will look at pictures in the property and anything else
17 that's pertinent to the deal.
18 Q Okay. Anything else?
19 A If there's a ground lease, we will look at a ground
20 lease. We may look at leases if there are major leases that we
21 are concerned about or we want to make sure we understand pretty
22 well. That's most of what we'll look at.
23 Q What is the point of that? Why are you trying to
24 understand those factors that you just mentioned?
25 A When we write a loan, we're looking as if we're going

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1 to own the property in case because we write non-recourse loans.
 2 So the bar could give us back the keys, so we look at every loan
 3 as if we're going to own the property and we want to understand
 4 how it operates and what the cash flow would look like if we
 5 took it over.
 6 Q Is there a particular reason why is there a cost to
 7 you, to Ladder?
 8 A A cost?
 9 Q Yes.
 10 A I'm not sure I follow.
 11 Q Well, you used the word "non-recourse." Let's start
 12 there. Can you define that term for us, please?
 13 A So non-recourse loan is where we cannot go after them
 14 personally. If something goes wrong and they default and we
 15 foreclose, we take back the property. But other than any
 16 recourse obligations that are on that particular loan, it's just
 17 the property. We can't go after them personally.
 18 Q So you basically own the property; is that fair?
 19 A We would own the property if they fell down the loan
 20 and we took it over, yes.
 21 THE COURT: Five-minute warning.
 22 MS. FAHERTY: Thank you, your Honor.
 23 Q Now, we've just spoken of the word "non-recourse." Is
 24 "recourse" a term of art in the banking industry where you work?
 25 A Yes.

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1 Q Can you describe for me what "recourse" means?
 2 A So "recourse" means that you're personally obligated to
 3 repay the loan if it is a full recourse loan. Or if there are
 4 recourse obligations, you would be personally liable for that
 5 specific obligation.
 6 Q Can you provide an example of what it means to be
 7 personally obligated?
 8 A It means that we need to be made whole and that you're
 9 required to pay it.
 10 Q How would you guarantee with regards to a recourse loan
 11 that the bank would be made whole again? Is there anything that
 12 you would put into place --
 13 MS. FAHERTY: I apologize, Your Honor. This is a
 14 complex question. I'll reask it.
 15 Q How would you guarantee with regards to a recourse loan
 16 that the bank would be made whole again?
 17 A We have net worth liquidity requirements that need to
 18 stay in place throughout the term of the loan.
 19 Q And if they don't?
 20 A It is a default.
 21 Q Is there an agreement that the bank signs with the
 22 borrower to ensure that those terms are in place and defined?
 23 A Yes, it is in the loan documents.
 24 Q Okay. I want to focus your attention on your current
 25 position with Ladder Capital.

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1 When you joined in 2008, what was your title?
 2 A Director.
 3 Q What is your title currently?
 4 A Executive director.
 5 Q Do you recall when -- withdrawn.
 6 When did you receive that title to executive director?
 7 A I can't recall.
 8 Q Approximately how long have you served as an executive
 9 director?
 10 A Five or six years, maybe.
 11 Q So approximately five or six years you received the
 12 title executive director?
 13 A Approximately, but I'm not exactly sure.
 14 Q Thank you for giving me the approximation.
 15 Did you hold any other titles between that time period
 16 from when you served as a director to now with your title as
 17 executive director?
 18 A No.
 19 Q Okay. Thank you.
 20 As it concerns your current position as an executive
 21 director, are you an originator?
 22 A Yes.
 23 Q How about the phrase "underwriter"? Are you familiar
 24 with the term "underwriter" in the banking industry?
 25 A I am.

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1 Q Describe for me your understanding of what an
 2 underwriter is?
 3 A Underwriter on the loan is who gathers all the
 4 diligence on every transaction, sets up the third-party reports
 5 and analyzes the numbers to decide if it is a loan that makes
 6 sense for us.
 7 Q What purpose does that serve in the context of your
 8 work?
 9 A Every loan has to go through the underwriting process
 10 to make sure that it is a deal that works for us, and they're
 11 responsible for putting it altogether and presenting it to a
 12 committee of why a deal might make sense or not.
 13 Q Do they assign a value to a particular deal?
 14 A No.
 15 Q Do they -- what type of insights other than the
 16 diligence we just described -- what type of insights are they
 17 presenting to the bank?
 18 A Well, we're not a bank, but the committee on a loan,
 19 they're presenting what the numbers look like and whether it is
 20 a deal that makes sense for us.
 21 Q And when you say "what the numbers look like," can you
 22 anchor that? And, for example, the collateral that's being used
 23 or the deal that you're trying to perform, describe for me what
 24 you're referencing.
 25 A They hire an appraiser to get a value. They hire an

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1 environmental engineer consultants to tell us about that aspect
 2 of the property and then they analyze all the numbers and they
 3 write a number according to what they think makes sense.
 4 Q Are they assessing risk?
 5 A Yes.
 6 Q And how do they do that?
 7 A Exactly as I just described. They'll go through the
 8 cash flows and they'll go through the market and decide what
 9 they think the assumptions are that we should use to decide if
 10 it is a risk worth taking.
 11 Q And have you ever served as an underwriter in any of
 12 your years since you graduated Penn State University?
 13 A Yes.
 14 Q When did you do that?
 15 A I don't recall the exact years, but there are about
 16 five years at Ladder Capital where I was underwriting.
 17 Q Why was that?
 18 A We were getting bigger quickly and weren't looking to
 19 hire additional under writers, so I raised my hand to take on
 20 that role and help out in the underwriting side.
 21 THE COURT: One minute.
 22 MS. FAHERTY: One question, Your Honor.
 23 THE COURT: Sure.
 24 Q And just to clarify for the five-year period when there
 25 wasn't sufficient staff and you served as an underwriter, did

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1 press conferences in the building no matter what time of
 2 day, okay.
 3 Okay. Let's get the witness.
 4 THE COURT OFFICER: Witness entering.
 5 THE COURT: I'll remind the witness, as I always
 6 do, that he is still under oath, and let's continue with the
 7 direct examination of Jack Weisselberg.
 8 MS. FAHERTY: Thank you, Your Honor.
 9 Q Welcome back, Mr. Weisselberg.
 10 At the break, we talked about how you had the roles of
 11 both an originator and underwriter. I want to focus your
 12 attention on your current employer, Ladder's, practices.
 13 Can you broadly describe the relationship of the
 14 originator and the underwriter performing work?
 15 A Sure. It is completely separate groups and the
 16 originator will discuss a new deal with the underwriters to make
 17 sure that it is a deal that could work for us. So upfront
 18 before the deal is actually signed up, we will have
 19 conversations to just go through the numbers and make sure we
 20 understand it pretty well.
 21 After that, once we actually sign a loan up, then
 22 underwriting takes care over with regard to diligence and
 23 getting, gathering all the information together and completing
 24 their process, and the originator is in constant contact with
 25 them. Anything that they may need from the borrower, they'll

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1 you wear both hats as an underwriter and an originator or just
 2 one?
 3 A My main priority was underwriting, but I was able to
 4 service a few of my clients that I had a good relationship with,
 5 so I did originate a few loans during that time period.
 6 MS. FAHERTY: Okay. I think now is a good time for
 7 a break, Your Honor.
 8 THE COURT: Okay. Have a good lunch, everyone.
 9 See you at 2:15. Thank you.
 10 (Witness exits the stand.)
 11 (Whereupon, a luncheon recess was taken.)
 12 A F T E R N O O N S E S S I O N
 13 * * * * *
 14 THE COURT OFFICER: All rise. Part 37 is now in
 15 session. The Honorable Judge Arthur Engoron presiding.
 16 Make sure all cellphones are on silent. Latops and
 17 cellphones will be permitted, but only to members of the
 18 public, members of the press. There's absolutely no
 19 recording or photography of any kind allowed in the
 20 courtroom. Please be seated and come to order.
 21 THE COURT: If only the witnesses would talk like
 22 that.
 23 Tommy, you would make a good witness.
 24 I have a statement first to make on the record.
 25 Attorneys are not allowed to make press statements or give

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1 make sure that the originator is attached since it is the
 2 originator's client technically. And then we'll work together
 3 to get the loan fully underwritten and prepared for committee.
 4 Q Would it be fair to say that there is a wall of
 5 separation between the originator and the underwriter?
 6 A Yes. We communicate. We work together, but at the end
 7 of the day, the underwriter's job is to underwrite the job/ loan
 8 and understand the risk and they will communicate with the
 9 originator; but it is a separate group that takes care of all
 10 the underwriting.
 11 Q You made a reference to assisting in the diligence
 12 process. Is it the originator's role to communicate with the
 13 borrower to keep the underwriter separate from the borrower?
 14 A No, the underwriter will speak with them directly.
 15 Typically, they'll cc the originator on an e-mail to make sure
 16 they are aware of everything and the originator should be aware
 17 of all conversations that take place. Most of the time, the
 18 underwriter will speak directly with the borrower to get the
 19 information.
 20 Q That was the general practice that you have observed in
 21 your time at Ladder, right?
 22 A Correct.
 23 Q Can you just broadly describe to me the type of
 24 financing Ladder Capital offers?
 25 A We lend on commercial real estate. We write first

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1 mortgages. Sometimes we'll add mezzanine loans to a first
 2 mortgage that we write. We also do balance sheet loans that are
 3 shorter term that cover all aspects of commercial real estate.
 4 Q And when you say a "balance loan," what does that mean?
 5 Where does that -- where is that balance held?
 6 A A balance sheet loan is a loan that we hold on our
 7 books, on Ladder's books.
 8 Q Where else can you hold the loans that you have at
 9 Ladder Capital aside from the ones that are maintained on
 10 Ladder's own internal books?
 11 A The ones that we don't maintain, we securitize.
 12 Q Can you describe for me what that means?
 13 A We pool together loans and sell them to the broader
 14 market in a bond offering.
 15 Q Can we break that apart? You said "we pool together
 16 loans." Is that pull or pool together, P-O-O-L?
 17 A P-O-O-L.
 18 Q What does that mean when you're pooling together the
 19 loans and you're selling them to the broader market? How does
 20 that look?
 21 A So we take anywhere from 30 to 50 loans, maybe less,
 22 and we put them altogether into one pool and then we sell it in
 23 tranches where somebody will buy the most senior piece and
 24 somebody will buy the most junior piece and that's what we do
 25 with fixed rate loans.

JACK WEISSELBERG - DIRECT (MS. FAHERTY) Page 1777

1 Q And are there -- what does it mean to be a senior loan
 2 that you pool together or a senior tranche?
 3 A The senior tranche is the most secure piece. It's the
 4 last lost piece, so that's typically set aside for people that
 5 are looking for safer bet and a lower yield.
 6 Q How about junior? What does it mean to be a junior
 7 tranche?
 8 A The junior means the first lost piece, so if anything
 9 suffers a loss on that loan or in the pool, that's the guy that
 10 takes the hit first and he usually gets a higher yield.
 11 Q Do you know who are the purchasers of these two
 12 types -- two tranche types of pooled securities?
 13 A I don't know specifically. The junior piece groups
 14 that this is what they do. They own --
 15 Q Investors interested in the potentially higher risk,
 16 higher rewards?
 17 A Yes.
 18 Q How about the senior tranche? Do you have an
 19 understanding about the types of investors in the senior tranche
 20 loans?
 21 A It's typically insurance companies or pension funds
 22 that are looking for a safer risk lower risk and lower yield.
 23 Q When you say "pension fund," would that be something
 24 like I used to be in education. I used to be a teacher. A
 25 teacher's unions?

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1 A It could be.
 2 Q Or we have court officers here, like a PBA in some way.
 3 Are those the type of pension funds that you're referring to,
 4 those types of groups?
 5 A It could be. I don't -- I don't work on the
 6 securitization side, so I am not selling the bonds, so I don't
 7 know who specifically the investors are.
 8 Q Not impossible, but those could be the type of pension
 9 funds that would invest?
 10 MR. KISE: Objection. Foundation.
 11 THE COURT: Can you read back the question?
 12 (Whereupon, the requested portion of the record was
 13 read back.)
 14 MR. KISE: My objection is he just testified that
 15 he doesn't work on the securitization side, so I am not
 16 selling the bonds, so I don't know. So he has no foundation
 17 to answer that question.
 18 THE COURT: Sustained.
 19 Q But generally speaking, if I heard you correctly, but
 20 please correct me if I misheard, it would be pension fund as a
 21 potential investor, right?
 22 A It could be.
 23 Q Thank you.
 24 MR. KISE: Same objection.
 25 THE COURT: Sustained. He says he doesn't know

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1 so...
 2 MS. FAHERTY: He offered the testimony, Your Honor,
 3 but I understand. I will withdraw.
 4 Q Are you familiar with the phrase "bad boy guaranty"?
 5 A Yes.
 6 Q What is a bad boy guaranty?
 7 A The non-recourse carve-out. So every non-recourse loan
 8 that we do, we have "bad boy carve-outs " that are intended for
 9 bad acts created by the borrower which would turn the loan into
 10 being a recourse loan.
 11 Q What are the types of bad acts that would constitute a
 12 bad act for a bad boy guaranty?
 13 A I don't recall all of them offhand.
 14 Q Do you know any types of bad acts that would constitute
 15 a bad act for a bad boy guaranty?
 16 A Yes. If you bring on environment waste to a property,
 17 fraud. Those are the two that I can think of off the top of my
 18 head.
 19 Q And does Ladder Capital have bad boy guaranties that it
 20 incorporates into the transactions it engages in?
 21 A Every non-recourse loan has them, yes.
 22 Q At Ladder Capital?
 23 A At Ladder Capital.
 24 Q Okay. We were talking a little bit before about how
 25 that there are balance loans that Ladder Capital might have. Is

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1 it fair to say Ladder does in fact have short-term loans that it
2 maintains that debt on its books?
3 A Yes, balance sheet loans.
4 Q Balance sheet loans. Thank you for the correction.
5 And is the answer still yes?
6 A Yes.
7 Q Thank you.
8 THE COURT: You can't just nod your head. You have
9 to say yes or no.
10 THE WITNESS: Sorry?
11 THE COURT: You can't just nod your head. You have
12 to say yes or no for the reporter.
13 THE WITNESS: I said yes.
14 THE COURT: I didn't hear the answer. I just saw
15 the head.
16 THE WITNESS: It's okay.
17 Q Do you recall how many loans you've worked on since
18 you've been at Ladder that have involved either Donald J. Trump
19 or an entity affiliated with the name the Trump Organization?
20 A I believe five.
21 Q Five?
22 A Yes.
23 Q Which ones?
24 A We did Trump Tower. We did 40 Wall Street. We did
25 Trump International Hotel & Tower Commercial. We did Trump

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1 A That would be my father.
2 Q Who is that?
3 A Allen Weisselberg.
4 Q Anybody else at the Trump Organization that you would
5 work with in particular at the beginning of these loan
6 discussions?
7 A After my father and I discussed the deals, then
8 typically Jeff McConney and Donna Kidder would send over
9 diligence.
10 (Continued on the next page.)
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JACK WEISSELBERG - DIRECT (MS. FAHERTY) Page 1781

1 Plaza Apartments Commercial and then Trump Central Park South.
2 Q And Trump Tower, do you recall what year that was?
3 A I believe it was 2012.
4 Q How about 40 Wall? What year was that one?
5 A That one, I believe, was 2015.
6 Q Trump Plaza Commercial, do you remember what year that
7 was?
8 A I don't recall.
9 Q Okay. Trump CPS or Central Park South, do you recall
10 what year that was?
11 A It was either 2016 or 2017. I'm not 100 percent.
12 Q Trump International Hotel & Tower in Chicago, do you
13 recall when that was?
14 A That was in New York.
15 Q Oh, in New York. Got it. What year was that?
16 A I don't recall.
17 Q Focusing on the loan relationship you had with the
18 Trump Organization, can you describe broadly the process for
19 financing that Ladder provided and that's how I'm going to focus
20 your brain on my next line of questions. I want to start with
21 the discussions of those loan relationships. Just broadly,
22 would you have any particular discussions with anyone for those
23 loan relationships with the organization?
24 A On the Trump side or on the Ladder side?
25 Q Trump side.

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1 Q All right. So what would you and your father do in
2 these initial discussions?
3 A Depending upon the deal, I may have approached him or
4 he may have approached me, just to discuss their current
5 financing and what their current loan looked like to see if
6 there is any way that we could refinance that with the new
7 mortgage.
8 Q So would it be the case if they didn't have a loan with
9 you, you would discuss with your father, if at all possible,
10 Ladder could offer a different financing arrangement. Does that
11 sound about accurate?
12 A If they did or they didn't there were some loans that
13 we had done eight or nine years prior that we had securitized,
14 so I would call and say this loan is coming due soon, what are
15 your plans, let's chat.
16 Q Got it. With regards to Jeff McConney, who is he?
17 A Jeff McConney?
18 Q Yes.
19 A He was a senior accountant, maybe the controller at the
20 time.
21 Q And the nature of your relationship with Jeff McConney
22 and those discussions concerning the Ladder relationship?
23 A He was more making sure that I received accurate
24 information. So he would send over rent rolls, operating
25 statements, and if I had questions I would give him a call and

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1 ask him about it.

2 Q So fair to say was Jeff McConney your contact to help

3 with the diligence aspect of the loan underwriting or the

4 finance underwriting?

5 A I wasn't the underwriter on those loans, but in the

6 initial conversation to size the loan it would be Jeff and

7 Donna.

8 Q Okay. And Donna Kidder, I think you mentioned her

9 name, who is she?

10 A I'm not sure what her role is. I know she works with

11 accounting.

12 Q She works in the accounting department?

13 A I believe.

14 Q Okay. And describe for me the nature of your

15 interactions with Ms. Kidder.

16 A Same as Jeff, but on a more sending us the information,

17 questions that I would typically ask to Jeff, sometimes to

18 Donna, as well, but very similar to the relationship I had with

19 Jeff.

20 Q Any particular properties or just broadly you would

21 reach out to Ms. Kidder?

22 A That would only be after we were discussing a

23 particular property.

24 Q And are there any particular properties for which you

25 would have conversations with Ms. Kidder?

J. Weisselberg - Plaintiff - direct (Faherty) Page 1785

1 A I don't recall which ones specifically, but probably

2 most of them.

3 Q Okay. All right.

4 MS. FAHERTY: Can you please pull up PX 00630?

5 Your Honor, I'm marking for identification

6 Plaintiff's Exhibit 630 that I'd like to show the witness,

7 please.

8 THE COURT: Okay.

9 Q Do you have that document in front of you,

10 Mr. Weisselberg?

11 A Yes.

12 Q Looking at this document, very top message, do you

13 recognize -- is that your e-mail address at the top there in the

14 "to" line?

15 A Yes.

16 Q And is this an e-mail from Allen Weisselberg at the

17 Trump Organization?

18 A Yes.

19 Q That's your father; right?

20 A Yes.

21 Q Okay. And in this message, it's dated 2011. I

22 recognize Counsel might have an objection in a moment, but it

23 states:

24 "As discussed, we are looking for a forward commitment

25 in the amount of 65 million, and a term of ten years to take

J. Weisselberg - Plaintiff - direct (Faherty) Page 1786

1 effect in August 2012. Thanks. Talk to you soon."

2 Do you see that there?

3 A I do.

4 Q And it appears that this is a forward of a message from

5 Donna Kidder; right? Am I reading that correctly?

6 A Yes.

7 Q Okay.

8 MS. FAHERTY: Your Honor, I'll tie it in, but I'd

9 like to move this into evidence.

10 MR. ROBERT: Objection, Your Honor. I know we have

11 our standing objection to statute of limitations. This is

12 going back to 2011. By anyone's account, even the account

13 that we disagree with the government with the statute is

14 2014, so I would object and say this is irrelevant and it's

15 also barred by the statute of limitations and therefore

16 should not come into evidence.

17 THE COURT: Overruled.

18 MS. FAHERTY: Thank you.

19 Q Is this the type of initial outreach you would have

20 with your father when exploring loan deals like we just

21 discussed a moment ago?

22 A Yes. Typically he mentioned "as discussed." We

23 probably had phone conversations and if Donna sent me an e-mail

24 prior to this then this was a little bit further along, but yes,

25 this is the initial sizing time period.

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1 Q Okay. And it says in the message "looking for a

2 forward commitment in the amount of \$65 million;" right?

3 A Yes.

4 Q And a term of ten years to take effect in August 2012;

5 right?

6 A Correct.

7 Q What is your understanding of what that message is

8 conveying here?

9 A He's telling us that he would like us to close the loan

10 in August 2012 and being that it was October of 2011, they were

11 looking for a forward commitment.

12 Q Okay. And the subject line here, it's a forward:

13 "TTCOML" and then "October 2011 rentroll.five-year projection?"

14 Do you have any understanding as to what TTCOML is a

15 reference to?

16 A Yes.

17 Q What is it?

18 A Trump Tower Commercial.

19 Q Is this a discussion you're having with your father

20 with regards to the Trump Tower commercial loan?

21 A Correct.

22 Q Did you, in fact, do a loan on Trump Tower in 2012?

23 A We did.

24 Q Okay. Thank you. You can put that to the side -- oh,

25 before you do.

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1 If I said the phrase to you, "rate lock," do you have
 2 any understanding of what that phrase "rate lock" means?
 3 A Yes.
 4 Q Is this e-mail a reference to a rate lock?
 5 A Well, it's in reference to a forward commitment, which
 6 would include a rate lock.
 7 Q Okay. And the forward commitment that's in here, can
 8 you describe for me what a rate lock would be?
 9 A A rate lock is when you lock in the interest rate for
 10 your loan.
 11 Q Got it.
 12 MS. FAHERTY: Okay. We can put that to the side,
 13 please.
 14 Q So once you have a discussion with your father, you're
 15 exploring the potential loan deal, here it appears that you and
 16 your father were talking more of the terms.
 17 Was there any diligence you would do in connection with
 18 those initial conversations with Mr. Weisselberg?
 19 A Well, typically I would ask for a rent roll and
 20 operating statements would be the initial conversation so we
 21 could start looking at the numbers.
 22 Q Okay. And why would you want a rent roll?
 23 A I'm sorry?
 24 Q Why would you want a rent roll?
 25 A Oh, so we could understand the tenants that are in the

J. Weisselberg - Plaintiff - direct (Faherty) Page 1789

1 building, the rent that they're paying when their lease began,
 2 when their lease expires, if they have lease termination
 3 options, things like that.
 4 Q Are you trying to understand if the property is
 5 generating income, for example?
 6 A Trying to figure out what income the property is
 7 generating.
 8 Q Okay. And a rent roll would give you that information;
 9 yes?
 10 A That would give us what the rent would be.
 11 Q Okay.
 12 A Yes.
 13 Q It would be a piece of the puzzle?
 14 A Exactly.
 15 Q Great.
 16 MS. FAHERTY: Can you put up PX 631, please?
 17 Thank you.
 18 Your Honor, I'd mark for identification Plaintiff's
 19 Exhibit PX-00631.
 20 Q Mr. Weisselberg, we've put it on the screen, but it's
 21 in front of you as well. This is another e-mail between you and
 22 Mr. Allen Weisselberg at the Trump Organization; right?
 23 A Yes.
 24 Q The date on this message is October 20, 2011, the next
 25 day from the message we were just looking at?

J. Weisselberg - Plaintiff - direct (Faherty) Page 1790

1 A Yes.
 2 Q Okay. And in this message, the subject, "Trump Tower,"
 3 Mr. Weisselberg, it's a little -- Mr. Allen Weisselberg says to
 4 you, "please note the numbers reflected in the projection
 5 includes a license fee payment from the producers of The
 6 Apprentice. (Reilly Worldwide) is shown as \$500,000. However,
 7 the real value of the two floors is approximately" or "approx
 8 \$100 PSF," per square foot "or 2,798,100 or an additional,"
 9 "add'l 2,298,100 to the bottom line.
 10 Additionally, the Trump Organization occupies approx
 11 37,225 square feet at approximately 75 PSF, equates to an
 12 additional 2,791,875 to the bottom line as well."
 13 Do you see that there?
 14 A Yes.
 15 Q And there appears to be an attachment. It's identified
 16 by -- in 001, I presume. Do you have an understanding why your
 17 father -- why Mr. Weisselberg, Allen, is giving you this
 18 information about The Apprentice and the square footage of the
 19 floor?
 20 A Yes. The -- with The Apprentice space, as well as the
 21 Trump Organization space, there was no rent associated with the
 22 rent roll, so I probably asked what was going on with this space
 23 and why is there no rent associated with it. So we included the
 24 \$500,000 that was being paid by The Apprentice as a license fee
 25 and he was just suggesting that the real value is probably much

J. Weisselberg - Plaintiff - direct (Faherty) Page 1791

1 higher if we vacated the space and found a third-party tenant.
 2 Q Okay. So the actual value received for the particular
 3 space for The Apprentice would have been 500,000 based on this
 4 message, yes?
 5 A That was what they were paying.
 6 Q And Mr. Allen Weisselberg is providing for you
 7 additional information of what they could have received; is that
 8 correct?
 9 A Correct.
 10 Q Okay. And this is the type of information that your
 11 father -- Mr. Allen Weisselberg and you have engaged in before
 12 to try and assess whether a deal is possible; is that right?
 13 A Correct.
 14 Q Okay. Would information like this help you do
 15 back-of-the-envelope calculations as you're deciding whether
 16 there is a deal to be made with regards to this transaction?
 17 A Not really.
 18 Q Have you ever performed back-of-the-envelope
 19 calculations about a potential loan deal with regards to the
 20 Trump Organization?
 21 A On my own?
 22 Q Yes.
 23 A Sure.
 24 Q Do you recall if you did one on Trump Tower?
 25 A I don't recall.

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1 Q Okay. When you yourself perform back-of-the-envelope
 2 calculations, do you incorporate cap rates into those
 3 calculations that you're doing?
 4 A Yes.
 5 Q Do you talk cap rates with Mr. Weisselberg, Mr. Allen
 6 Weisselberg?
 7 A Sure.
 8 Q When you're discussing the various deals for the Trump
 9 Organization, have you talked about cap rates that are possible
 10 cap rates to be used on those valuations?
 11 A When we send out an application for a new loan, one of
 12 the stipulations -- excuse me -- is loan to value, so we'll try
 13 to figure out what we think the appraiser is going to come back
 14 at and put an LTV there, a loan to value number, that would make
 15 sense. So typically, we'll have those discussions.
 16 Q What is a loan to value?
 17 A It's the percentage of the loan based on compared to
 18 the ratio to the value of the property.
 19 Q The value of the asset?
 20 A Yes.
 21 Q Okay, great. Thank you.
 22 Just a broad question, has your father ever called you
 23 to discuss cap rates in the market?
 24 A I don't recall, but probably.
 25 Q Okay. And just broadly speaking, discuss cap rates and

J. Weisselberg - Plaintiff - direct (Faherty) Page 1794

1 A Not often, but maybe once or twice.
 2 Q What are the two examples you're thinking of?
 3 A I believe that Mr. Trump would speak to the CEO of my
 4 company, Brian Harris, occasionally before a loan closed or was
 5 signed up.
 6 Q Can you give me an example of when that occurred?
 7 A Think with the Trump Tower loan that occurred -- it may
 8 have happened with 40 Wall, as well, but I don't recall.
 9 Q And what is your understanding as to why Mr. Trump
 10 would speak with Brian Harris about a loan deal with Ladder
 11 Capital?
 12 A They had a relationship that goes back many years and
 13 before a loan closes sometimes they'll have a chat.
 14 Q Do you know the substance of those chats?
 15 A I don't.
 16 Q Okay. You recall that Mr. Harris and Mr. Trump did
 17 speak in connection with the Trump Tower deal in 2012?
 18 A I believe so, yes.
 19 MS. FAHERTY: Can we pull up PX 649? Thank you.
 20 And, Your Honor, I neglected to move the prior
 21 exhibit in. I'd like to move that in subject to I'm aware
 22 Counsel have their standing objection.
 23 MR. ROBERT: Objection.
 24 THE COURT: Overruled. It's in.
 25 Q Okay. Mr. Weisselberg, you've been handed a document

J. Weisselberg - Plaintiff - direct (Faherty) Page 1793

1 he asked you for advice on a particular real estate asset in a
 2 part of Manhattan, would you be able to provide that cap rate
 3 type information?
 4 A Not accurately.
 5 Q So you would tell your father no, I'm not providing you
 6 a cap rate?
 7 A I may tell him what I think, but that he should
 8 probably call an appraiser.
 9 Q Okay. Other than your conversation with Mr. Allen
 10 Weisselberg broadly about possible deals with Ladder, and you
 11 reference Ms. Kidder and Mr. McConney, before a deal is
 12 consummated are you aware of other individuals at the Trump
 13 Organization to your knowledge who would speak with members of
 14 the Trump Organization -- Ladder with the members of the Trump
 15 Organization?
 16 A Sorry. Could you repeat the question?
 17 Q Yes, that was a poorly worded question.
 18 Other than the names we've already discussed, to your
 19 knowledge, are you aware of other members of the Trump
 20 Organization reaching out and speaking to members of Ladder
 21 Capital about a deal before the loan transaction and the
 22 financing transaction is consummated?
 23 MR. KISE: Objection. Are we talking about 2011 or
 24 anytime?
 25 MS. FAHERTY: I'm talking generally.

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1 that's been marked as Plaintiff's Exhibit 649. Do you recognize
 2 that e-mail address at the top in the "from" bar? Is that your
 3 e-mail address at Ladder Capital?
 4 A Yes.
 5 Q It's dated January 8, 2012; right?
 6 A Yes.
 7 Q Do you recognize the e-mail address
 8 sportsalley@aol.com?
 9 A Yes.
 10 Q What is sportsalley@aol.com?
 11 A That's my father's, Allen Weisselberg's, personal
 12 e-mail address.
 13 Q It appears you're forwarding Mr. Allen Weisselberg a
 14 message between you and Brian Harris; right?
 15 A Correct.
 16 MS. FAHERTY: Okay. Can we scroll down further?
 17 We're going to go to the underlying bottom e-mail.
 18 Okay, there we go.
 19 Q Looking at the bottom of this first page do you see on
 20 January 7, 2012, 10:50 p.m. there appears to be a message to
 21 Brian Harris. My understanding is it's from you, but the e-mail
 22 header is gone and it says, "quick FYI," dot, dot, dot, "I spoke
 23 to DT when he landed in Florida on Friday night and he was
 24 congratulating me on getting such a prize. Seems like he's done
 25 as far as he knows. Could not have been nicer to me or more

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1 complimentary of you."
 2 MR. FAHERTY: Actually, if we go back one message
 3 it will give us our context. Go further underneath. Sorry,
 4 Ashley. Further. Great.
 5 Q Okay. A message from you, do you see at the very back?
 6 A Yes.
 7 Q To Brian Harris, Pamela McCormack, Greta Guggenheim,
 8 Michael Pasadon, Ed Peterson, Micah Goodman, and David Traitel.
 9 Those are all employees at Ladder Capital?
 10 A At the time, yes.
 11 Q And this appears to be a message sent on January 6th in
 12 2012, yes?
 13 A Yes.
 14 Q And within the body of this message you're discussing
 15 the subject "Trump Tower." It says, "They're not ready to rate
 16 lock today." We just spoke about rate locking?
 17 A Yes.
 18 Q And further into the message it says, "Also, Brian,
 19 Donald may call you. Not sure if he did already. FYI, he will
 20 probably elect to take a lower loan amount if we need him to,
 21 rather than sign a lease."
 22 Are you informing Brian Harris in this message that
 23 Donald Trump was going to call him?
 24 MR. ROBERT: Objection. It's hearsay. It's coming
 25 from an e-mail from someone that's not on the stand relaying

J. Weisselberg - Plaintiff - direct (Faherty) Page 1797

1 something and then this witness is relaying what was said.
 2 It's not for the truth of the matter asserted. I think
 3 they're trying to establish the truth of matter asserted.
 4 Q Did you in fact send an e-mail --
 5 THE COURT: Wait, wait, wait. Are you withdrawing
 6 that question?
 7 MS. FAHERTY: I can withdraw the question.
 8 THE COURT: Okay.
 9 Q Did you, in fact, send this e-mail that stated Donald
 10 may call Brian Harris?
 11 A Yes.
 12 Q Any reason to believe you didn't send this message?
 13 A No.
 14 Q Any reason to believe you didn't have those thoughts in
 15 your mind that Donald J. Trump might be calling Brian Harris
 16 when you sent this message?
 17 A No.
 18 Q And is it your understanding Donald J. Trump did in
 19 fact call Brian Harris?
 20 A That I don't recall.
 21 MS. FAHERTY: Let's scroll up further to the
 22 earlier exchange. Right there.
 23 Q January 7, 10:50. Brian Harris writes: "I spoke to DT
 24 when he landed in Florida on Friday night."
 25 You did in fact have an understanding that Brian Harris

J. Weisselberg - Plaintiff - direct (Faherty) Page 1798

1 spoke with Donald Trump in Florida?
 2 A Reading this e-mail, now I do.
 3 Q Thank you. Okay, we can move on. Thank you.
 4 And do you recall that as a result of that exchange you
 5 and Brian Harris were of the understanding that the Trump Tower
 6 deal was going to go ahead with Ladder?
 7 A That was our understanding.
 8 Q Yes. Thank you.
 9 Do you recall how you were aware that Donald Trump was
 10 going to be calling Brian Harris such that you were able to
 11 e-mail that message?
 12 A I don't recall.
 13 Q Would Mr. Trump have informed you that he was going to
 14 be calling Brian Harris?
 15 A No.
 16 Q Is that something you would have learned from possibly
 17 Allen Weisselberg?
 18 A Probably.
 19 Q He would have informed you of such things possibly?
 20 A Yes.
 21 MS. FAHERTY: I'm going to move on to 650.
 22 Your Honor, I'd like to move that prior exhibit in.
 23 MR. ROBERT: I would object first on the statute of
 24 limitations; and secondly, it's hearsay.
 25 THE COURT: Statute of limitations objection

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1 overruled. Hearsay objection, it's not to be -- I won't
 2 consider it for the truth of its contents, just for notice.
 3 MS. FAHERTY: Thank you, Your Honor.
 4 (Whereupon, the item previously referred to is
 5 received and marked Plaintiff's Exhibit Number 649 in
 6 evidence.)
 7 Q Mr. Weisselberg, you testified that you were aware that
 8 in fact you did at that time know you were going to have --
 9 secure the Trump Tower deal between Ladder and the Trump
 10 Organization; right?
 11 A We were -- the understanding was we were going to win
 12 the deal.
 13 Q Did you have an understanding at that time that
 14 Mr. Trump was the necessary approval for that transaction to go
 15 forward?
 16 A Yes.
 17 Q Is it your general understanding that
 18 Mr. Donald J. Trump had to approve every transaction that the
 19 Trump Organization did with Ladder?
 20 A I don't recall the smaller ones. I know on the larger
 21 ones, yes. I'm not sure about all of them.
 22 Q Which smaller ones are you referring to?
 23 A The Trump International Hotel and Tower Commercial and
 24 the Trump Plaza Commercial.
 25 Q So is it your testimony right now as you're sitting

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1 here today that you're unaware that you do not know Mr. Trump
 2 was required to approve every loan transaction?
 3 A I don't recall --
 4 Q And Ladder Capital?
 5 MR. ROBERT: Objection. It's a direct examination.
 6 She is leading the witness. He's appearing here as their
 7 witness.
 8 MS. FAHERTY: I asked a question, he gave an
 9 answer. I'm clarifying his answer.
 10 MR. ROBERT: No, that was a cross examination
 11 question.
 12 MS. FAHERTY: I'm quite good at that, too,
 13 Mr. Robert. I think it was a clarifying question for his
 14 particular answer.
 15 THE COURT: I generally allow clarifications, so
 16 overruled, but be careful.
 17 MS. FAHERTY: Your Honor, I appreciate that.
 18 Q Do you need that read back?
 19 A No. I think I understand it. I don't recall
 20 specifically if he had to sign off on every loan.
 21 Q Okay.
 22 MS. FAHERTY: Can you pull up --
 23 Q Do you recall meeting with my office previously where a
 24 member of the Attorney General, the Attorney General's Office
 25 asked you some questions, there was a court reporter there, you

J. Weisselberg - Plaintiff - direct (Faherty) Page 1801

1 swore -- you gave an oath, gave testimony. Do you recall that
 2 occurring?
 3 A No.
 4 Q You don't recall meeting with my office before?
 5 A Not in your office. We did it over Zoom.
 6 Q Over Zoom, sorry. I should be clear.
 7 Do you recall giving testimony to members of my office?
 8 A Yes.
 9 Q And it was sworn testimony; correct?
 10 A Yes.
 11 Q You raised your hand, you gave an oath, you swore you
 12 would testify truthfully?
 13 MR. ROBERT: Objection.
 14 MS. FAHERTY: I'm just following your model.
 15 MR. ROBERT: He's their own witness in their case
 16 in chief. They can't use an alleged prior inconsistent
 17 statement which is where I think she is going, even though I
 18 don't know what it is. They can't impeach their own
 19 witness. They called them in their case as a direct
 20 witness.
 21 MS. FAHERTY: I'm going to refresh the witness's
 22 recollection. I first want to make sure --
 23 MR. KISE: That's clearly not what she's doing,
 24 clearly.
 25 THE COURT: I mean, I think the defendants'

J. Weisselberg - Plaintiff - direct (Faherty) Page 1802

1 statements are generally correct.
 2 Now, what are we doing here?
 3 MS. FAHERTY: Your Honor, I can withdraw. I can
 4 withdraw the question.
 5 THE COURT: Okay.
 6 MS. FAHERTY: I can move on.
 7 Q I'm going to hand up to the witness an exhibit
 8 identified as PX 650.
 9 MS. FAHERTY: Can we pull that back? I think I
 10 handed you the wrong -- thank you, Your Honor.
 11 Q All right. We have 650 up on the screen. You have 650
 12 in front of you, yes?
 13 A Yes.
 14 Q This is an e-mail between you and Greta Guggenheim
 15 dated January 10, 2012?
 16 A Yes.
 17 Q And I'll draw your attention to the underlying message
 18 from you to Greta at 11:27 p.m.. Do you recall -- well, I'll
 19 read it. "We should have their comments to app and rate lock
 20 agreement tomorrow, but they are skittish on a CMBS loan."
 21 What is a CMBS loan?
 22 A It's a commercial mortgage back security, so that's a
 23 securitization loan.
 24 Q So this is an example of a loan that has been
 25 securitized, yes?

J. Weisselberg - Plaintiff - direct (Faherty) Page 1803

1 A That's going to be securitized. That's our plan.
 2 Q Got it. And then it goes on: "Ivanka (with Jared
 3 Kushner's input) has made him rethink things. I tried to
 4 explain the differences BW" -- is that between?
 5 A Yes.
 6 Q "Between a low leverage CMBS loan and a 100 percent
 7 financing CMBS loan where one overpays. He gets it, but he is
 8 deciding. He is also nervous about Gucci's rent becoming public
 9 knowledge, as he tends to embellish from time to time. Anyway,
 10 they're going to negotiate the app and rate lock agreement to be
 11 ready, but are on the fence right now."
 12 Do you recall sending that message to Greta Guggenheim
 13 on January 12, 2012?
 14 MR. KISE: Your Honor, we've been going quite a
 15 while. I just want to raise the significant relevance
 16 objection here. This is 2012. What does this have to do
 17 with anything? Are they going to tie this up somehow?
 18 These loans aren't even at issue in any shape, form or
 19 fashion in the case by anyone's view.
 20 THE COURT: Well, you know me, I tend to give some
 21 leeway. I hope there will be a connection and, as I've said
 22 many times, the statute of limitations limits claims, not
 23 evidence.
 24 Also, I think these -- this testimony may be
 25 relevant to the requested equitable relief, so I'm going to

J. Weisselberg - Plaintiff - direct (Faherty) Page 1804

1 allow it for now.

2 MR. KISE: Let me just pause there and clarify

3 that, Your Honor. How could conduct that's outside the

4 statute of limitations be relevant to any relief in the

5 case? The Court can't consider things -- then you're going

6 to consider things from 1990, 1995, 2000, 2005? I mean, it

7 becomes limitless at that point.

8 THE COURT: Well, I'm not going to set a particular

9 time limit, but 6312 refers to a pattern and I -- the acts

10 would now be subject to a claim, but the pattern I think who

11 would be? We could brief that, we could discuss that.

12 MR. KISE: I mean, respectfully, Your Honor, I

13 would disagree. The pattern that has to be established is a

14 pattern within the limitations period. Otherwise, 6312

15 could reach back to 1985. I mean, it becomes an arbitrary

16 limit which I think is the precise reason we have

17 limitations periods, but if we want to take that up at a

18 different time, that's fine. My only objection now is it's

19 seemingly very irrelevant.

20 THE COURT: Well, out of an abundance of caution,

21 I'll let her continue. Yes, it's an interesting question to

22 what extent pre-limitations actions are -- could be

23 encompassed with an examination of, quote, "persistent

24 fraud." I think, again, it's the question of the claim.

25 When you look -- I don't know. We'll have to talk about

J. Weisselberg - Plaintiff - direct (Faherty) Page 1805

1 that. I'll allow this for now with the objection on the

2 record.

3 MS. FAHERTY: And I'll try to move faster, Your

4 Honor. I appreciate what we're all trying to get through

5 here.

6 Q Just, again, turning your attention to -- I don't know

7 if there was a question pending. I lost it.

8 The question was do you recall sending that message to

9 Greta Guggenheim on January 22, 2012?

10 A Reading it now clearly, I did, but I don't recall the

11 e-mail.

12 Q Okay.

13 THE COURT: Apparently there are cases that are --

14 or least a case that specifically held that examining

15 conduct pursuant to 6312 can include pre-limitations

16 behavior, and I can get that cite at some point. Sorry to

17 interrupt.

18 MS. FAHERTY: Thank you, Your Honor.

19 Q So in the body of this message you're referring to a

20 CMBS loan and "they are skittish." Is it "they are skittish" a

21 reference to the Trump Organization?

22 A Yes.

23 Q And later on you make a statement "he's also nervous

24 about Gucci's rent becoming public knowledge. As he tends to

25 embellish from time to time."

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1 What is that a reference to being nervous about Gucci's

2 rent becoming public knowledge? Is that in any way connected to

3 a CMBS loan?

4 A Gucci was the major tenant at Trump Tower.

5 Q Okay. And what does it mean in this message about

6 becoming nervous to Gucci's rent becoming public knowledge?

7 A I don't recall specifically what I was referring to in

8 this e-mail.

9 Q Is there something about a CMBS loan that would make

10 financial information like rent from a tenant in a building

11 becoming public knowledge?

12 A Yes.

13 Q And what is that?

14 A It's a public offering, so the documents for all large

15 loans, usually the top ten, sometimes the top 20 are released

16 publicly.

17 Q So information about rent in a building would

18 potentially be publicly available in connection with the CMBS

19 loan?

20 A Correct.

21 Q Okay. Thank you.

22 MS. FAHERTY: Your Honor, I move to admit this

23 exhibit into evidence, please?

24 MR. ROBERT: Objection.

25 THE COURT: Granted. It's in.

J. Weisselberg - Plaintiff - direct (Faherty) Page 1807

1 (Whereupon, the item previously referred to is

2 received and marked Plaintiff's Exhibit Number 650 in

3 evidence.)

4 MS. FAHERTY: Thank you. You can put that down.

5 Q Was that your general understanding that the Trump

6 Organization had concerns about financial information becoming

7 public in connection with any of the Ladder loan transactions?

8 MR. KISE: Objection. At what time period? I

9 mean, anytime period?

10 MS. FAHERTY: General understanding.

11 A Yes, I recall it being public was a concern.

12 Q Was that your understanding throughout the time period

13 that you've been working on the Trump Organization loans?

14 A Not sure.

15 Transcript continues on the following page....

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JACK WEISSELBERG - DIRECT(MS. FAHERTY) Page 1808

1 THE COURT: So let's agree with if there's no
 2 indication of a time period, it refers to all the time or
 3 just generally.
 4 MR. KISE: So again, at any point without any
 5 specificity? Just okay. I think it's objectionable, but
 6 you're the judge.
 7 THE COURT: I think commonsensically it is limited
 8 by the time period in issue which may be a long time period
 9 I grant.
 10 Q We spoke earlier about a loan on Central Park South in
 11 or about 2017. You didn't recall the time period, right?
 12 A Correct.
 13 Q Okay. Tell me what you recall about that particular
 14 loan?
 15 A It was a short-term balance sheet loan and they had a
 16 property that was unencumbered meaning it had no debt on it and
 17 they came to us for a loan.
 18 Q Which property was that?
 19 A This was located at -- on Central Park South, on Sixth
 20 Avenue.
 21 Q It was the property located on Central Park South, on
 22 Sixth Avenue?
 23 A Yes.
 24 Q So if I say "CPS," would you agree that that's our
 25 parlance for that same property, yes?

JACK WEISSELBERG - DIRECT(MS. FAHERTY) Page 1809

1 A Sure. Yes.
 2 Q Do you recall how much that loan was for?
 3 A It was 25 million.
 4 Q 25 million?
 5 A Yeah.
 6 Q What is your understanding as to the need for that
 7 loan?
 8 A My understanding at the time was that they had a
 9 settlement that they needed to pay, so they took an unencumbered
 10 asset and we gave them 25 million for it.
 11 Q You said it was a short-term loan. How long was the
 12 term of that loan?
 13 A 12 months.
 14 Q 12 months?
 15 A Yes.
 16 Q What is your understanding as to why it was a
 17 short-term loan?
 18 A At the time, they were waiting for two apartment units
 19 to sell at another property and they thought they would have
 20 closed in time for the settlement and when they realized it
 21 could not or may not work, they just came to us us. So they
 22 knew those two units were going to sell shortly, so they needed
 23 a short-term bridge loan.
 24 Q When you say "short-term bridge loan," is that to free
 25 up cash?

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1 A It was to provide cash.
 2 Q Provide cash, okay.
 3 Did you say what settlement that was for?
 4 A I did not say.
 5 Q Do you have any understanding as to what settlement
 6 that money was going towards?
 7 A I believe it was Trump University.
 8 Q Thank you.
 9 Did you have any understanding at this time that there
 10 were cash issues related to their liquidity?
 11 A The understanding that we had was that they had
 12 recourse obligations to another lender that limited the amount
 13 of cash that they could access. They had to maintain a
 14 liquidity requirement and so that was the main thing that was
 15 holding them up as well as these two units that had not sold
 16 yet.
 17 Q Do you recall who that lender was?
 18 A I believe it was Deutsche Bank.
 19 Q What specifically was the cash issue at Deutsche Bank
 20 that you understood?
 21 A As I just mentioned they had a liquidity requirement
 22 with debt that they had with them meaning they had to maintain a
 23 certain liquidity level. I never knew what that number was, but
 24 if they had dipped into cash there was a chance that they could
 25 triplex a default on that loan and that they didn't want to do

JACK WEISSELBERG - DIRECT(MS. FAHERTY) Page 1811

1 that.
 2 Q So in order to get the bridge loan, they avoided
 3 triggering a default on their liquidity requirement at that
 4 time?
 5 MR. ROBERT: Objection. It is another one of the
 6 leading questions that they want to have a summary of
 7 something. They can ask a non-leading question and get an
 8 answer, Your Honor.
 9 THE COURT: Rephrase it, so that there's no issue
 10 about whether it's leading or not.
 11 MS. FAHERTY: I was just rephrasing his words. So
 12 I can withdraw, Your Honor.
 13 THE COURT: Okay.
 14 MS. FAHERTY: I think the point is made. Thank
 15 you.
 16 THE COURT: Withdrawn.
 17 Q Let's turn your attention to 40 Wall Street and that
 18 loan transaction, please.
 19 A Okay.
 20 Q Do you recall how that loan came to you?
 21 A I don't recall if I approached my father, if he
 22 approached me, but we had a conversation.
 23 Q So you don't know who brought it to whom, but there was
 24 a conversation between you and Mr. Allen Weisselberg; fair to
 25 say?

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1 A Correct.

2 Q Do you remember what broadly those initial discussions

3 entailed?

4 A We had discussed the current loan that they had and the

5 maturity date and certain dates that were in important on that

6 loan and, you know, I mentioned that I think we could provide a

7 loan here.

8 Q Did you have an understanding at that time what that

9 "then current loan" was that you were discussing?

10 A Yes. They had a loan with Capital One.

11 Q What do you recall about the particulars of that

12 Capital One loan that prompted the discussion with Mr. Allen

13 Weisselberg about what, if any, financing or refinancing Ladder

14 could provide?

15 A The loan they had at Capital One had a unique feature

16 of amortization paydown of \$5 million and we were -- they

17 wanted to decide whether it was better for them to just make

18 that payment and stay with their current loan or maybe get a new

19 loan with a lower rate.

20 Q Did you discuss the ground lease at all with regards to

21 40 Wall in those initial conversations?

22 A I don't think initially.

23 Q Are you aware that there is a ground lease?

24 A Eventually we got there, yes.

25 Q What do you know about the ground lease at 40 Wall?

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1 A The ground lease was owned by a third party, I believe

2 it was a family in Germany, and there was a rent reset that

3 comes due in, I believe, 2032 and it is based on the fair market

4 value of the ground lease and six percent of that would be the

5 payment. So we knew that the current ground rent that had

6 contractual increases until then would go up to a number that we

7 couldn't determine for sure at the time of the loan.

8 Q And sorry. I should ask this clarifying question.

9 Does the Trump Organization or Mr. Donald J. Trump own

10 40 Wall in fee simple?

11 A It's a lease fee.

12 Q And it is this ground lease that controls that

13 ownership arrangement?

14 A Correct. They own the building and somebody else owns

15 the dirt.

16 Q Thank you.

17 Do you remember the initial general terms that you and

18 Mr. Allen Weisselberg were initially discussing when you first

19 contemplated a re-fi of the Capital One loan with Ladder?

20 A We were talking about a ten-year CMBS loan. I believe

21 it was 160 million. That's all that I recall in the initial

22 conversations.

23 Q Do you recall possibly discussing the rating if you had

24 securitized the loan, what those ratings might be?

25 A Initially, no. But eventually, yes.

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1 Q Do you recall looking at any initial projections with

2 regards to that initial discussion?

3 A Yes.

4 Q What projections do you recall looking at?

5 A I don't recall the specifics, but typically we would

6 receive a rent roll and operating statements.

7 MS. FAHERTY: Let's pull up 1290. Did we keep it

8 or did you give it back to me? No. You gave it back to me.

9 Thank you.

10 Your Honor, I marked for identification Plaintiff's

11 Exhibit PX-10290.

12 Q I put that on your screen in front of you as well, Mr.

13 Weisselberg. Appears to be a message from Allen Weisselberg,

14 your father, right?

15 A Yes.

16 Q To you on April 9, 2015, yes?

17 A Yes.

18 Q And this is a forward with the subject Trump Mar31,

19 2015, March 31, 2015, yes?

20 A Yes.

21 Q "Derivatives valuation report from Chatham Financial."

22 Do you see that there?

23 A I do.

24 Q And there is an attachment with a title

25 "Trump31-Mar-2015valuation.xls". Do you see it?

JACK WEISSELBERG - DIRECT(MS. FAHERTY) Page 1815

1 A Yes.

2 Q This is your father forwarding you a message from

3 Chatham Financial, correct?

4 A Correct.

5 Q Who is Chatham Financial?

6 A Chatham Financial is a third-party provider that

7 borrowers and lenders use for a few different devices. One is

8 to buy rate caps and in this case to figure out what prepayment

9 penalty would cost.

10 Q And what is the point of sending this message regarding

11 what a prepayment penalty might be?

12 A So when we -- when they were deciding when the Trump

13 Organization was deciding whether to make the amortization

14 payment or to get a new loan, the process of getting a new loan,

15 they would have to make a prepayment penalty to Capital One. So

16 they hired Chatham to find out what that prepayment penalty

17 would look like.

18 Q And this is just Mr. Weisselberg Allan forwarding it to

19 you, so that you could have a further discussion about it, yes?

20 A Correct.

21 THE COURT: Five-minute warning.

22 MS. FAHERTY: Your Honor, I move to admit this into

23 evidence.

24 MR. ROBERT: Objection. Statute of limitations and

25 also I'm not sure if there is an attachment because there is

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1 a second document that says "document provided natively" and
 2 whatever is coming from valuation reports would be hearsay.
 3 MS. FAHERTY: I'm not putting it in for the truth
 4 of the matter asserted. I'm putting it in for notice that
 5 this was information the Trump Organization had and
 6 forwarded to Mr. Jack Weisselberg.
 7 THE COURT: Okay. Statute of limitations overruled
 8 and hearsay. Granted except to the extent that it is being
 9 introduced to prove notice.
 10 MS. FAHERTY: Your Honor, I can have our consultant
 11 put the street which is the attachment to this document on
 12 the screen.
 13 THE COURT: Let's see that.
 14 MS. FAHERTY: So we can see it.
 15 THE COURT: Granted. It is in.
 16 (Whereupon, the Document was marked in evidence as
 17 Plaintiff's Exhibit 1290.)
 18 Q Do you recognize that this is the Excel spreadsheet?
 19 It says, "Chatham Financial" here?
 20 A It says "Chatham Financial," yes.
 21 Q Any reason to believe that this is not the attachment
 22 that was included to this message?
 23 A No.
 24 Q Okay.
 25 MS. FAHERTY: Your Honor, I move to admit subject

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1 to all of the objections I imagine.
 2 THE COURT: It is in.
 3 MS. FAHERTY: Thank you.
 4 THE COURT: Including the attachment.
 5 MR. ROBERT: It is for notice only correct.
 6 THE COURT: Yes.
 7 MS. FAHERTY: Yes. Probably a good moment for a
 8 break at this point, Your Honor.
 9 THE COURT: Okay. 15 minutes. We'll take a
 10 10-minute-break.
 11 (Witness exits the stand.)
 12 (Whereupon, a recess was taken.)
 13 THE COURT OFFICER: All rise. Part 37 is back in
 14 session. Please be seated and come to order.
 15 THE COURT OFFICER: Witness entering.
 16 THE COURT: So let's continue with the direct
 17 examination of Mr. Jack Weisselberg.
 18 MS. FAHERTY: Thank you, Your Honor.
 19 Q Mr. Weisselberg, during your discussions of the 40 Wall
 20 loan transaction, do you recall there came a point in time when
 21 you discussed with Jeff McConney information related to the
 22 ground lease?
 23 A Yes.
 24 Q Do you recall at any point reviewing formal,
 25 potentially legal documents?

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1 A I remember we reviewed the actual ground lease.
 2 MS. FAHERTY: Your Honor, I marked for
 3 identification the plaintiff's next Exhibit PX-00635.
 4 Q I put it on the screen, Mr. Weisselberg, plaintiff's
 5 exhibit. Does this appear to be a message from Jeff McConney at
 6 the Trump Organization to you on April 10, 2015?
 7 A Yes.
 8 Q Is there also a copy on this message to Allen
 9 Weisselberg at the Trump Organization?
 10 A Yes.
 11 Q The subject is "forward:40 Wall Street ground lease"
 12 and there appears to be an attachment, yes?
 13 A Yes.
 14 Q The attachment is 20 -- well, I don't have to
 15 represent to you. It is on the screen.
 16 "20100720103907533.tif," do you see that?
 17 A Yes.
 18 Q In this message, Jeff McConney appears to be writing
 19 you, "Jack, attached is the 4th loan modification along with
 20 summary which talk about how to compute the FMV rent a few years
 21 from now." Then it looks like there is an emoticon smiley face,
 22 right?
 23 A Yes.
 24 Q What is FMV rent?
 25 A Fair market value rent.

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1 Q Okay. And did you have any understanding as to what a
 2 4th loan modification along with a summary was?
 3 A It was actually a typo. It is 4th lease modification.
 4 Q 4th lease modification, okay.
 5 Did you understand that this message about 4th lease
 6 modification related to the 40 Wall Street ground lease?
 7 A Yes.
 8 Q And then I'll ask you to turn to the next page in your
 9 document in front of you, plaintiff's exhibit. Do you recognize
 10 that page right there?
 11 A Yes.
 12 Q What do you recognize that to be?
 13 A This is the fourth amendment to the ground lease
 14 discussing the rent reset.
 15 Q And this is a document you reviewed that Jeff McConney
 16 sent to you with regards to the 40 Wall Street?
 17 A I perused it, but the underwriting team reviewed it.
 18 MS. FAHERTY: Your Honor, I move this exhibit into
 19 evidence.
 20 MR. ROBERT: Objection.
 21 THE COURT: On the ground?
 22 MR. ROBERT: Statute of limitations.
 23 THE COURT: Overruled.
 24 (Whereupon, the Document was marked in evidence as
 25 Plaintiff's Exhibit 635.)

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DOUGLAS LARSON, JACK WEISSELBERG October 18, 2023

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1 Q Turning your attention to this summary page, you agree
 2 with me there is a note under the title, "Resume of 4th
 3 Modification of Ground Lease on 40 Wall Street New York City"?
 4 A Yes.
 5 Q The note says, "This resume represents a brief summary
 6 of any of the important provisions of the 4th modification of
 7 the lease," yes?
 8 A Yes.
 9 Q And the date of the loan modification -- the lease
 10 modification appears is December 31, 2007?
 11 A Correct.
 12 Q The landlord is identified?
 13 A Yes.
 14 Q Is the tenant identified?
 15 A Yes.
 16 Q The tenant is 40 Wall Street, L.L.C.?
 17 A Yes.
 18 Q Do you recognize that tenant, 40 Wall Street, L.L.C.?
 19 A Yes.
 20 Q Who do you recognize 40 Wall Street, L.L.C. to be?
 21 A That was the owner of the building.
 22 Q Is the 40 Wall Street, L.L.C. affiliated with the Trump
 23 Organization?
 24 A Yes.
 25 Q Do you see further down on the page there is a topic

JACK WEISSELBERG - DIRECT(MS. FAHERTY) Page 1821

1 header, "Provisions of the Fourth Modification"?
 2 A Y88es.
 3 Q Do you see at point two, it says, "Revised Section
 4 2.05A to provide for rent valuation as of January 1, 2033 at the
 5 greater of a, six percent the then value of the land considered
 6 as vacant and unimproved, but with the right to construct a
 7 900,000 square-foot building for X, office purposes, and Y,
 8 ground floor retail space or other retail space in the building
 9 which existed after January 1, 2028 or B, 85 percent" -- it says
 10 "O", but would it be a fair interpretation that it should be
 11 "of"?
 12 A I believe so.
 13 Q "The then rental." Do you see that?
 14 A Yes.
 15 Q Was this provision relevant to you in the underwriting
 16 of the 40 Wall transaction?
 17 A Yes.
 18 Q Turn to the next page. Do you see that second
 19 provision there that says, "condominium conversion right"?
 20 A Yes.
 21 Q "Paragraph four eliminates the tenant's condominium
 22 conversion rights which it had under Section 27.09." Do you see
 23 that there?
 24 A Yes.
 25 MS. FAHERTY: If we move to -- it is identified as

JACK WEISSELBERG - DIRECT(MS. FAHERTY) Page 1822

1 five at the bottom of the page, you will see it as numbered
 2 paragraph five, right there. Back one. Thank you.
 3 Q Do you see that paragraph five was included in there?
 4 A Yes.
 5 Q Which states, "In consideration of the elimination of
 6 Section 27.09 of the lease, landlord and tenant agree that if in
 7 the future tenant is of the opinion that the area and times
 8 favor the construction of residential units which may be
 9 condominium units and tenant desires to create a residential
 10 condominium for the sale of units to the public, tenant may
 11 propose revision of the lease to permit the conversion to
 12 condominium ownership for the sale of such residential units
 13 provided, however, that in no event shall landlord have any
 14 obligation to agree with or take any action to effectuate such
 15 condominium conversion and landlord's determination to permit
 16 any such conversion shall be at landlord's sole and unfettered
 17 discretion." That was included in this document, yes?
 18 A Yes.
 19 Q Then one more page forward, do you recognize
 20 the -- the signature at the very bottom of this document?
 21 A Yes.
 22 Q Whose signature do you recognize that to be?
 23 A That's Donald J. Trump's.
 24 Q Donald J. Trump, the man sitting over at that table
 25 there?

JACK WEISSELBERG - DIRECT(MS. FAHERTY) Page 1823

1 A No.
 2 Q He was there, right?
 3 A At some point.
 4 Q That signature for Donald J. Trump is associated with
 5 40 Wall Street, L.L.C., yes?
 6 A Yes.
 7 Q Okay. We can put that down. I handed up to you a
 8 document marked as Plaintiff's Exhibit P X-01109. Let me know
 9 when you see that in front of you.
 10 A Yeah.
 11 Q I'm going to ignore a lot of the bottom of this
 12 e-mail --
 13 A Thank you.
 14 Q -- because I think it is just irrelevant, personal
 15 information, personal communications, but looking at the message
 16 from you to Allen Weisselberg dated April 16, 2015 at
 17 10:29 a.m., that's you e-mailing your father, Mr. Allen
 18 Weisselberg, yes?
 19 A Correct.
 20 Q And then you have -- he responds to you, "Not too
 21 shabby. Let's get the rate and answer on the ground lease, so
 22 we could move the process," yes?
 23 A Yes.
 24 Q And then further up in the chain, you inform Mr. Allen
 25 Weisselberg that you're "sitting down tomorrow with our head of

JACK WEISSELBERG - DIRECT(MS. FAHERTY) Page 1824

1 large loans and then probably Brian and Mazzei on Monday," yes?
 2 A Yes.
 3 MS. FAHERTY: For the court reporter, that's
 4 M-A-Z-Z-E-I.
 5 Q The Brian referenced here, who is that?
 6 A That's Brian Harris.
 7 Q Mr. Mazzei or Mrs. Mazzei referenced here, who is that?
 8 A That's Mike Mazzei.
 9 Q There is reference here to the head of large loans.
 10 Who was that?
 11 A I don't know exactly. I'm not sure. We actually had a
 12 head of large loans. It was probably David Henschke who was our
 13 head of securitization.
 14 Q Thank you. So possibly discussing the securitization
 15 of the 40 Wall Street loan? Is that what that's a reference to?
 16 A Yes.
 17 Q Okay. And the reference in the underlying message from
 18 Allen Weisselberg, "Let's get the rate and the answer on the
 19 ground lease." What is that a reference to, to your
 20 understanding?
 21 A With the rate, we wanted to know what their interest
 22 rate would be based on the cash-free loan and our understanding
 23 of the loan. And the answer on the ground lease is making sure
 24 it was financeable, securitizeable and figuring out what we
 25 thought the rent was going to be when it reset.

Page 1826

1 A The rating agency comes up with their own value which
 2 leads to the loan to value based on the rating agency cash flow
 3 and that cash flow includes what the ground rent payment will
 4 be.
 5 (Continued on the next page.)
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JACK WEISSELBERG - DIRECT(MS. FAHERTY) Page 1825

1 Q And can you talk a little bit more about that, why
 2 would that be a concern?
 3 A Well, the ground lease is part of the operating
 4 expenses for the property, so it affected the net cash flow and
 5 in this case as I had mentioned earlier, the ground lease was
 6 resetting to a number that we thought would be much higher. So
 7 it was important to figure out what we figured it would be 17 or
 8 18 years later.
 9 Q Does that mean 40 Wall Street, L.L.C. once the ground
 10 lease reset would potentially have higher rent exposure that it
 11 would have to pay at the time of that reset; is that right?
 12 A The ground rent could potentially be higher, yes.
 13 Q And that was a concern to you for what reason?
 14 A It would affect the net cash flow and our loan dollars
 15 are based on the net cash flow of the property.
 16 Q Would it also impact the loan beyond the current
 17 contemplated financing project?
 18 A It would only affect that, but because of that, it
 19 affects our loan.
 20 Q Understood. Thank you. You could put that to the
 21 side.
 22 Just to clarify as well, does that ground lease reset
 23 also impact the rating agency's LTVs?
 24 A Yes.
 25 Q In what way?

J. Weisselberg - Plaintiff - direct (Faherty) Page 1827

1 Q And you can put that down. Thank you, sir.
 2 MS. FAHERTY: Did I move that into evidence, Your
 3 Honor? If not, I am so moving.
 4 MR. ROBERT: Objection. Statute of limitations.
 5 THE COURT: Understood.
 6 MS. FAHERTY: Thank you, sir.
 7 Q Okay. Mr. Weisselberg, I've handed up to you a
 8 document that we've marked as Plaintiff's Exhibit PX-00647 and
 9 putting it on the screen here appearing to an e-mail from you on
 10 April 23, 2015 to Brian Harris.
 11 And would you agree with me this appears to be another
 12 group of individuals who all work at Ladder Capital at that
 13 time?
 14 A Yes.
 15 Q And the subject is 40 Wall Street?
 16 A Correct.
 17 Q And looking at the names included on the cc line, do
 18 you have any understanding as to who that group of individuals
 19 includes?
 20 A Yes.
 21 Q Who are they?
 22 A Craig Robertson was the underwriter on the deal, Mike
 23 Mazzei was our president at the time. David Henschke was our
 24 head of securitization, Ed Peterson was our head trader, Greta
 25 Guggenheim was our CIO at that time, Pamela McCormack was our

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1 general counsel at that time, and Matthew Jacobs was our head of
 2 CMBS underwriting at that time.
 3 Q And this grouping of individuals, are they a particular
 4 group at Ladder? Would there be a reason for writing to this
 5 group?
 6 A I believe that most of them made up the committee that
 7 would approve the loan, not all of them.
 8 Q And is there a name for that committee?
 9 A For this one it would be Conduit Committee.
 10 Q Conduit?
 11 A Conduit.
 12 Q Okay, great. Thank you.
 13 So in this message, and you don't have any reason to
 14 doubt this, is a message authored by you; correct?
 15 A Correct.
 16 MS. FAHERTY: Your Honor, I'm going to ask
 17 questions about this, so I want to avoid missing it. Move
 18 to admit this document.
 19 MR. ROBERT: Objection. Statute of limitations.
 20 THE COURT: Overruled. It's in evidence.
 21 (Whereupon, the item previously referred to is
 22 received and marked Plaintiff's Exhibit Number 647 in
 23 evidence.)
 24 MS. FAHERTY: Thank you, Your Honor.
 25 Q So turning your attention to the first paragraph,

J. Weisselberg - Plaintiff - direct (Faherty) Page 1829

1 Mr. Weisselberg. You mentioned how you're going to discuss the
 2 40 Wall Street transaction for Trump.
 3 "We sat down today to discuss the 40 Wall Street
 4 transaction for Trump. The proposed loan of \$160 million (137
 5 dollars per SF" or square foot, "excluding the ground lease,
 6 \$369 dollars per square foot, including the ground lease) with a
 7 real LTV of approximately 35 to 40 percent and a DSCR of 2.32X
 8 at closing and a debt yield of 14.02 percent at closing, will
 9 take out the current \$160 million seven-year IO loan that they
 10 currently have with Capital One."
 11 So is this what we talked about earlier, the financial
 12 arrangement that the Trump Organization currently had in place
 13 that Mr. Allen Weisselberg was seeking to refinance with Ladder?
 14 A Last part of that sentence, yes.
 15 Q Sure. And DSCR, what does DSCR stand for?
 16 A That's debt service coverage ratio.
 17 Q What is a debt service coverage ratio?
 18 A That is when you take a loan constant which is using
 19 the interest rate and the amortization schedule and you divide
 20 it by the net cash flow of the property to figure out what the
 21 coverage is, meaning how much cash flow there is from the
 22 property to pay the debt service.
 23 Q And IO, what is IO?
 24 A Interest only.
 25 Q Okay. All right. And it goes on further to state the

J. Weisselberg - Plaintiff - direct (Faherty) Page 1830

1 loan has acquired \$5 million amortization payment in November of
 2 2015, right?
 3 A Yes.
 4 Q And the reference to that loan, am I reading it
 5 correctly, is it your understanding that that loan is a
 6 reference to the Capital One loan, yes?
 7 A Correct.
 8 Q Okay. The sentence continues, "alternatively for Trump
 9 they can make that same \$5 million payment to break the (swap
 10 prepayment penalty,) which would be a tax deductible payment.
 11 So a new loan would reduce his rate from 5.71 percent to a low
 12 to mid 3's rate, extend his loan for ten years and allow him to
 13 recover his prepayment penalty in a little more than one year.
 14 Of note, he will be coming out of pocket for the prepayment
 15 penalty."
 16 What is that reference to, that grouping of sentences I
 17 just read, the "alternatively for Trump?"
 18 A So this was mentioning why our loan would make sense
 19 for them and that if they decided not to make the amortization
 20 payment to Capital One and keep that loan outstanding that they
 21 would come to us for a new loan and this would be the
 22 alternative where they would lower their rate and the prepayment
 23 penalty they would be able to recover that just in saving on
 24 debt service over what I said was a little more than a year.
 25 Q And do you recall -- how did you form that

J. Weisselberg - Plaintiff - direct (Faherty) Page 1831

1 understanding about what alternatives that they had that they
 2 were exploring?
 3 A We did a pre-sizing, sort of underwriting to figure out
 4 what the loan payment would be assuming our rate was in the low-
 5 to mid-three percent and figured out how long it would take them
 6 to recover that prepayment penalty.
 7 Q Got it. And the e-mail goes on. The next paragraph
 8 begins, "the rub on the deal is the ground lease." What did you
 9 mean by that?
 10 A Every deal that we do has a risk, if not more, and in
 11 this situation the biggest risk or something that made it unique
 12 was the ground lease reset.
 13 Q For all the reasons we are just discussing a moment
 14 ago, yes?
 15 A Correct.
 16 Q Great. And the very end of that paragraph it begins
 17 with the sentence "we can get into the details if you want to
 18 call, if you would like, but we have gotten comfortable with
 19 that risk and David and Craig believe we can get a BBB rating on
 20 the loan with the majority of the rating agencies."
 21 What is that a reference to, the BBB rating with the
 22 majority of the rating agencies?
 23 A So that would be a triple B rating, which is investment
 24 grade. So we would be just letting him know that we thought
 25 that our worst case would be having the lowest end of an

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1 investment grade loan which would be a triple B rating and the
 2 agencies that we use at the time I believe were Standard &
 3 Poor's and Fitch. So we did an analysis of how we thought they
 4 would look at our cash flow and we were able to back into at
 5 worst case a triple B.
 6 Q So still contemplating whether you could securitize the
 7 loan and if so, what it would look like?
 8 A Well, we knew we could securitize the loan. It was a
 9 question of whether we could get investment grade treating and
 10 this was saying we believe that we would.
 11 Q Great, thank you.
 12 And then you state "please let us know your thoughts or
 13 if you would like to have a conversation later today. I was
 14 planning on sending them a one-page term sheet after we finalize
 15 our quote and we could go from there."
 16 Is it a fair reading that at this point you were
 17 prepared to issue a term sheet on the 40 Wall Street loan but
 18 had not yet done it?
 19 A We were preparing but we needed Brian sign off before
 20 we did that. So this was the initial e-mail to let him know how
 21 we felt and if he wanted to have a discussion about it, then we
 22 could discuss it and we were hoping to be able to issue a term
 23 sheet.
 24 Q Do you recall if there was any further discussion after
 25 this message?

J. Weisselberg - Plaintiff - direct (Faherty) Page 1833

1 A I'm sure there was.
 2 Q Okay. You can put that to the side.
 3 MS. FAHERTY: Okay. I've marked for identification
 4 plaintiff's next exhibit, PX-00648. I put it on the screen
 5 as well. And I'll turn your attention to very bottom second
 6 page of this e-mail. You can zoom out a little bit.
 7 A You mean the top? The top of the second page?
 8 Q I'm just drawing your attention to the bottom message
 9 on that second page and I'll just ask does this look like the
 10 message we were just looking at a moment ago?
 11 A Yes.
 12 Q Yes, okay.
 13 A Yes.
 14 MS. FAHERTY: So zooming out from there and you can
 15 now go to the front page.
 16 Q Does this e-mail thread appear to be a continuation of
 17 overview you were providing to Brian Harris in order to be able
 18 to issue the term sheet on the 40 Wall Street loan?
 19 A Yes.
 20 Q Okay. And Mr. Harris did in fact have some questions,
 21 yes?
 22 A He said okay with me. And then he just mentioned that
 23 he thinks that they're going to want to rate lock.
 24 Q But otherwise you -- Mr. Harris indicated to you it
 25 would be okay for you to issue the term sheet, yes?

J. Weisselberg - Plaintiff - direct (Faherty) Page 1834

1 A Yes.
 2 Q Okay. And very top message of this thread is an e-mail
 3 from Mike Mazzei to you, yes?
 4 A Yes.
 5 Q And Brian Harris, yes?
 6 A I don't believe he was on this e-mail -- oh, yes, he's
 7 cc'd. Apologies. Yes, yes.
 8 Q And he says "did we possibly get something done today.
 9 Okie doke;" right?
 10 A Yes.
 11 Q Okay. Looking at your message, the one right below the
 12 okeydoke, you wrote a message to Michael Harris and Michael
 13 Mazzei at 4:54 p.m., same day, April 23rd. Do you see that
 14 there?
 15 A Yes.
 16 Q In that message you write, "Okay, they would prefer to
 17 close in July instead of November."
 18 Is that a reference to the Trump Organization?
 19 A Correct.
 20 Q Do you recall as you sit here today that the Trump
 21 Organization was interested in closing the 40 Wall Street
 22 transaction in July instead of November?
 23 A I don't. I recall reading the e-mail, but I don't
 24 recall that part of this.
 25 Q Any reason to doubt that at the time that you wrote

J. Weisselberg - Plaintiff - direct (Faherty) Page 1835

1 this e-mail that that was your understanding?
 2 A No.
 3 Q And your message continues, "And not increase the
 4 spread by ten BPS" or BPS, right?
 5 A Basis points, yes.
 6 Q Basis points, yes. Thank you.
 7 "In July, their prepayment penalty is 6 million as
 8 opposed to 5 million in November, so we quoted 161 million,
 9 giving them the difference in loan proceeds;" right? You wrote
 10 that?
 11 A Yes.
 12 Q And then next it says, "Donald is on board and ready to
 13 go." Is that Donald J. Trump?
 14 A Yes.
 15 Q And then it says, "Ivanka and Don, Jr. are back on
 16 Monday and will be notified then."
 17 Who is the Ivanka referenced here?
 18 A Donald J. Trump's daughter.
 19 Q Is that Ivanka Trump?
 20 A Yes.
 21 Q And the Don, Jr. Who is that a reference to?
 22 A That's Donald Trump, Jr., Donald's son.
 23 Q So this statement, "Ivanka and Don, Jr. are back on
 24 Monday and will be notified then," is that a reference to Ivanka
 25 and Don, Jr. will be notify of the information contained in this

J. Weisselberg - Plaintiff - direct (Faherty) Page 1836

1 particular paragraph here about the 40 Wall transaction?
 2 A I don't recall specifically, but reading it, that's the
 3 assumption I would make, but I'm not sure.
 4 Q You don't have any reason to doubt the words that you
 5 wrote that these individuals will be notified then, do you?
 6 A No.
 7 MS. FAHERTY: Okay. We can move on from that
 8 document, Your Honor. Thank you.
 9 Your Honor, I move to admit, please.
 10 THE COURT: It's in.
 11 MS. FAHERTY: Thank you, Your Honor.
 12 (Whereupon, the item previously referred to is
 13 received and marked Plaintiff's Exhibit Number 648 in
 14 evidence.)
 15 MR. ROBERT: I just want my objection on the
 16 record.
 17 THE COURT: My only objection is the pronunciation
 18 of o-k-i-e.
 19 I can't vouch for the spelling, but the expression.
 20 MS. FAHERTY: I do say okeydoke.
 21 THE COURT: Where are you from?
 22 Q I've marked as Plaintiff's next exhibit PX-00626 and
 23 handed it forward to the witness, so I'll give you a minute.
 24 We put it on the screen, Mr. Weisselberg. Let me know
 25 when you see it there.

J. Weisselberg - Plaintiff - direct (Faherty) Page 1837

1 A Yes, got it.
 2 Q Okay. Do you recognize this document on the screen?
 3 A Yes.
 4 Q What do you recognize it this to be?
 5 A This was the cover letter to the signed application I
 6 believe for the 40 Wall Street loan.
 7 Q And this document is on 40 Wall Street LLC letterhead,
 8 yes?
 9 A Correct.
 10 Q Did you have an understanding that the address for 40
 11 Wall Street LLC was at 725 Fifth Avenue, the 26th floor in New
 12 York, New York with the ZIP code 10022?
 13 A Yes.
 14 Q And the name associated with 40 Wall Street LLC, is
 15 that Allen Weisselberg as the executive vice president?
 16 A Correct.
 17 Q And it's addressed to Ladder Capital Finance LLC.
 18 That's where you work; right?
 19 A Correct.
 20 Q And the message is a proposed 161 million refinancing
 21 of 40 Wall Street, New York, New York, yes?
 22 A Correct.
 23 Q And Mr. Allen Weisselberg writes to you:
 24 "Dear, Jack. Enclosed please find the term sheet for
 25 the above-referenced loan executed by the borrower."

J. Weisselberg - Plaintiff - direct (Faherty) Page 1838

1 Is it your understanding that the borrower was 40 Wall
 2 Street LLC?
 3 A Correct.
 4 Q Mr. Weisselberg's letter continues:
 5 "Please be reminded that as we agreed, the lender will
 6 not incur any third-party fees and expenses until I advise you
 7 to go ahead with third-party reports." Do you see that there?
 8 A Yes.
 9 Q What is your understanding of that sentence "to not
 10 incur any third-party fees and expenses until I advise you to go
 11 ahead with third-party reports?"
 12 A Oftentimes a sponsor will sign an application and have
 13 us get started on our underwriting but not incur legal fees or
 14 hiring an appraiser or other third-party reports until they give
 15 us the go ahead.
 16 Q Okay. And did you say appraisal fees?
 17 A Yes.
 18 Q So basically don't hire an appraiser to do anything
 19 until I say it's okay?
 20 A Correct.
 21 Q Got it. And it's signed, "very truly yours." Do you
 22 recognize the signature?
 23 A I do.
 24 Q Whose signature is that?
 25 A Allen Weisselberg.

J. Weisselberg - Plaintiff - direct (Faherty) Page 1839

1 Q And at the very bottom it says there is an enclosure,
 2 yes?
 3 A Yes.
 4 MS. FAHERTY: And turn the page.
 5 Q And then I'll just invite you to confirm whether you
 6 recognize the enclosure attached to this letter?
 7 A Yes.
 8 Q What do you recognize this enclosure to be?
 9 A This is our standard form application that was
 10 personalized to this transaction.
 11 Q Okay. Is that also referred to as a term sheet?
 12 A Yes.
 13 Q Okay.
 14 MS. FAHERTY: Your Honor, I move to admit this into
 15 evidence.
 16 MR. ROBERT: Objection. Statute of limitations.
 17 THE COURT: Granted. It's in.
 18 (Whereupon, the item previously referred to is
 19 received and marked Plaintiff's Exhibit Number 626 in
 20 evidence.)
 21 Q And turning your attention to the PDF page six?
 22 MS. FAHERTY: It's 9517.
 23 Q Do you recognize the signature at the bottom of that
 24 page?
 25 A Yes.

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1 Q Who do you recognize that signature to be?

2 A That's Donald J. Trump.

3 Q Okay. And Donald J. Trump on behalf of 40 Wall Street

4 LLC?

5 A Correct.

6 Q As president?

7 A Yes.

8 Q And I'll draw your attention to the prior page, so

9 ending in the number 9516, drawing your attention to the

10 paragraph that is titled "Reserves." Do you see that there?

11 A Yes.

12 Q And was a term included within this term sheet under

13 the "Reserves" paragraph that "the borrower will be required to

14 establish at closing reserves for material, deferred maintenance

15 and initial deposits into tax reserves. In addition, ongoing

16 reserves will be collected for taxes and such other purposes as

17 lender may be determine" -- "may determine to be necessary as a

18 result of its due diligence review and underwriting.

19 In lieu of reserves for insurance, tenant improvements,

20 leasing commissions, capital expenditures and ground lease

21 payments, Donald J. Trump may provide a personal guaranty.

22 In lieu of reserves for free rent periods (at closing

23 only), Donald J. Trump will guaranty all outstanding free rent,

24 which will burn off on a lease by lease basis when the

25 respective tenant begins to pay full, unabated rent."

J. Weisselberg - Plaintiff - direct (Faherty) Page 1841

1 Do you see that there?

2 A Yes.

3 Q Did you also have that understanding that as termed

4 within this term sheet that Donald J. Trump was going to provide

5 a personal guaranty with regards to free rent periods?

6 A Yes.

7 Q And was he also going to provide a personal guaranty in

8 lieu of reserves for insurance, tenant improvements, leasing

9 commissions, capital expenditures, and ground lease payments?

10 A Yes.

11 Q I'll just turn your attention to the Exhibit A, Closing

12 Conditions document page.

13 A Okay.

14 Q And drawing your attention to paragraph 8. I'll read

15 it and then I'll ask you a question.

16 Paragraph 8 states: "As a closing condition, the

17 delivery of financial statements (including tax returns) from

18 borrower and any guarantor, WeiserMazars LLP, will be acceptable

19 to lender in connection with any accounting or reporting

20 obligation in the loan documents requiring an acceptable

21 accounting firm. The loan documents will provide that

22 borrower's annual financial statement shall be audited by an

23 acceptable accounting firm (i.e., WeiserMazars LLP.)" 4.

24 Do you see that there?

25 A Yes.

J. Weisselberg - Plaintiff - direct (Faherty) Page 1842

1 Q And were they in fact a condition included in this term

2 sheet at Exhibit 8 that the delivery of financial statements was

3 apart of a closing condition? That's a bad question.

4 A Yes.

5 MS. FAHERTY: Thank you. Okay. We can move on

6 from that document.

7 Q With regards to the guaranty is it fair to say based on

8 what we were just looking at in that term sheet that the

9 guaranty would be sufficient in lieu of reserves?

10 A Yes.

11 Q Any conditions on that guaranty? Was there

12 requirements about a certain amount of that guaranty for the --

13 that to be in lieu of the reserves?

14 A The guaranty was going to be a specific number that

15 they were guaranteeing.

16 Q And why is that?

17 A We were going to during diligence figure out exactly

18 what those reserves would have been had it not been guaranteed

19 and actually posted and have him guarantee that and typically we

20 go a little bit higher because cash is always better than a

21 guaranty, so the guaranty we typically make a little bit higher.

22 Q Great. Thank you. Appreciate that.

23 MS. FAHERTY: Your Honor, I've marked as

24 plaintiff's next exhibit PX-01396. I've handed it up to the

25 witness.

J. Weisselberg - Plaintiff - direct (Faherty) Page 1843

1 Q Mr. Weisselberg, let me know when you have it in front

2 of you.

3 A I do.

4 Q Okay. Does this appear to be an e-mail from you dated

5 May 19, 2015 at 11:46 a.m. to Allen Weisselberg and David Cohen?

6 A Yes.

7 Q And there is a copy to several names on this e-mail.

8 Mark Ableman. Who is Mark Ableman?

9 A He was our in-house transaction manager.

10 Q He worked at Ladder?

11 A At Ladder, correct.

12 Q Craig Robertson. We heard his name earlier. He was an

13 underwriter at Ladder?

14 A Correct.

15 Q Was he the specific underwriter at the 40 Wall

16 transaction?

17 A He was the underwriter on the loan.

18 Q Michael Bette. Who is that?

19 A He was the junior underwriter on the loan.

20 Q Scott Weinberg?

21 A He was our outside counsel.

22 Q John Bauco?

23 A Bauco, yes. He was also outside counsel.

24 Q And Sarah S. Gochberg?

25 A Sarah is our closer on the loan.

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1 Q And the subject is 40 Wall; right?

2 A Correct.

3 Q And David Cohen. Is David Cohen somebody who works for

4 Ladder Capital?

5 A No, he works for the Trump Organization.

6 Q And what is your understanding of who David Cohen is at

7 the Trump Organization?

8 A He was in-house counsel.

9 Q And your message to Allen and David Cohen, it reads:

10 "Allen/David, please confirm the following: One, at

11 closing, Trump Corporation or an affiliate would sign a 15-year

12 master lease for the currently vacant 20,000 square foot retail

13 space at a rent of 1.4 million in the event that a lease with

14 Balducci or an acceptable replacement tenant has not been

15 signed.

16 Upon the execution of the Balducci (or replacement)

17 lease, the master lease will be terminated" -- "will

18 terminated." You would agree with me there probably is a typo

19 there?

20 A There is a couple typos there.

21 Q I'm trying.

22 "Additionally, Donald J. Trump will personally

23 guarantee the lease until a new lease is signed."

24 Do you see that there?

25 A Yes.

J. Weisselberg - Plaintiff - direct (Faherty) Page 1845

1 Q Okay. What is a 15-year master lease for the vacant

2 20,000 square feet retail space?

3 A So a master lease is something we will use with

4 sponsors if a lease is not signed yet for a vacant space, we

5 will have the sponsor sign a master lease for that so that we

6 can include that rent and as soon as the tenant actually takes

7 the space and signs the lease, then that master lease will go

8 away. And if it doesn't, then the master lease stays in place

9 for the life of the loan. And in this case, five years beyond.

10 Q And explain to me what's a master lease.

11 A A master lease is when a sponsor signs a lease for a

12 vacant space at their property.

13 Q So they're undertaking the obligation to make the

14 payments on that space, is that fair?

15 A Correct.

16 Q Okay. And is this e-mail a reflection that on May 19,

17 2015, Ladder Capital, including you, had an understanding that

18 Balducci was potentially going to be leasing the 20,000 square

19 feet retail space referenced here?

20 A Potentially, yes.

21 Q Okay. And then there is a reference to a personal

22 guaranty for the lease. Is that different than the master lease

23 itself?

24 A The master lease is not always guaranteed. They'll

25 sign it and they'll be obligated to make those payments. We

J. Weisselberg - Plaintiff - direct (Faherty) Page 1846

1 went a step further and made them personally guarantee that he

2 would pay the rent on that lease.

3 Q Got it. Thank you.

4 And then Point 2, it says: "You will send an

5 additional good-faith deposit of \$75,000;" right?

6 A Yes.

7 Q Do you recall if you did in fact receive that \$75,000?

8 A I don't recall if we received it, but typically when

9 the legal bill starts to go above the deposit we have we ask

10 sponsors to put up more money to make sure we can cover it, so I

11 assume they did pay it, but I don't recall.

12 Q And then number three you asked that they confirm that

13 "we have your permission to move forward, without restriction,

14 towards the closing of the loan (legal searches, insurance,

15 etc.)" Do you see that there?

16 A Yes.

17 Q And why did you need that confirmation for permission

18 to move forward without restriction toward the closing of the

19 loan?

20 A This was in response to the cover letter on the

21 application that was signed that told us to wait on spending any

22 money until a certain point and we were confirming we were going

23 to hire lawyers now, we'll need money.

24 Q And maybe appraisers, too?

25 A It doesn't mention it parenthetically here, but I would

J. Weisselberg - Plaintiff - direct (Faherty) Page 1847

1 assume.

2 Q Okay. And then you write: "Please reply to this

3 e-mail with your confirmation that we are all on the same page

4 and will move towards a July 2, 2015 closing." You see that

5 there?

6 A Yes.

7 Q Was it your understanding that you were moving towards

8 a July 2, 2015 closing for the 40 Wall transaction?

9 A At that time, yes.

10 Q Do you see that black Sharpie notation in the middle

11 section of the page towards the right side?

12 A Yes.

13 Q Do you recognize that black Sharpie marking?

14 A I do not.

15 Q Did you write "okay" on this document?

16 A No. This -- I actually never saw this document prior

17 to prep because this was Allen Weisselberg's e-mail that was

18 printed, so I would have received a response to this with

19 approval. That looks like it's an internal approval from the

20 Trump side.

21 Q And I'll just ask you to turn to the second page of

22 this document.

23 A Okay.

24 Q And reference you into the middle of this document.

25 This appears to be a wire transfer for about \$75,000; right?

Page 1848

1 A Yes.
 2 Transcript continues on the following page...
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JACK WEISSELBERG - DIRECT(MS. FAHERTY)

1 A Are you referring to the operating statement financials
 2 for the property or personal financials?
 3 Q Personal financials.
 4 A It came in hard copy. It was not e-mailed to us.
 5 Q Did it include a cover page that had a title,
 6 "Statement of Financial Condition"?
 7 A I couldn't recall.
 8 Q If I showed you an example of a Statement of Financial
 9 Condition for Donald J. Trump, would you -- do you think you
 10 would recognize it as something you've seen before?
 11 A Possibly. It's been a while.
 12 Q You made reference to receiving the personal financials
 13 and hard copy. Can you describe for me a little bit more about
 14 that?
 15 A For a few of the transactions, if not all, they would
 16 messenger over the personal tax returns for Donald J. Trump as
 17 well as his personal financial statement.
 18 MS. FAHERTY: Your Honor, I've marked as
 19 plaintiff's next exhibit PX-01059. I will just put it on
 20 the screen.
 21 Q Mr. Weisselberg, drawing your attention, this is an
 22 e-mail from Jeff McConney. He is from the Trump Organization,
 23 right?
 24 A Correct.
 25 Q He provided you information, if you requested it,

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JACK WEISSELBERG - DIRECT(MS. FAHERTY)

1 Q And the originator info for it is 40 Wall Street
 2 L.L.C., correct?
 3 A Yes.
 4 Q No reason to doubt that you did, in fact, receive your
 5 \$75,000 good-faith deposit, right?
 6 A Correct.
 7 Q And no reason to doubt that this document does -- was,
 8 in fact, confirmed to you at some subsequent point, right?
 9 A This wire confirmation?
 10 Q That you received the confirmation on the first cover
 11 page.
 12 A Yes, no reason to doubt.
 13 Q Okay. We can put that to the side. Thank you.
 14 MS. FAHERTY: Your Honor, I move to admit the prior
 15 exhibit, that exhibit.
 16 MR. SUAREZ: Objection. Statute of limitations.
 17 THE COURT: Overruled. It is in.
 18 MS. FAHERTY: PX 1396.
 19 (Whereupon, the Document was marked in evidence as
 20 Plaintiff's Exhibit 1396.)
 21 Q Mr. Weisselberg, are you aware that in connection with
 22 the 40 Wall transaction, you did, in fact, receive financials?
 23 A Yes.
 24 Q Can you describe broadly the form of the financials you
 25 received in connection with the loan transaction?

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JACK WEISSELBERG - DIRECT(MS. FAHERTY)

1 certain information from the Trump Organization, right? You
 2 said that before?
 3 A Correct.
 4 Q And dated May 22, 2014 to you. That's your e-mail
 5 address, right?
 6 A Yes.
 7 Q The subject is "DJT." Is that a reference to Donald J.
 8 Trump?
 9 A I believe so.
 10 Q It says, "Jack, FYI, I'm sending over DJT'S tax returns
 11 and F/S to you today." Do you see that?
 12 A Yes.
 13 Q What was your understanding of what this message was
 14 conveying?
 15 A That he was going to messenger over Donald J. Trump tax
 16 returns and financial statement to me that day.
 17 Q And when you say "messenger over," is that a hard copy
 18 transmittal to you?
 19 A Yes.
 20 Q Did he personally deliver it or was there a courier
 21 service they would use?
 22 A I believe they would use an employee, but it was not
 23 Jeff McConney.
 24 Q A Trump Organization employee.
 25 A Yes.

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1 Q So they would hand-deliver it to you?

2 A Yes.

3 Q Do you have any understanding why Jeff McConney would

4 be e-mailing you that he is sending over the tax return and F/S

5 for you?

6 A I think he wanted me to prepare me, so I could go down

7 and grab them from the Trump employee.

8 Q Any particular reason for that procedure that you just

9 described?

10 A I think they were concerned about confidentiality and

11 they wanted to make sure that it was going directly into my

12 hands.

13 Q They wanted to make sure -- your understanding was

14 they wanted to make sure this information was treated

15 sensitively, yes?

16 A Correct.

17 Q Were you permitted to maintain this financial

18 information at Ladder or did you at any point have to return it?

19 A During the underwriting of the loan and prior to

20 closing, we kept it and I believe we kept it shortly thereafter

21 in case we needed while selling the loan, and then we returned

22 it.

23 Q Do you have any understanding as to what happened with

24 the Balducci's lease that we talked about before?

25 A In what regard?

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1 Q Was the Balducci's lease ever signed?

2 A I don't believe it was signed.

3 Q Do you have any understanding as whether -- as to

4 whether there was a different tenant that they were seeking to

5 place in that same space as identified for Balducci's?

6 A Yes they were looking at Dean & DeLuca.

7 MS. FAHERTY: Your Honor, I marked for

8 identification Plaintiff's Exhibit P X-1307 and put it on

9 the screen. Your Honor, I neglected to move the last

10 exhibit in. I move to admit that prior exhibit.

11 MR. SUAREZ: Objection. Statute of limitations.

12 Relevance.

13 THE COURT: Overruled and overruled.

14 MS. FAHERTY: Thank you.

15 (Whereupon, the Document was marked in evidence as

16 Plaintiff's Exhibit 1059.)

17 Q Mr. Weisselberg, drawing your attention to the very top

18 message in the e-mail thread, this appears to be a message from

19 Donna Kidder, the employee of the Trump Organization, dated

20 June 24, 2015, 10:04 a.m., yes?

21 A Yes.

22 Q To Allen Weisselberg and David Cohen, right?

23 A Yes.

24 Q The e-mail here says, "Lawyer said they didn't have a

25 term sheet." You didn't receive this particular message, did

JACK WEISSELBERG - DIRECT(MS. FAHERTY) Page 1854

1 you?

2 A It doesn't appear that way.

3 Q This message appears to be in response to a thread that

4 you are on. Do you see the message right below from you, Jack

5 Weisselberg, dated June 24, 2015 to Donna Kidder, David Cohen

6 and Allen Weisselberg with the subject "re Dean & DeLuca"? Do

7 you see that there?

8 A Yes, but the time is a little confusing.

9 Q I completely agree with you. Sometimes when these

10 documents get printed from the discovery process, time works

11 differently in metadata.

12 A But yes, I do recognize that.

13 Q Any reason to believe that time would have gone

14 backwards for that uppermost message?

15 A No.

16 Q No. Same here. Okay. So in the message that Donna

17 appears to have forwarded on, you are writing with regards to

18 Dean & DeLuca, that you would like to see the term sheet that

19 they are expecting to sign prior to the lease since the lease

20 won't be signed prior to closing. Thanks, Donna.

21 And I'll give you a moment to look through this full

22 thread if you want to refresh your recollection, but do you have

23 any understanding as to why you were writing to Donna Kidder on

24 June 24, 2015 about Dean & DeLuca and a term sheet that they are

25 expecting to sign prior to the lease?

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1 A No.

2 THE COURT: Five-minute warning.

3 MR. FAHERTY: So I'll -- we'll go further on to

4 the bottom of this first page if this helps. Keep going.

5 Right there. Thank you, Ashley.

6 Q So at 11:00 a.m., this appears to be an e-mail from you

7 to David Cohen, Donna Kidder, Allen Weisselberg, all at the

8 Trump Organization, right?

9 A Correct.

10 Q The message is just Dean & DeLuca, no "re"?

11 A No forward, right. Correct.

12 Q And your message says, "Do we have an unsigned LOI/term

13 sheet for Dean & DeLuca." What is an LOI/term?

14 A Letter of intent. Many tenants sign a letter of intent

15 with the basic terms and then they negotiate the lease after.

16 So I was trying to see if we could get the preliminary document

17 prior to the full lease being executed.

18 Q Okay. And then you write, "I need that within the

19 hour, if possible. Trying to get the appraiser in the right

20 spot but at least need that for now. Has one been drawn up

21 yet." Do you see that there?

22 A I do.

23 Q What does it mean that you're trying to get the

24 appraiser in the right spot?

25 A I don't recall.

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1 Q Was this information you were seeking to provide to an
 2 appraiser with regards to the 40 Wall Street transaction?
 3 A I was probably trying to get it to the underwriter who
 4 was getting this request from the appraiser prior to finalizing
 5 the report, but I don't recall the context of this e-mail.
 6 Q Is that your specific recollection or just as you sit
 7 here today, you -- your surmise?
 8 A After reading it, I'm surmising that that's what it
 9 was. I did not have direct contact with the appraiser.
 10 Q And the word "appraiser," is that interchangeable for
 11 underwriter at Ladder Capital?
 12 A No.
 13 Q But as you're sitting here, that word "appraiser"
 14 signifies for you the underwriter could be the appraiser; is
 15 that your testimony?
 16 A No. I'm saying that the underwriter requested
 17 something for the appraiser, so I'm letting the sponsor know
 18 that the appraiser is requesting a document.
 19 Q Okay. Thank you.
 20 A Sure.
 21 MS. FAHERTY: Your Honor, I move to admit this
 22 document into evidence.
 23 MR. SUAREZ: Objection. Statute of limitations.
 24 Relevance.
 25 THE COURT: Overruled. Granted. It is in.

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1 MS. FAHERTY: I have two more and I will be
 2 zippity-doo-dah, Your Honor, for today.
 3 THE COURT: Understood.
 4 MS. FAHERTY: Can I have the next document, please.
 5 Your Honor, I'm introducing an exhibit identified by PX
 6 1249, okay.
 7 Q This appears to be a message from David Cohen at the
 8 Trump Organization to you, right?
 9 A Yes.
 10 Q June 24, 2015 at 9:24 p.m., yeah?
 11 A Yes.
 12 Q Do you recognize that additional Trump Organization
 13 e-mail address Tess Carathansis?
 14 A It looks familiar, but I don't recall having too much
 15 interaction with her.
 16 Q And the subject of this message is, "forward: Dean &
 17 DeLuca draft term sheet," yes?
 18 A Yes.
 19 Q And there is an attachment that I'll represent to you
 20 is the document included here. So if you could just take a
 21 moment to look at the next page. You see that there?
 22 A Yes.
 23 Q And it is a one-, two-, three-, four-page document.
 24 And if we go to the very last page of that four-page attachment,
 25 you see that it's two signature blocks unfilled in, right?

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1 A Yes.
 2 MS. FAHERTY: And, Ashley, turning to the first
 3 page of that, the term sheet, so the attachment.
 4 Q Do you see it says here, "[copy and paste on Trump
 5 letterhead]"?
 6 A Yes.
 7 Q Dated June 24, 2015?
 8 A Yes.
 9 Q It says, "Proposal for Dean & DeLuca"?
 10 A Yes.
 11 Q And then it continues, "for the space at 40 Wall
 12 Street," yes?
 13 A Yes.
 14 Q Okay. And then turning to the e-mail, the transmitted
 15 document, David Cohen says to you, "See attached. The final
 16 won't necessarily be in this form. I didn't put it on the
 17 letterhead. Is that okay." Do you see that there?
 18 A Yes.
 19 Q Any reason to doubt that you didn't receive in e-mail?
 20 A No.
 21 Q Do you recall receiving this e-mail and the attachment?
 22 A No.
 23 MS. FAHERTY: Your Honor, I move to admit this
 24 exhibit the e-mail and cover -- and attachment.
 25 THE COURT:

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1 MR. SUAREZ: Objection. Statute of limitations.
 2 Relevance.
 3 THE COURT: Overruled. It's in.
 4 (Whereupon, the Document was marked in evidence as
 5 Plaintiff's Exhibit 1249.)
 6 MS. FAHERTY: The next one will be two seconds.
 7 THE COURT: Go ahead.
 8 MS. FAHERTY: Your Honor, there is PX 1428.
 9 Q Okay. This is an e-mail from David Cohen to you on
 10 June 24, 2015 a few minutes later at 9:40 p.m. The subject is
 11 40 Wall and there's an attachment.
 12 A Yes.
 13 Q And at the bottom, there's a scan e-mail "@trumporg
 14 forward." It appears that there was a document forwarded that
 15 was ultimately forwarded to you and I'll ask you to turn to the
 16 attachment to this message.
 17 A Okay.
 18 Q Do you see that there is a letterhead, "40 Wall Street,
 19 L.L.C."?
 20 A Yes.
 21 Q From 725 Fifth Avenue, New York, New York?
 22 A Yes.
 23 Q Dated June 24, 2015, yes?
 24 A Yes.
 25 Q And again, proposal for Dean & DeLuca at the 40 Wall

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1 Street space, yes?
 2 A Yes.
 3 Q And if you just quickly look at the very last page of
 4 this attachment, you see two signature blocks, yes?
 5 A Yes.
 6 Q Unsigned?
 7 A Yes.
 8 MS. FAHERTY: Your Honor, I move to admit --
 9 Q Any reason to doubt you didn't receive this message?
 10 A No.
 11 MS. FAHERTY: Okay. Your Honor. I move to admit.
 12 MR. SUAREZ: Objection. Statute of limitations,
 13 relevance.
 14 THE COURT: Overruled. It is in evidence.
 15 MS. FAHERTY: We can rest for this afternoon.
 16 We'll continue tomorrow with this witness.
 17 THE COURT: Okay. I'll direct the witness not to
 18 discuss this case or your testimony with anybody until
 19 you're all through with your testimony. You're excused from
 20 the witness stand for now.
 21 (Witness exited the stand.)
 22 THE COURT: I understand we have some housekeeping
 23 matters to discuss. You want to approach?
 24 (Whereupon, a discussion was held off the record.)
 25 (Whereupon, the trial was adjourned to October 19,

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1 25023 at 10:00 a.m.)
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	1859:13	1757:23,25	1806:22;1815:22;	1699:22;1700:7;
\$	[achieving (1)	1816:25;1828:18;	1704:6;1720:8;
\$100 (1)	[copy (1)	1682:12.5	1836:9;1839:14;	1724:22;1744:21;
1790:8	1858:4	acquire (1)	1849:14;1853:10;	1746:11;1749:8,19;
\$114 (2)		1739:9	1856:21;1858:23;	1751:12;1754:12;
1684:16.5;1685:3	A	acquired (1)	1860:8,11	1756:1,2,18;1758:10;
\$114.5 (2)		1830:1	admitted (5)	1767:8;1786:21;
1683:22.5;1684:11		across (1)	1679:4;1685:16;	1831:14;1833:10
\$160 (2)	able (13)	1765:1	1687:1.5;1709:17;	agree (23)
1829:4,9	1686:6;1710:1;	act (2)	1714:21	1681:13;1682:25;
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1682:18;1683:3.5	1764:6;1766:13;	action (1)	1757:18	1729:23;1731:13;
\$18,000,334,523 (1)	1773:3;1793:2;	1822:14	admonition (1)	1735:19;1737:4;
1682:14.5	1798:10;1830:23;	actions (1)	1742:7	1739:4;1740:10;
\$18,300,000 (1)	1832:4,22;1833:17	1804:22	advance (1)	1741:16;1742:18,19,
1684:7	Ableman (2)	acts (4)	1686:7	20;1747:15;1808:1,24;
\$20 (9)	1843:8,8	1779:9,11,14;1804:9	advice (1)	1820:1;1822:6,14;
1680:5.5,7.5,9,10,20;	above (2)	actual (11)	1793:1	1827:11;1844:18;
1681:3;1728:12,19;	1686:12;1846:9	1682:25;1683:9.5,	advise (4)	1854:9
1730:25	above-referenced (1)	11.5;1684:10,10.5,14,	1715:15;1722:9;	agreed (1)
\$200 (2)	1837:25	20;1712:18;1737:8;	1838:6,10	1838:5
1680:22.5,24	absolute (1)	1791:2;1818:1	advised (2)	agreement (4)
\$220 (1)	1741:17	actually (15)	1691:4;1750:17	1682:22.5;1769:21;
1679:20.5	absolutely (2)	1693:16;1701:24;	affect (5)	1802:20;1803:10
\$222 (1)	1678:3.5;1773:18	1711:1;1715:16;	1697:23;1743:14,24;	AG's (1)
1737:21	absurd (1)	1733:13;1753:11;	1825:14,18	1707:11
\$23 (2)	1754:14	1763:22;1774:18,21;	affected (1)	ahead (8)
1682:24.5;1727:21	abundance (1)	1796:2;1819:3;	1825:4	1695:2;1747:19;
\$23.2 (1)	1804:20	1824:11;1842:19;	affects (1)	1758:6;1798:6;1838:7,
1683:12.5	acceptable (4)	1845:6;1847:16	1825:19	11,15;1859:7
\$240 (1)	1841:18,20,23;	add (1)	affiliate (1)	aid (1)
1729:8	1844:14	1776:1	1844:11	1757:8
\$260 (4)	access (1)	added (2)	affiliated (2)	ALAN (1)
1679:21.5;	1810:13	1679:22;1680:20	1780:19;1820:22	1677:17
1684:18.5;1685:4;	accompanying (1)	addition (1)	afternoon (4)	ALINA (1)
1731:1	1704:15	1840:15	1679:13;1760:1,21;	1677:11.5
\$369 (1)	according (3)	additional (8)	1860:15	Allan (1)
1829:6	1684:10.5;1702:23;	1681:3;1708:9;	Again (26)	1815:18
\$374 (2)	1772:3	1772:19;1790:8,12;	1679:18.5,24;	alleged (1)
1684:21;1685:4.5	Accordingly (1)	1791:7;1846:5;	1680:23;1684:12;	1801:16
\$389 (1)	1706:12	1857:12	1685:18,19;1688:15;	allegedly (1)
1737:23	account (3)	Additionally (2)	1697:2;1698:4;1708:2;	1697:21
\$4.8 (5)	1734:10;1786:12,12	1790:10;1844:22	1710:9;1724:3;1729:9;	ALLEN (32)
1683:4,10,11,22.5;	accountant (2)	add'l (1)	1749:24;1751:4,21;	1676:7.5;1782:3;
1684:9	1735:12;1783:19	1790:9	1752:7;1754:13;	1785:16;1789:22;
\$486,930,096 (1)	accountants (6)	address (12)	1757:15;1758:3;	1790:3,17;1791:6,11;
1683:25	1688:16,24;1745:21;	1694:17,18;1700:17;	1769:11,16;1804:24;	1792:5;1793:9;
\$5 (3)	1747:23;1748:22;	1760:11;1785:13;	1805:6;1808:4;	1795:11,13;1798:17;
1812:16;1830:1,9	1750:11	1795:2,3,7,12;1837:10;	1859:25	1811:24;1812:12;
\$500,000 (2)	accounting (5)	1851:5;1857:13	against (1)	1813:18;1814:13;
1790:6,24	1784:11,12;1841:19,	addressed (1)	1719:13	1818:8;1823:16,17,24;
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1846:5,7;1847:25;	accuse (1)	adjusted (2)	1826:1,2	Allen/David (1)
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	1746:14;1747:3,7	1757:8	1714:23;1716:10	1746:21;1800:15;
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Table with 5 columns containing legal terms and their corresponding page numbers. Terms include: recess, recognize, recalled, record, recording, recourse, recover, recross, redirect, reduce, reference, related, referenced, referring, refers, re-fi, refinance, refinancing, reflected, reflection, reflects, refresh, refreshing, regard, regarding, regards, regular, rehabilitate, rehabilitation, Reilly, REISBAUM, related, relating, relationship, relaying, released, Relevance, relevant, relief, relying, remains, remember, remembers, remind, reminded, rent, relating, rental, rentroll, repay, repeat, rephrase, rephrasing, replacement, replied, reply, report, reporters, reporting, reports, represent, requested, requesting, required, requirements, requiring, re-redirect, Reserves, reset, resetting, residential, respectfully, respective, respond, responded, responds, response, responsibilities, responsible, rest, restate, restriction, result, resulting, Resume, retail, retained.

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In The Matter Of:
PEOPLE OF THE STATE OF NEW YORK v.
DONALD J. TRUMP, et al

JACK WEISSELBERG, DAVID MCARDLE
October 19, 2023

NICOLE C. ROBINSON

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JACK WEISSELBERG, DAVID MCARDLE October 19, 2023

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1 SUPREME COURT OF THE STATE OF NEW YORK
 2 COUNTY OF NEW YORK : CIVIL TERM : PART 37
 3 ----- X
 4 PEOPLE OF THE STATE OF NEW YORK, BY
 5 LETITIA JAMES, ATTORNEY GENERAL OF
 6 THE STATE OF NEW YORK,
 7 Plaintiff,
 8
 9 Index No.
 10 -against- 452564/2022
 11 DONALD J. TRUMP; DONALD TRUMP, JR.; ERIC TRUMP;
 12 IVANKA TRUMP; ALLEN WEISSELBERG; JEFFREY MCCONNEY;
 13 THE DONALD J. TRUMP REVOCABLE TRUST; THE TRUMP
 14 ORGANIZATION, INC.; TRUMP ORGANIZATION, LLC;
 15 DJT HOLDINGS, LLC; DJT HOLDINGS MANAGING MEMBER;
 16 TRUMP ENDEAVOR 12, LLC; 401 NORTH WABASH VENTURE,
 17 LLC; TRUMP OLD POST OFFICE, LLC; 40 WALL STREET,
 18 LLC.; AND SEVEN SPRINGS, LLC,
 19 Defendants.
 20 ----- X
 21 60 Centre Street
 22 New York, New York 10013
 23 October 19, 2023
 24
 25 B E F O R E:
 HONORABLE ARTHUR F. ENGORON,
 Justice, Supreme Court
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 MARK LADOV, ESQ.
 SHERIEF GABER, ESQ.
 (Appearances continued on the next page.)

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Proceedings

1 THE COURT OFFICER: All rise. Part 37 is now in
 2 session. The Honorable Judge Arthur Engoron presiding.
 3 Make sure all cell phones are on silent. Laptops and cell
 4 phones will be permitted, but only to members of the press.
 5 There is absolutely no recording or photography of any kind
 6 allowed in the courtroom. Now be seated and come to order.
 7 THE COURT: Well, the plaintiff seems to have a
 8 full complement. Defense side, where is everybody?
 9 MR. KISE: Deposition.
 10 THE COURT: Other things to do?
 11 All right. We're going to have a short sidebar.
 12 (Whereupon, there is an off-the-record discussion
 13 held.)
 14 THE COURT: Okay. Let's get the witness.
 15 THE COURT OFFICER: Witness entering.
 16 (Whereupon, the witness enters the courtroom and
 17 approaches the witness stand.)
 18 THE COURT: Let's resume the direct examination for
 19 Jack Weisselberg.
 20 MS. FAHERTY: Thank you, Your Honor.
 21 CONTINUED DIRECT EXAMINATION
 22 BY MS. FAHERTY:
 23 Q Good morning, Mr. Weisselberg.
 24 A Good morning.
 25 Q Do you recall back to yesterday we had a discussion

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1
 2
 3 Attorneys for Defendants
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 5 Tallahassee, Florida 32302
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 Senior Court Reporters

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J. Weisselberg - Plaintiff - direct (Faherty)

1 about Mr. Trump's financials?
 2 A Yes.
 3 Q And I believe you testified that you would receive a
 4 hard copy version of those financials; right?
 5 A Correct.
 6 MS. FAHERTY: Okay. I'm going to ask to put up on
 7 the screen PX 654. And I'll just note on the record I've
 8 marked for identification, Your Honor, plaintiff's next
 9 exhibit, PX-504.
 10 A Okay.
 11 Q And take a quick look at that document I've placed in
 12 front of you, Mr. Weisselberg, and I'll give you a minute to
 13 review it, please.
 14 A Okay.
 15 Q And I'll just draw your attention to the very first
 16 page of the document. Do you see that there are a series of
 17 numbers that begins L as in "Larry," C as in "Charles,"
 18 00295757?
 19 A Yes.
 20 Q I'll represent to you that this is a document produced
 21 by Ladder Capital. So this is a document from the Ladder
 22 Capital files, okay?
 23 A Okay.
 24 Q Do you recognize this document, maybe not specifically,
 25 but generally, as the form of the financials Ladder Capital

J. Weisselberg - Plaintiff - direct (Faherty) Page 1875

1 received from the Trump Organization?
 2 A It looks familiar. I can't guarantee this is what is I
 3 saw.
 4 Q But no specific recollection of this document, but a
 5 general recollection. Is that fair?
 6 A Correct.
 7 MS. FAHERTY: Your Honor, I move to admit this into
 8 evidence.
 9 THE COURT: Granted. It's in.
 10 MR. ROBERT: Objection. Statute of limitations.
 11 THE COURT: Overruled.
 12 MS. FAHERTY: Thank you.
 13 (Whereupon, the item previously referred to is
 14 received and marked Plaintiff's Exhibit Number 504 in
 15 evidence.)
 16 Q And I want to turn your attention to a couple of pages
 17 in this document, so I'll ask that you turn to the third page of
 18 your document. And if you need help, we'll put it on the
 19 screen, as well, okay?
 20 So you'll see that this is the independent accountant's
 21 compilation report. And we'll scroll down to the bottom of this
 22 note. We'll go to the date.
 23 And just confirming, Mr. Weisselberg, you see that this
 24 is the Statement of Financial Condition of Donald J. Trump for
 25 June 30th -- as of June 30, 2014, yes?

J. Weisselberg - Plaintiff - direct (Faherty) Page 1876

1 A Yes.
 2 Q Okay. And the accountant's compilation report is
 3 signed on November 7, 201. Do you see that there?
 4 A Yes.
 5 Q I'll represent to you that this is the date that this
 6 document was compiled and issued to be finalized, okay?
 7 A Okay.
 8 Q Bearing that date in mind, do you -- would you agree
 9 with me that this is probably the financials that you would have
 10 received in connection with the 40 Wall Street loan transaction?
 11 A I can't confirm, but probably.
 12 Q Okay. And we'll go over some dates as to when the loan
 13 transaction closed, but I'll represent to you the 2015 Statement
 14 of Financial Condition was not issued as of the end of the 40
 15 Wall transaction, okay?
 16 A Okay.
 17 Q Okay. All right. Now, let's flip to the next page.
 18 You'll see there is a page titled "Assets." Do you see it
 19 there?
 20 A Yes.
 21 Q Okay. Looking at the line it states: "Cash and
 22 marketable securities." Can you read the amount that's listed
 23 there?
 24 A 302,300,000.
 25 Q Do you have any understanding as to what that figure

J. Weisselberg - Plaintiff - direct (Faherty) Page 1877

1 represents? Is that liquid assets?
 2 A That would be liquidity.
 3 Q Liquidity?
 4 A Yes.
 5 Q Okay. Let's turn to the next page. I'll draw your
 6 attention to the line that states "net worth." Can you read
 7 that figure there?
 8 A 5,777,540,000.
 9 Q Roughly 5.8 billion, is that what that number reflects?
 10 A Just short of 5.8 billion.
 11 Q Okay, great. Thank you. And we can put that aside.
 12 Just a broader question. Is it a fair understanding
 13 that Ladder relied on the statements of financial condition's
 14 submissions as part of the underlying of their 40 Wall loan?
 15 A For the 40 Wall loan liquidity is what we were really
 16 paying attention to because we had some contingent liabilities,
 17 recourse obligations. So we wanted to make sure there was
 18 enough liquidity to cover the obligations.
 19 Q And I don't think that quite fully responds to my
 20 question. My question was that you relied upon the Statement of
 21 Financial Condition, so would that be a yes?
 22 A The net worth statement is one of many things that we
 23 look at in the underwriting process. I wouldn't say it was a
 24 key factor.
 25 Q It was a factor that you relied upon?

J. Weisselberg - Plaintiff - direct (Faherty) Page 1878

1 A It was a factor.
 2 Q Thank you, okay.
 3 Were there other documents you reviewed to determine
 4 that Mr. Trump had the specific net worth?
 5 A Liquidity, no.
 6 Q Okay, thank you.
 7 All right. I'm going to hand up a document, and while
 8 I'm doing that I'll just ask if you're familiar with an acronym,
 9 an "RUC memo?"
 10 A Yes.
 11 Q What is an RUC memo?
 12 A RUC stands for Risk and Underwriting Committee and that
 13 is what we do for all large loans or unique loans.
 14 Q Okay. Are you -- the RUC memo, that's something that
 15 Ladder Capital has as part of its business practices; correct?
 16 A Right.
 17 Q So I'm going to have my trial vendor put up on the
 18 screen the document I just passed forward to you. It's --
 19 MS. FAHERTY: Your Honor, I've marked for
 20 identification plaintiff's next exhibit. It's marked
 21 PX-00645 and I'll put that up on your screen.
 22 Q This is an e-mail from Craig Robertson at Ladder
 23 Capital dated June 29, 2015, 10:47 a.m. and it's addressed to
 24 the Conduit Committee at Ladder Capital.
 25 Did we discuss that committee yesterday, the Conduit

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J. Weisselberg - Plaintiff - direct (Faherty) Page 1879

1 Committee?
 2 A We did.
 3 Q And the Conduit Committee, they're reviewing the terms
 4 on the -- the loan deal; right?
 5 A Yes.
 6 Q And the names that are listed in this e-mail you'll see
 7 them all up on your screen. Do you recognize that all of the
 8 names included in the bcc line? Were those all -- excuse me --
 9 members of the Conduit Committee?
 10 A No.
 11 Q Who are the names listed in that bcc entry there?
 12 A They're Ladder employees that may have been involved in
 13 the transaction at some level, so they were included on this to
 14 know when the committee meeting was.
 15 Q Okay. And the Conduit Committee, that was the e-mail
 16 addressed list we saw yesterday; right?
 17 A It may have included -- some of them may have excluded
 18 some of them. I'm not sure at this time what Conduit Committee
 19 covered.
 20 Q But there was a generic e-mail mailbox designated for
 21 the Conduit Committee as indicated here on this message; right?
 22 A Correct.
 23 Q And so sending an e-mail to the Conduit Committee at
 24 LadderCapital.com ensured that the members of the Conduit
 25 Committee receives this e-mail; right?

J. Weisselberg - Plaintiff - direct (Faherty) Page 1880

1 A Correct.
 2 Q Okay, great.
 3 And the subject of this message is the RUC memo: 40
 4 Wall Street; right?
 5 A Correct.
 6 Q And then there appears to be an attachment, one is an
 7 image and the other is 40 Wall Street RUC memo.PDF and I'll
 8 represent to you, Mr. Weisselberg, I attached specific
 9 attachments so can you take a moment to look through the
 10 attachment that I've included in this exhibit and just confirm
 11 for me that that looks like the RUC memo for the 40 Wall Street
 12 transaction?
 13 A Yes.
 14 MS. FAHERTY: Your Honor, I move to admit this into
 15 evidence, please.
 16 MR. KISE: Your Honor, just two things: One,
 17 statute of limitations; the other is I want to point out a
 18 bit of New York history. This document does confirm that
 19 the property at 40 Wall was in fact the tallest building --
 20 MS. FAHERTY: You are stealing my thunder. I was
 21 going to highlight --
 22 MR. KISE: I wasn't sure you were going to say --
 23 THE WITNESS: I believe it was for a month or two.
 24 I think it was the tallest building for a month.
 25 MS. FAHERTY: Only for a month.

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1 THE COURT: Overruled on statute of limitations
 2 grounds.
 3 Q So let's focus on the first cover e-mail, please.
 4 Were you there at the -- is there an RUC committee
 5 presentation when you have the RUC memo?
 6 A Yes.
 7 Q And were you in attendance at that committee
 8 presentation?
 9 A I believe at the time it was in person, so yes, I would
 10 have been the one presenting.
 11 Q Okay. So you were apart of this process, fair to say?
 12 A Yes.
 13 Q Okay, great.
 14 In the very first paragraph Craig states that this is
 15 the RUC memo for 40 Wall Street and it includes some of the
 16 terms -- it includes the terms for the loan deal that we've been
 17 talking about since yesterday; right?
 18 A Yes.
 19 Q Okay. Turning to the second paragraph it says that
 20 "the loan proceeds will be utilized to refinance an existing
 21 mortgage originated by Capital One Bank (the prior loan which
 22 featured a principal balance of 160 million (137.31/SF))."
 23 This is a reflection of Ladder Capital's understanding
 24 of the Capital One loan that they were going to be refinancing,
 25 yes?

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1 A Correct.
 2 Q Okay. And then the next paragraph begins, "As of
 3 June 18, 2015, Cushman & Wakefield appraised the property at a
 4 value of 540 million (463.44 per SF)."
 5 Is it a fair assessment of this line in this e-mail
 6 that as of June 18, 2015 Ladder Capital had received an
 7 appraisal for the 40 Wall Street property at a value of
 8 \$540 million?
 9 A I believe we received the report shortly after, but the
 10 value was as of that date.
 11 Q Okay. So Ladder was aware of that value as of that
 12 date, yes?
 13 A Correct.
 14 Q Okay. And then it includes information that a loan
 15 amount will be 160 million with a 3.665 percent interest rate;
 16 right?
 17 A Correct.
 18 Q And then there is a 25-year amortization on the loan.
 19 Do you recall that that 25-year amortization rate contemplated
 20 the reset on the ground lease?
 21 A There were various factors. I believe that was one of
 22 the driving forces was to make sure that the principal balance
 23 of the loan had ammed down to a level that we would be
 24 comfortable with the rent -- the ground rent reset.
 25 Q And just to confirm, you made a reference to "ammed

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1 down." That means to amortize down, yes?

2 A Correct. The principal balance of the loan amortized

3 down.

4 Q Okay, thank you.

5 And the next sentence, does this refresh your

6 recollection that the loan did in fact close in or about

7 July 2nd of 2015?

8 A It was scheduled to close July 2nd, according to this.

9 I believe it was around that date.

10 Q Let's turn to the memo itself.

11 And on that very first cover sheet there is a picture

12 of 40 Wall Street --

13 MS. FAHERTY: We missed a page. Next line.

14 Thanks, Ashley.

15 Q Can you just tell me what that acronym under the

16 picture of the building says, the address and then there is a

17 loan number: "OWL-150430-03." Does that number have any

18 particular significance or meaning to the combination of letters

19 and numbers?

20 A The letters represent outstanding whole loan and the

21 numbers represent the date that the application was signed. So

22 in this case it was April 30, 2015 and the 03 at the end means

23 that it was the third loan that we had an application signed

24 that day. So on April 30th of 2015, three loans or at least

25 three loans were signed up and this was the third one.

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1 to be executed shortly after closing. At closing, an entity

2 controlled by Donald J. Trump will sign a 12 (12) year master

3 lease to occupy the suite at substantially similar economics,

4 which lease will be guaranteed by Donald J. Trump.

5 Mr. Trump will be required to make monthly payments

6 under the master lease for the term of the loan until the space

7 is leased to a tenant acceptable to lender when substantially

8 similar economics to the Dean & DeLuca lease and such tenant

9 takes physical possession of the space and commences payment of

10 full unabated rents." Do you so he that there?

11 A I do.

12 Q And is this paragraph acknowledging in the RUC memo

13 that there is a master lease to be included as part of the deal

14 terms; right?

15 A Yes.

16 Q And that Donald J. Trump will execute that master

17 lease; right?

18 A Yes.

19 Q And that there will be a guarantee that Donald J. Trump

20 executes; right?

21 A Yes.

22 Q And in this particular report there is a reference to

23 Dean & DeLuca. It's no longer Balducci's, yes?

24 A That's correct.

25 Q All right. Let's turn to the next page.

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1 Q And that's applications at Ladder Capital, not

2 applications with the Trump Organization; right?

3 A Correct.

4 Q Okay, great.

5 Let's turn to the next page. And I'll just ask you

6 broadly with regards to the RUC memo is it a fair

7 characterization that they're organized in a certain manner?

8 For example, we're looking at a page right now that states

9 "executive summary." So is the organization broken into

10 sections of this memo?

11 A Yes. At this time this was the format for all

12 committee memos.

13 Q Okay, great.

14 And so this first section we're going into is the

15 executive summary section of the RUC memo; correct?

16 A Correct.

17 Q Okay. So looking at this section in the middle of the

18 page, you'll see that there is a number one with some words

19 printed there. Do you see that section?

20 A Yes.

21 Q Okay. And this point, number one states: "The

22 physical occupancy presented above includes 118,500 square foot

23 retail space with respect to the sponsor is in negotiations with

24 Dean & DeLuca for a 15 (number 15) year lease at a rental rate

25 of 1,400,000 (\$75.68 per square foot). Such lease is expected

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1 Looking at the top paragraph, it's still the "Executive

2 Summary" section. This section is titled -- subsection is

3 titled "Reserve Comments." And I'll draw your attention to the

4 bottom two paragraphs of this section. It states:

5 "In lieu of ongoing reserves for insurance, tenant

6 improvements, leasing commissions, capital expenditures and

7 ground lease payments, Donald J. Trump will provide a personal

8 guaranty." Similar discussion as we had yesterday, this is

9 recognizing the Donald J. Trump guaranty in connection with

10 those reserves, yes?

11 A Yes.

12 Q And the next sentence, the "TI/LC" is that tenant

13 improvements and lease commissions?

14 A Yes.

15 Q "And free rent reserves outstanding at closing are

16 presented below," and that's a reference to this number -- this

17 chart on this particular page, yes?

18 A Yes.

19 Q Okay. "And in lieu of any -- an upfront reserve for

20 these items, Donald J. Trump will provide a personal guaranty

21 for such amounts outstanding," yes?

22 A Yes.

23 Q So, again, the reflection of the guaranty has been

24 included in the executive summary; yes?

25 A Yes.

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1 Q Okay. Let's turn to the next page, still within the
 2 executive summary. Third paragraph. This is again
 3 acknowledging the Capital One deal that it was going to be
 4 refinanced by the Ladder deal, yes?
 5 A Yes.
 6 Q And again, there is a reference to the \$540 million
 7 Cushman appraised value. That was the value Ladder had in its
 8 possession as of the time of this RUC memo, yes?
 9 A Yes.
 10 Q Okay. We'll go to the next page, please.
 11 And in this portion of the RUC memo, Executive Summary
 12 section, there appears to be an analysis of the ground lease,
 13 yes?
 14 A Yes.
 15 MR. ROBERT: Objection. We've held back with all
 16 the leading questions, but I think at some point it has to
 17 be more of a direct, Your Honor.
 18 THE COURT: As usual, I see both sides. You can't
 19 testify -- you know, you can't suggest an answer. If you
 20 want to clarify something, okay, but just be cautious in
 21 that regard.
 22 MS. FAHERTY: Sure, Your Honor.
 23 Q And this was included in the RUC memo because it was
 24 relevant to the loan deal. Is that a fair characterization?
 25 A Yes.

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1 MS. FAHERTY: Turn to the next page, please.
 2 Q This is the final page of the Executive Summary
 3 section. There is a paragraph in there subtitled "Sponsor."
 4 Do you recall who the sponsor was of this deal?
 5 A Yes.
 6 Q Who was that?
 7 A Donald J. Trump.
 8 Q So is this section included in here to describe who
 9 Donald J. Trump is?
 10 A Yes.
 11 Q And I'd like you to look at the very last paragraph
 12 contained in this section of the sponsor on the executive
 13 summary page.
 14 Do you recall -- I'm drawing your attention to the very
 15 last sentence, which reads: "As of June 30, 2014, Mr. Trump
 16 reported a net worth of nearly \$5.8 billion and a liquidity in
 17 excess of \$300 million."
 18 Do you recall where that information came from to be
 19 able to be included in the Executive Summary page?
 20 A The underwriter wrote this and reviewed the financial
 21 statement. Typically this would come from a personal financial
 22 statement, but I didn't write this.
 23 Q Would you agree with me that this information looks
 24 substantially similar to what we just reviewed in the prior
 25 exhibit, which was the Statement of Financial Condition of

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1 Donald J. Trump as of June 30, 2014?
 2 A Yes.
 3 Q Okay, great.
 4 THE COURT: Just I want to address all the
 5 attorneys, okay. I could have made this comment at any
 6 point. It's a pet peeve of mine when the lawyer questioning
 7 a witness comments on the answers. I don't mind "thank
 8 you," but "okay, great." No, don't do that for at least two
 9 reasons: One, it could possibly influence the testimony --
 10 following testimony; and two, I don't know whether the
 11 reporters take this down or not. So ask a question, get an
 12 answer, ask the next question, but don't comment on the
 13 answer you just heard. Thank you.
 14 Q We'll turn to the next page. Turning your attention
 15 this is now, a section identified as "Deal Strengths," yes?
 16 A Yes.
 17 Q Drawing your attention to paragraph four subtitled
 18 "Conservative Loan Structure."
 19 Is this a reflection -- well, what is your
 20 understanding of the second bullet under this particular
 21 subparagraph, "The loan features a warm body carve out
 22 guarantor, Donald J. Trump. As of June 30, 2014, Mr. Trump
 23 reported a net worth of nearly 5.8 billion and liquidity in
 24 excess of 300 million.
 25 A Sorry, what is the question?

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1 Q What is your understanding of what that is a reflection
 2 of?
 3 A You're showing that it's a strong sponsor.
 4 Q Does it say the word "strong" in there?
 5 A The reflection is that it's a strong sponsor. You
 6 asked me about the reflection. This is saying that we have a
 7 strong sponsor that has a large net worth and a lot of
 8 liquidity.
 9 Q Understood.
 10 And this is a similar information that we saw from the
 11 prior exhibit with a net worth of 5.8 billion and liquidity in
 12 excess of 300 million; right?
 13 A Nearly 5.8 billion, yes.
 14 Q Information you would have received from the sponsor?
 15 A Correct.
 16 Q Yes. And then I'll just draw your attention to one
 17 more page. It's 13 in the document, a section titled,
 18 "Sponsorship."
 19 A Okay.
 20 Q And drawing your attention to that second box that
 21 states, "Financial Statement-Donald J. Trump." And then there
 22 is a box of information. It says, "Statement type: Personal
 23 financial statement, financial statement date: June 30, 2014."
 24 And then there are a series of numbers, it looks like monetary
 25 amounts. Is this information that Ladder independently put

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1 together?

2 A This is a result of what we received from the sponsor.

3 Q Okay, great. We can put that aside.

4 THE COURT: Remember, don't say "great."

5 MS. FAHERTY: I did it. Sorry. I'm saying it to

6 myself, but you're right, Your Honor. I apologize.

7 THE COURT: I just want to comment on one other

8 part of the examination. You read a sentence and then asked

9 him for his reflection. Was that the word?

10 THE WITNESS: I believe so.

11 THE COURT: And then he said it reflects that there

12 is a strong sponsor and you said "do you see the word

13 'sponsor' there." You asked him what it meant to him. We

14 all know the word "sponsor" wasn't there, but so I'll leave

15 it at that.

16 MS. FAHERTY: Your Honor, I've marked as

17 plaintiff's next exhibit, PX-00640, which I've handed up to

18 the witness.

19 Q Mr. Robertson -- Mr. Weisselberg, I've also put PX

20 00640 on the screen for you.

21 Does this appear to be an e-mail from Donna Kidder at

22 the Trump Organization addressed to Craig Robertson at Ladder

23 Capital dated June 24, 2015, 9:10 a.m.?

24 A Yes.

25 Q And there are ccs on this e-mail, Allen Weisselberg,

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1 you at Ladder Capital and Jeff McConney?

2 A Correct.

3 Q And the subject is "re: 40 Wall Budget Questions;"

4 right?

5 A Yes.

6 Q And it appears that there is an attachment?

7 A Yes.

8 Q Okay. Let's go to -- further into this e-mail. It is

9 the third page of this PDF document and there is an e-mail on

10 Tuesday, June 23, 2015 at 10:28 a.m. from Craig Robertson at

11 Ladder Capital to Donna Kidder with Allen Weisselberg and you as

12 ccs on the message and the underlying subject is "40 Wall budget

13 questions;" right?

14 A Yes.

15 Q And remind me, Craig Robertson, he was the underwriter

16 on the 40 Wall Street loan deal?

17 A He was the senior underwriter.

18 Q The senior underwriter?

19 A Yes.

20 Q Were you always copied on messages that Craig

21 Robertson, Senior Underwriter, sent to the client?

22 A I can't confirm always, but typically the originator is

23 cc'd on e-mails between the underwriter and the client.

24 Q So the general practice would be that you should be or

25 would be copied, but you can't confirm that it was every single

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1 message you were copied?

2 A Correct.

3 Q And this message titled "40 Wall budget questions, do

4 you have any understanding as to why Craig Robertson would have

5 sent an e-mail to the client, the Trump Organization, about

6 budget questions related to 40 Wall Street?

7 A Yes.

8 Q What is your understanding?

9 A On all deals there is a back and forth between the

10 underwriter and the borrower with questions on the financials.

11 Sometimes included in this e-mail there are one-time costs that

12 would go what we call "below the line" to not property cash

13 flow, but once every ten years, something like that.

14 Other times, the number may jump a lot in one year or

15 it may go down a lot in one year, which is not typical, so we'll

16 have questions so we can get some clarity on that and that's

17 what this e-mail was.

18 Q And what is your understanding for the need for those

19 questions? Does it result in any change in the budget or in any

20 change in underwriting the loan?

21 A Yes, yes. Typically we'll be able to figure out why it

22 happened and either the budget may change or we'll have a

23 footnote that we can add to our underwriting about why there was

24 such a difference in the number.

25 Q And when you say "the budget may change," is that the

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1 underlying client's budget or are you referring to something

2 that Ladder Capital maintains?

3 A It could be both.

4 Q Okay. And you made reference to a one-time expense,

5 and I'll turn your attention to page -- the page we're still on.

6 In Craig's 10/28 e-mail to Donna with a copy to you and

7 Allen, middle of the -- the actual words printed on this page,

8 Craig writes: "R&M expenses increased by 400 K," 400,000?

9 A Correct.

10 Q "Appears to include one-time expenses (highlighted

11 differences below.)"

12 Is that an example of what you were just talking about,

13 a one-time expense that the underwriter may have addressed with

14 the client?

15 A It could be, yes.

16 Transcript continues on the following page....

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1 Q Then there appears to be a response from the client,
 2 right?
 3 A Yes.
 4 Q Any understanding what occurred with regards to this
 5 particular exchange between Robertson and Ms. Kidder that you
 6 were copied on on June 24th and June 23, 2015?
 7 A I'm sorry. What exactly are you asking?
 8 Q I asked if you had any understanding as to what
 9 occurred as a result of this exchange.
 10 A I don't know what the result was.
 11 MS. FAHERTY: Your Honor, I move to admit this
 12 exhibit into evidence.
 13 MR. ROBERT: Objection. Statute of limitations.
 14 THE COURT: Overruled. Granted. It is in
 15 evidence.
 16 (Whereupon, the Document was marked in evidence as
 17 Plaintiff's Exhibit 640.)
 18 MS. FAHERTY: I have another exhibit to pass up.
 19 It's -- Your Honor, I marked them, the next document, as
 20 Plaintiff's PX-00636. I've handed it up to the witness.
 21 Q Mr. Weisselberg, I've also put this document on the
 22 screen in case you want to review it there.
 23 A Okay.
 24 Q This top e-mail appears to be a message from Donna
 25 Kidder dated June 10, 2015 addressed to you at Ladder Capital,

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1 Jeff McConney at the Trump Organization, Allen Weisselberg at
 2 the Trump Organization. The subject is, "re: Quick questions.
 3 And there appears to be an attachment memo to
 4 "accounting-rosenberggreenbergblahallc-partof32ndfloor40wa...
 5 pdf". You see this e-mail in front of you?
 6 A Yes.
 7 Q This is early June, right, June 10th?
 8 A Yes.
 9 MR FAHERTY: All right. Can we go to the bottom of
 10 this message up a little higher. Not the attachment. Okay.
 11 Sorry.
 12 Q So the underlying e-mail is from you to Donna, Jeff and
 13 Allan at the Trump Organization, subject, "Quick questions."
 14 You're asking, "Can you guys help me with these questions?
 15 Craig is out today and may know these answers, but I need to get
 16 an answer back today." The reference to Craig here, is that
 17 Craig Robertson?
 18 A Yes.
 19 Q And you're asking about "Murphy & O'Connell's lease
 20 expired at the end of April 2015. Have they vacated the
 21 property."
 22 What is your recollection as to who Murray and
 23 O'Connell's is or their lease?
 24 A This is a tenant at 40 Wall.
 25 Q And the next entry is, "LaRocca Hornik, Rosen,

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1 Greenberg & Blaha, L.L.P.'s lease expired at the end of
 2 February 2015. Have they vacated the property."
 3 What is your understanding as to who LaRocca Hornik
 4 Rosen Greenberg & Blaha is?
 5 A A tenant at 40 Wall Street.
 6 Q So you're inquiring about tenants at 40 Wall Street in
 7 this message; is that correct?
 8 A Yes. A lot of times when we close a loan, the lease
 9 expiration is right around the time we close or shortly after,
 10 so we're just getting an update on some of the tenants that were
 11 around the date that we didn't have the information when we
 12 either closed or are about to close.
 13 Q And your understanding is that this information was
 14 necessary for Craig?
 15 A Well, this is the kind of question that would typically
 16 come from an underwriter and for some reason, the question was
 17 coming up within the office at Ladder, so I was asking it.
 18 Q Was this information at all relevant for the appraisal
 19 at 40 Wall Street at this time, to your understanding?
 20 A It was prior to the date of the value, so it would be.
 21 I don't recall the size of the tenants, if it would have had a
 22 material impact; but yes, any tenant at the property would have
 23 an impact on the appraisal.
 24 Q Okay. And you write in this message, "But I need to
 25 get an answer back today."

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1 Do you recall why you needed an answer so promptly on
 2 June 10, 2015?
 3 A I do not.
 4 Q Okay.
 5 THE COURT: "Okay" isn't as bad as "great," but try
 6 not to do it anyway.
 7 MS. FAHERTY: Your Honor, I move to admit this
 8 document into evidence, please.
 9 MR. ROBERT: Statute of limitations objection, sir.
 10 THE COURT: Overruled. Granted. It's in.
 11 (Whereupon, the Document was marked in evidence as
 12 Plaintiff's Exhibit 636.)
 13 MS. FAHERTY: I marked as plaintiff's next exhibit
 14 P X-625. Handed it up to the witness.
 15 Q Mr. Weisselberg, please just take a quick look at this
 16 document and tell me whether you recognize it.
 17 A I don't recognize the specifics of this, but it is a
 18 typical form, so I do recognize the form.
 19 Q And do you recognize the form that this is a
 20 guaranty -- do you recognize that this document is a guaranty
 21 of recourse obligations?
 22 A Yes.
 23 Q And this document is executed as of July 2, 2015 by
 24 Donald J. Trump according to the second page of this document.
 25 Do you see that there?

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1 A I don't see it on the second page.
 2 Q First page. You were right.
 3 A I don't see that it was executed by him on the first
 4 page.
 5 Q It is the very first page. Do you see that this is a
 6 document entitled, "Guaranty of Recourse Obligations."
 7 A It needs to be signed to be executed. I don't see a
 8 signature.
 9 Q Let's go to the very last page of this document.
 10 A I recognize that this is an executed recourse
 11 obligation.
 12 Q Do you recognize that signature?
 13 A I do.
 14 Q Whose signature do you recognize that to be?
 15 A That's Donald J. Trump signature.
 16 Q Is this consistent with the guaranty of recourse
 17 obligations that all of the documents we've been discussing
 18 prior to this document contemplated?
 19 A I would have to go through to look at the numbers to
 20 see if they match the numbers; but yes, this would be the loan
 21 document signed by him.
 22 Q No reason to doubt that it is?
 23 A I don't know if it is consistent with the memo. A lot
 24 of times, things change after the memo, so I couldn't say
 25 without going through in-depth to know if it was the same.

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1 Q Fair to say that this signed executed version is a
 2 final version of the terms of the recourse guaranty in
 3 connection with the 40 Wall Street deal, right?
 4 A Yes, fair to say that.
 5 Q You can put that to the side, please.
 6 MS. FAHERTY: Your Honor, I'd like to move that
 7 into evidence.
 8 MR. ROBERT: Objection. Statute of limitations.
 9 THE COURT: Overruled. Grant the. It's in.
 10 (Whereupon, the Document was marked in evidence as
 11 Plaintiff's Exhibit 625.)
 12 Q Mr. Weisselberg, in connection with the 40 Wall Street
 13 deal, do you recall whether you received an inquiry from your
 14 father to respond to certain press questions about the deal?
 15 A He was asking for my input on questions from the press.
 16 THE COURT: You don't have to take down -- if it is
 17 now, we can move on, but sometimes it sounds like "I agree"
 18 or something, so --
 19 MS. FAHERTY: It is a tic. We marked as the next
 20 Exhibit PX-1062. We'll put it up on the screen.
 21 Q The very top e-mail in this thread on Plaintiff's
 22 Exhibit 1062 is an e-mail from Weisselberg at trumporg.com. Is
 23 that Allen Weisselberg?
 24 A Yes.
 25 Q Dated August 4, 2015, 7:35 p.m., addressed to you at

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1 Ladder Capital with a subject of "re, 40 Wall."
 2 Do you see that there?
 3 A Yes.
 4 Q We will go to the third page of this document and the
 5 underlying message appears to be from josh. -- I'm not going to
 6 say it. I'm going to spell it. M-R-O-Z-I-N-S-K-I @
 7 crenews.com, sent on Tuesday August 4, 2015, addressed to Hope
 8 Hicks. The subject is "40 Wall."
 9 Do you see that document there?
 10 A Yes.
 11 Q It appears in sum and substance that "I'm a reporter
 12 from Commercial Real Estate Direct" and he states, Hope Hicks
 13 was listed as a press contact on a recently -- released
 14 recently issue by the Trump Organization and Trump owns 40 Wall
 15 Street in Manhattan. There is a reference to "Ladder Capital
 16 has provided \$160 million of debt against the property." The
 17 individual states he had several questions and you can see
 18 within the body of this message there are several questions,
 19 right?
 20 A Yes.
 21 Q Is this the message you recall your father forwarding
 22 to you to get some input on how to respond?
 23 A Yes.
 24 MS. FAHERTY: Let's turn to the next message in the
 25 chain. If we can scroll up just a little bit.

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1 Q It appears that Hope Hicks at trumporg.com or
 2 hhicks@trumporg.com forwarded this message on August 4, 2015 to
 3 Amanda Miller or amiller@trumporg.com. Do you know who Amanda
 4 Miller is?
 5 A Yes.
 6 Q Who is Amanda Miller?
 7 A An employee at the Trump Organization at the time.
 8 Q Do you know what her position is at the organization?
 9 A I do not.
 10 Q It is also addressed to Donald Trump Jr. or
 11 djtjr@trumporg.com. Do you see that there?
 12 A Yes.
 13 Q Then the next address on this e-mail address is Allen
 14 Weisselberg. That's your father, right?
 15 A Yes.
 16 Q And Ms. Hicks writes, "Please see below and let me know
 17 what guidance you would like to provide, if any," right?
 18 A Yes.
 19 Q And then from there, is that when your father forwarded
 20 you the message at 3:12 p.m.?
 21 A It would appear that way.
 22 Q And your father, Mr. Allen Weisselberg's, message to
 23 you in sum and substance says, "Anything you want me to add when
 24 I call the writer back? See below," right?
 25 A Yes.

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1 Q If we go to your message at 3:26 p.m., there appears to
 2 be a pretty fulsome response. Is this the inputs you -- are
 3 the inputs you provided to your father included in the body of
 4 this message?
 5 A They could be, but I couldn't be sure.
 6 Q I didn't hear you the answer.
 7 A I couldn't be sure if it was. I believe so.
 8 Q And the very first entry, it states, "\$540 million
 9 value, so 29.6 percent."
 10 Any understanding as to what that particular line entry
 11 references, the \$540 million value?
 12 A His initial question was what was the LTV on the deal,
 13 so this was the loan to value.
 14 Q And what does the \$540 million represent?
 15 A It says the \$540 million value, so the 29.6 percent is
 16 our loan to that value.
 17 Q And is that also the appraised value of what the 40
 18 Wall Street asset?
 19 A It is.
 20 MS. FAHERTY: Thank you. I will move onto the next
 21 exhibit before I move to admit it, Your Honor.
 22 MR. ROBERT: Statute of limitations objection.
 23 THE COURT: Overruled. It's in evidence.
 24 MS. FAHERTY: Thank you Your Honor.
 25 (Whereupon, the Document was marked in evidence as

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1 Plaintiff's Exhibit 1062.)
 2 Q I know we discussed it, but just confirming the 40 Wall
 3 Street deal was ultimately securitized?
 4 A Yes.
 5 MS. FAHERTY: I've handed to the witness the
 6 document I've marked as PX-1070. Putting it on your screen
 7 here.
 8 Q This is a message from you dated August 4, 2016
 9 addressed to Allen Weisselberg. Subject, "Forward, here's the
 10 note from Trepp and an excerpt from Moody's."
 11 Do you see that forward there?
 12 A I'm sorry. Which part are you referring to, the e-mail
 13 from me to him or --
 14 Q Just confirming you forwarded this message to Allen
 15 Weisselberg, your father, on August 4, 2016, right?
 16 A Yes.
 17 THE COURT: Question for the witness. Are there
 18 any other Allen Weisselbergs in this universe that you know
 19 of?
 20 THE WITNESS: I don't think so.
 21 THE COURT: All right. So why don't we just call
 22 him "Allen Weisselberg," not "your father," not "your father
 23 Allen Weisselberg," et cetera. So any reference to Allen
 24 Weisselberg is Allen Weisselberg.
 25 MS. FAHERTY: Appreciate the direction, Your Honor.

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1 THE COURT: Okay.
 2 MR. KISE: To the extent we can, I know we're
 3 moving this along and we are not trying to press, but a lot
 4 of these questions are leading questions. They're
 5 just -- they're not framed in the direct, the normal
 6 sense --
 7 THE COURT: Right, without agreeing or disagreeing
 8 with you.
 9 Ms. Faherty --
 10 MR. KISE: Not really officially objecting.
 11 THE COURT: I'm not officially ruling, but we take
 12 your point.
 13 Q What do you recall that this message is forwarding
 14 here, Mr. Weisselberg?
 15 A Are you referring to the message that I forwarded to
 16 Allen? I was forwarding the response to a question that he had
 17 asked us from our head of securitization.
 18 Q And for what reason were you forwarding that response?
 19 A They had e-mailed and asked the question about why they
 20 were on the "watch list." So this was the response from our
 21 head of securitization.
 22 Q So if you scroll down to the second page of this
 23 document, is this what you're referring to, that there's a
 24 message between emily.flitter@thomsonreuters.com, dated
 25 August 4, 2016, to Allen Weisselberg with the subject, "Here's

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1 the note from Trepp and an excerpt from Moody's"?
 2 A Yes.
 3 THE COURT: Five-minute warning.
 4 Q What is Trepp?
 5 A Trepp is a service that publicly distributes
 6 information about securitized loans as well as other loans just
 7 regarding the rate that the lender/ servicer -- it gives you
 8 all -- all public information about the loan.
 9 Q And the reference to an excerpt from Moody's, what is
 10 Moody's?
 11 A Moody's is a rating agency.
 12 Q And the -- the underlying message from Emily Flitter
 13 includes a box and one of the boxes, there is a title, "Watch
 14 List Commentary." Do you have any understanding what that is a
 15 reference to, the watch list commentary as of July 2016?
 16 A Yes. Part of what Trepp does, they describe the loan
 17 and if there are any issues on the loan, they'll put it on a
 18 watch list that they're concerned about the loan, and then
 19 they'll track it every month until it changes to either going
 20 towards a default or the issue was resolved.
 21 Q Do you recall what the issue was that was triggering
 22 this watch list commentary particularly as it related to the 40
 23 Wall Street Street loan?
 24 A On this one because of the guaranties, mainly the
 25 master lease as well as free rent, when the servicer ran their

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1 cash flow, it was tripping the DSCR test that we had. But in
 2 reality, which is what we found out through our research, it
 3 didn't actually triplex it, but the servicer thought that it had
 4 been tripped or it could be tripped which is why it was on the
 5 watch list and not actually going into default.
 6 Q And the forward that you passed along to Allen
 7 Weisselberg is your internal review of what was being triggered
 8 in the watch list and what explanation you could provide? Is
 9 that a fair reading of this e-mail?
 10 A Yes. I wanted confirmation of what I assumed of what
 11 was happening from our head of securitization, so he replied by
 12 agreeing with me.
 13 MS. FAHERTY: One second, Your Honor.
 14 THE COURT: Sure.
 15 MS. FAHERTY: I have no further questions, Your
 16 Honor.
 17 Thank you, Mr. Weisselberg.
 18 Oh, I do have to move this document into evidence,
 19 please.
 20 THE COURT: They may have to object.
 21 MS. FAHERTY: They do. They don't need to.
 22 MR. ROBERT: August of 2016. No, no objection.
 23 THE COURT: Oh, that's right. It is after --
 24 well, you could still object to the extent that --
 25 MR. ROBERT: This one, I'm okay with. Thank you,

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1 sir.
 2 (Whereupon, the Document was marked in evidence as
 3 Plaintiff's Exhibit 1070.)
 4 MR. ROBERT: We reserve to call him back during our
 5 case, Your Honor.
 6 THE COURT: Okay. So let's break now. The witness
 7 is excused, right?
 8 Thank you.
 9 (Witness excused.)
 10 THE COURT: See you in 15 minutes.
 11 (Whereupon, a recess was taken.)
 12 THE COURT OFFICER: All rise. Part 37 is back in
 13 order. Please be seated and come to order.
 14 THE COURT: You may have noticed I don't run up the
 15 stairs anymore. It is not because I've run out of energy.
 16 It is that people told me that it is enough. Okay. Would
 17 the plaintiff like to call it's/her next witness?
 18 MR. GABER: Yes, Your Honor. The people call David
 19 McArdle.
 20 THE COURT OFFICER: Witness entering.
 21 D A V I D M C A R D L E , a witness called by the Plaintiff,
 22 after having been first duly sworn by the Clerk of the Court,
 23 took the witness stand and testified as follows:
 24 THE COURT OFFICER: Please state your name and
 25 business address or home address for the record.

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1 THE WITNESS: My name is David McArdle. My
 2 corporate address is 1290 Avenue of the Americas, New York,
 3 New York.
 4 THE COURT: Let's begin the direct examination of
 5 Mr. McArdle.
 6 DIRECT EXAMINATION
 7 BY MR. GABER:
 8 Q Good morning, Mr. McArdle. Can you please state your
 9 employer and title for the record, please?
 10 A I'm the senior managing director at Cushman & Wakefield
 11 here in New York City.
 12 Q Mr. McArdle, you worked on several valuation and
 13 appraisal engagements for the Trump Organization, that's
 14 correct?
 15 A That is correct.
 16 Q Before we discuss some of that work, Mr. McArdle, could
 17 you, please, give us a high level view of your professional
 18 background?
 19 A Certainly. I've been in the real estate business over
 20 40 years. 35 years of which involves commercial real estate
 21 appraisal also with experience in residential, different forms
 22 of residential valuation. For the last 30 years, I've been
 23 employed with Cushman & Wakefield here in New York City
 24 appraising general commercial properties.
 25 Q Do you have any licenses or relevant professional

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1 qualifications that you employ in your work?
 2 A I do. I hold the MAI designation which is considered
 3 the, you know, premier designation in our industry. It is
 4 awarded by the Appraisal Institute and widely recognized as the
 5 top designation. I'm also registered in the State of New York
 6 as a New York certified general operator. Again, that is the
 7 broadest and highest license that you can achieve in the state
 8 for legal purposes.
 9 Q And so, Mr. McArdle, are you familiar with the uniform
 10 standards of professional appraisal practice or USPAP?
 11 A Yes, very much so.
 12 Q Could you tell me what USPAP is?
 13 A USPAP represents the uniform standard appraisal
 14 practice kind of guidelines and standards that appraisers are
 15 expected to uphold. It's formed by quasi-government trade group
 16 industry. You know, experts in the appraisal world collaborate
 17 to -- you know, to set these guidelines and standards to, you
 18 know, serve the public the best and fairest.
 19 Q And so does USPAP govern your work on appraisal
 20 engagements?
 21 A Very much so. They are guidelines. It is not a
 22 governing body, but it's a -- it's kind of a blueprint for
 23 standards, ethics, morals.
 24 Q So I'm just going to ask what are the sorts of
 25 requirements in USPAP that you follow when conducting an

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1 appraisal engagement?

2 A Well, there is a standard protocol that should take

3 place at the onset of an assignment. We call it the engagement

4 process. We establish, you know, who our client is, who

5 intended users might be of the product and generally defined,

6 obviously the identify, the subject property at hand and then

7 also get a good understanding at least early on -- of the

8 general scope, you know, what are we trying to accomplish here,

9 what are the needs of the client, and that's the sort of general

10 framework we like to capture in the letter of engagement.

11 Q Does it prescribe any specific form of a report, oral

12 versus written or otherwise?

13 A Very much so. I mean, this letter of engagement

14 briefly focuses on the type -- the property you're appraising,

15 the client base, the form of reporting. We do have a liberty of

16 reporting verbally. Generally, two other forms of written

17 reports are widely used, restricted and -- which is more of a

18 concise written report and there's also an appraisal report

19 which would be the most comprehensive document. So we clearly

20 define in the letter of engagement which product the client

21 would receive.

22 Q And as an appraiser and an MAI, are you allowed to give

23 an opinion of value without making that in conformity with

24 USPAP?

25 A No. No. We --

D. MCARDLE - DIRECT(MR. GABER) Page 1912

1 Q And so does USPAP require that an opinion of value be

2 supported by disclosed methodology or specific requirements?

3 A USPAP suggests that there's certain uniform

4 methodologies be adopted for each appraisal report. We call

5 it -- well, this is a due diligent portion of the assignment

6 that's necessary and there's also the actual valuation itself

7 takes place by using one, two or three of the standard

8 approaches to value.

9 Q So maybe going from generally to more specific, I

10 wanted to talk about real property and focuses on appraisals of

11 vacant land.

12 Can you walk me through the process that you take when

13 you are engaged to prepare an appraisal of real property or

14 vacant land?

15 A Sure. Well, the very first thing we would want to

16 understand is the vacant land itself. The physical attributes

17 or characteristics such as size, shape, condition, topography.

18 Would also be very interested in what could be legally

19 constructed or erected at the property or developed and that, of

20 course, would fall into the category of zoning. It's very

21 important that we have to understand what you could feasibly

22 develop at that property.

23 Q Where do you acquire the information that goes into

24 that consideration? How do you learn about the zoning, the

25 legal requirements, the condition and the like, the things you

D. MCARDLE - DIRECT(MR. GABER) Page 1913

1 just described? Where do you get your data for that?

2 A Sure. It's a wide combination of data sources. Of

3 course, there's public information out there, zoning

4 departments, assessors in the local municipalities. There's

5 also very meaningful information that is supplied by owners and

6 clients.

7 Q Excuse me. What type of very meaningful information do

8 you mean when you say that?

9 A Yeah. Well, we want to gain a very good understanding

10 of the subject property. Typically, the client or owner knows

11 that property better than anyone and, you know, obtaining a

12 survey, for example, would be a key document that we would want

13 from an owner or a client. And then any nuances, approvals or

14 any legal or any other factors that might play into the use of

15 this property that may impact its value if it were to be put to

16 market for sale.

17 Q And moving onwards to discuss how you might then take

18 that information and generate a value for the property, are you

19 familiar with the concept of highest and best use?

20 A Certainly.

21 Q Can you describe your understanding of that content?

22 A Yes. Highest and best use is important in that we want

23 to be sure that we are developing a value based on four

24 important tests within the highest and best use analysis.

25 Basically, we want to support why the property should be

D. MCARDLE - DIRECT(MR. GABER) Page 1914

1 developed in a certain way. Highest and best use includes look

2 at a property on a vacant basis and -- vacant land basis and

3 also an improved basis.

4 If you're focusing on vacant land right now, the test

5 includes what's legally permissible, what's physically possible,

6 what is feasible, and what is most profitable. So there are

7 four tests to the highest and best use analysis and we would

8 methodically go through those and, you know, reach our

9 conclusion considering those four tests of the asset.

10 Q And that gives you a conclusion of value?

11 A It doesn't give us a conclusion of value, but it -- it

12 looks into the use, the highest and best use of this property.

13 Q So how does that highest and best use relate to your

14 final opinion of value?

15 A Well, the highest and best use establishes the use of

16 the property, the best use. And from there, we make the

17 decision of how the marketplace would value the property. If

18 we're talking about, you know, undeveloped vacant land in this

19 example, that would quickly lead us to most -- you know, and if

20 it is residential, it would lead us to a sales comparison

21 approach, would quickly default to the approach, one of the

22 three approaches that we feel are most appropriate or a

23 combination of the three. So the number crunching and the

24 actual value of the property is subsequent to the highest and

25 best use analysis. We sort of methodically go through, you

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1 know, the process. We've understood the property. We know the
 2 characteristics. We know what type of use it should be and then
 3 we start the, you know, most appropriate way to value it.
 4 (Continued on the next page.)
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D. McArdle - Plaintiff - direct (Gaber)

1 transactions that are fairly current and reflective of the
 2 current market conditions.
 3 Q By the way, are you familiar with the concept of the
 4 subdivision sellout analysis?
 5 A Yes, I am.
 6 Q Can you explain your understanding of that analysis?
 7 A Sure. That's -- that gets into the work involved
 8 valuing a property with subdivision potential or a multi-unit
 9 housing project rather than just valuing one individual lot by
 10 way of comparable sales. The subdivision analysis takes into
 11 account the potential sale of multiple lots or buildings and so
 12 there is -- if it's just sellout analysis of vacant land it's
 13 merely a model that we develop understanding or projecting out a
 14 sales scenario over a time horizon in that wouldn't -- that
 15 would develop the general proceeds that a developer might yield
 16 by selling each of those lots over a timeline.
 17 During that process there are expenses that the
 18 developer would have to incur depending on the particular
 19 project. It could be some hard costs to bring the site up to
 20 speed, it might be some interest charges and just various
 21 expenses that have to be reduced from the gross potential income
 22 that they would be receiving by way of the lot sales.
 23 Q And how do you identify the number of potential lots
 24 when you're conducting this analysis?
 25 A Well, that's always interesting and critical part of

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D. McArdle - Plaintiff - direct (Gaber)

1 Q Can you describe sales comparison approach?
 2 A Sure. The sales comparison approach is an effort to
 3 simply find like kind properties that have recently transferred
 4 in the marketplace and market -- you know, it's the way
 5 residential property largely transfers. Market participants put
 6 a lot of weight on comparable sales.
 7 Good example would be single-family homes. That
 8 marketplace is less concerned with the cost approach and less
 9 concerned with the income approach. They're almost entirely
 10 locked in and expecting to have their properties valued by way
 11 of just similar comparable land sales in this case as best we
 12 can find. So we elect to go out to the marketplace and find
 13 appropriate comparable sales. There are limitations to that.
 14 We try not to stray too far from the market in terms of mileage
 15 or distance, radius from the subject site.
 16 We also want to find like kind properties, you know, in
 17 terms of size or shape. So it's not always perfect, but we do
 18 the best we can trying to obtain a set of sales that best match
 19 the subject property.
 20 Q When you say "set of sales" so are you using the final
 21 selling price or do you also use listing prices when --
 22 A We prefer to use sale prices. Those are closed sales
 23 that have been negotiated in the open market. Definitely want
 24 to use sales that are not influenced by related parties or
 25 anything like that. So we really want to be using open market

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D. McArdle - Plaintiff - direct (Gaber)

1 the analysis. Subdivision analysis has to -- you know, we have
 2 to be certain as to the number of lots being sold. You know,
 3 that's part of the initial scope of the assignment. We want to
 4 gain an understanding of the actual subject property. We do
 5 that by various sources, some of which is checking
 6 municipalities. But I think the most obvious source would be to
 7 go to the owner and, you know, who, again, in most cases know
 8 their property better than anyone else and, you know, having a
 9 good working relationship with an owner or a client. It's very
 10 common to look to the client for specific information about the
 11 land and what potential it holds and perhaps what stage it's in
 12 in terms of the approval process, which is a very significant
 13 part of subdividing land.
 14 Q Really quickly. You mentioned a couple things I wanted
 15 to come back to. You were talking about costs and you mentioned
 16 gross potential income. Does the subdivision sellout analysis
 17 account for time, value of money in a period when you're looking
 18 at those factors?
 19 A It certainly does. The sellout analysis is typically
 20 projected out over a number of years and that's typically you,
 21 know, what -- the time that we believe it would take to
 22 liquidate all the lots, for example, at a property.
 23 So by going out multiple years we would then be, you
 24 know, achieving proceeds over a course of years. We have to
 25 factor in the time, value of money. So it's the model is

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1 effectively a discounted cash flow analysis and discounting has
 2 to take place. It's a mathematical equation where we discount
 3 the proceeds as they, you know, are achieved over the course of
 4 the time. So the model takes into account the -- that
 5 particular discounting.
 6 So we would have to select a discount rate and then
 7 through some modeling in Excel, it develops the net present
 8 value of the property on an as-is basis.
 9 Q Can you explain what you mean by "net present value on
 10 an as-is basis?"
 11 A Well, for example, the -- if one were to do a five-year
 12 sellout of a particular number of lots, those gross retail
 13 proceeds really don't drop to the bottom line. There is
 14 expenses that would have to be incurred and a dollar five years
 15 is not worth a dollar today. So there is a discounting process
 16 that needs to take place and kind of bring back, reduce that
 17 aggregate proceeds value down to a present value and that's what
 18 it would be worth for a developer today or an owner.
 19 Q I'd like to move on and show the witness an exhibit
 20 marked Plaintiff's 157.
 21 THE COURT: Before you get into that you were asked
 22 what is a subdivision sellout analysis. Could that be
 23 simplified to determining the value of the current value of
 24 property if it's subdivided?
 25 THE WITNESS: Yes.

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1 THE COURT: Okay. There are simple answers in
 2 there and there are detailed answers, but thank you.
 3 Q Mr. McArdle, do you recognize this document?
 4 A Yes, I do.
 5 Q Okay. Can you tell me what this is?
 6 A This looks like a setup for our internal administrators
 7 recognizing that a letter of engagement has been signed for
 8 Trump National Golf Course in Westchester and we're just
 9 starting the process of entering into what we call our job
 10 center. Clearly, there is a retainer due so we have that
 11 engaged. We're looking for our retainer and it's just the early
 12 stages of the engagement.
 13 Q Okay. And here in the subject line it mentions Trump
 14 National Golf Course Westchester. It also mentions it's in
 15 Briarcliff Manor, New York. I've seen it interchangeably called
 16 Westchester and Briarcliff. If I use those interchangeably,
 17 would you understand?
 18 A Certainly. I've seen it done the same way.
 19 Q Can you direct your attention to -- first to page four
 20 of this document really quickly.
 21 You mentioned this was a setup for the engagement
 22 letter. Do you recognize this is the attachment for those
 23 e-mails? Do you recognize this portion of the exhibit?
 24 A Yes, I do.
 25 Q Can you tell me what this is?

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1 A So this is the actual engagement letter between Cushman
 2 & Wakefield and Sheri Dillon of Bingham McCutchen.
 3 MR. GABER: So I'd like to move this into evidence.
 4 THE COURT: Granted. It's in evidence.
 5 MR. FIELDS: Your Honor, this is -- is this just
 6 the engagement agreement or is there anything else that's
 7 attached behind the engagement agreement?
 8 THE COURT: Counsel, do you know or can you check?
 9 MR. GABER: It's just the e-mails and the
 10 engagement letter.
 11 MR. FIELDS: Okay. Then it's just a statute of
 12 limitations objection, Your Honor. Thank you, Your Honor.
 13 THE COURT: Overruled. It's in.
 14 (Whereupon, the item previously referred to is
 15 received and marked Plaintiff's Exhibit Number 157 in
 16 evidence.)
 17 Q Can we go back to page three of this document,
 18 Mr. McArdle? You'll see an e-mail from you to Eric Trump. It
 19 says: "Eric, attached is the revised appraisal proposal
 20 totaling \$12,500. I hope this works for you and we can move
 21 forward. Thank you for the opportunity, Dave."
 22 So you are writing to Eric Trump at this proposal and
 23 you describe -- sorry. You are thanking him for the
 24 opportunity. Can you tell me what you mean by that?
 25 A Yes. The -- yes. The letter of engagement was written

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1 to Counselor Sheri Dillon of Bingham McCutchen. It was widely
 2 understood that intended users of this document would also be
 3 the Trump Organization, Donald J. Trump, Eric Trump. So in
 4 short order after the engagement there were communications with
 5 Eric and I about some preliminary steps that we were going to
 6 take to get this engagement underway.
 7 Q All right. So did you understand Eric Trump to be the
 8 client in this engagement?
 9 A I think he was certainly an extension of the client.
 10 The client technically is Sheri Dillon, but in my view she was a
 11 representative of the Trump Organization.
 12 Q You mentioned intended users. I think that's on page
 13 four of this exhibit, the first page of the engagement letter.
 14 That section says "the appraisal estimate would be prepared for
 15 Bingham McCutchen LLP and it's intended only for the use
 16 specified below. Other intended users are the Trump
 17 Organization and Donald J. Trump. The client agrees that there
 18 are no other intended users."
 19 Is this what you were referring to a moment ago?
 20 A That's correct.
 21 Q Okay. And so you were saying that you understood Eric
 22 Trump to be at least an extension of the client, so it was your
 23 understanding that while the formal engagement was with Sheri
 24 Dillon that Mr. Trump was ultimately -- Mr. Eric Trump was
 25 ultimately your client in performing this work?

D. McArdle - Plaintiff - direct (Gaber) Page 1923

1 A Well, in a practical sense, yes.

2 Q Okay. Thank you.

3 I want to note on the first page of this document it

4 says at the top e-mail, "the revised LOE has been uploaded to

5 JC." First of all, what is JC?

6 A JC is job center. That's our administrative program to

7 catalog all the assignments that we bring in.

8 Q Okay. Can I show you a document that plaintiffs have

9 marked as Exhibit 156?

10 So if you could, Mr. McArdle, just flip through and let

11 me know if you recognize this document. Again, I'll note it's a

12 series of e-mails and then one attachment, which the attachment

13 begins on page four.

14 A Okay. I'm familiar with this document.

15 Q Can you tell me what this document is?

16 A This is another letter of engagement between the same

17 Sheri Dillon of Bingham McCutchen and similar intended users,

18 the Trump Organization and Donald J. Trump.

19 MR. GABER: I'd like to move this document into

20 evidence.

21 MR. ROBERT: Objection, Your Honor. Statute of

22 limitations, also relevancy. And I want to have a

23 continuing objection to the whole line of questioning as

24 this is all well outside the applicable statute of

25 limitations. We're talking about documents and testimony

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1 about appraisals that were done in 2013.

2 THE COURT: Since you're good at repeating things,

3 I'll repeat statute of limitations bars claims, not

4 evidence. I won't go into a whole dissertation now about

5 how evidence could be admissible, but, you know, I did think

6 of a simple example that just sort of came to me.

7 Let's say a murder or a bank robbery was committed

8 within the statute of limitations. There is evidence, there

9 is a letter from the defendants prior to the statute of

10 limitations saying "I plan to rob the bank." Wouldn't that

11 come in as evidence?

12 MR. ROBERT: I'm not a criminal practitioner. To

13 me that's apples and oranges here. Here they're trying to

14 allege conduct --

15 THE COURT: I'm -- I asked you a question. Would

16 that come in, I planned to rob the bank even if it was

17 written before statute of limitations.

18 MR. ROBERT: I honestly don't know how that would

19 be evidence to prove the crime that a person committed bank

20 robbery that they're being charged with so I would think it

21 wouldn't come in.

22 THE COURT: Really? "I plan to rob the bank"

23 wouldn't be evidence that you did rob the bank?

24 MR. ROBERT: I would think it doesn't.

25 THE COURT: Anyway --

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1 MR. ROBERT: The People would have to prove that

2 particular crime, did the person rob the bank that day.

3 MR. AMER: The AG's response is yes.

4 THE COURT: I'll overrule the objections and let's

5 proceed.

6 (Whereupon, the item previously referred to is

7 received and marked Plaintiff's Exhibit Number 156 in

8 evidence.)

9 Q Okay. Mr. McArdle, it seems you said that this

10 document, Plaintiff's 156, was a similar engagement. It appears

11 to me that this signature page of this document, document page

12 nine on both of these exhibits is different.

13 Can you -- do you see the signature page there on page

14 nine here, do you know whose signature that is on the August 6,

15 2013 engagement letter?

16 A It looks Eric Trump.

17 Q Okay. And as opposed to on Plaintiff's 157, the

18 August 9th engagement letter, the revised engagement letter, the

19 signature page there, if I can direct you to it, signed by Sheri

20 Dillon?

21 A Sheri Dillon.

22 Q So is it fair to say that the -- and you can look at

23 the two documents and compare that the nature of the revision is

24 to remove Mr. Trump's name and signature from the original

25 letter and replace it with Ms. Dillon and Bingham McCutchen LLP

D. McArdle - Plaintiff - direct (Gaber) Page 1926

1 as the client in the engagement?

2 A Certainly appears that the August 9th signature

3 supercedes the other agreement.

4 Q Okay. But following up with your testimony from

5 earlier notwithstanding the revision you understood Eric Trump

6 to be a client or the extension of the client in the revised

7 engagement?

8 A I certainly did.

9 Q Okay. Thank you.

10 So can you describe the nature of -- and we can put

11 aside 156 and just focus on the engagement represented by the

12 revised letter.

13 Can you describe the nature of that engagement for me?

14 A That engagement was focused on the valuation of 71

15 potential attached units within the confines of Trump National

16 Briarcliff Golf Community.

17 Q And you looked earlier at an e-mail that you had sent

18 to Eric Trump about this saying "thank you for the opportunity."

19 Had you discussed the nature and scope of this

20 engagement with Mr. Trump at the time of entering into this

21 engagement letter?

22 A I definitely had conversations with Eric Trump at the

23 very initial stage of engagement.

24 THE COURT: We should probably use first names

25 because there are several Mr. Trumps.

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1 MR. GABER: Understood. Thank you. That's a good
 2 point.
 3 Q Mr. McArdle, if you look at page two of Plaintiff's 157
 4 towards the bottom there, there is an e-mail from Eric Trump to
 5 you. He's saying, "Good morning, David." And then further down
 6 he says, "By separate cover, I will send you all the information
 7 on the 71 units. Moreover, the dates are critically important
 8 to us."
 9 About those two points there, is it correct that
 10 Mr. Trump -- Mr. Eric Trump was planning to send you information
 11 about -- well -- withdrawn.
 12 What are the 71 units that Eric Trump is referring to
 13 here?
 14 A What my understanding is when the Trump Organization
 15 purchased and redeveloped the entire golf club property there
 16 was significant excess land at the property that had approvals
 17 and very advanced stages for the development of semi-detached
 18 single-family homes and also an opportunity which you call that
 19 low density and they were just attached. You'd have two luxury
 20 residences as attached to each other. I believe they were --
 21 Q Duplex?
 22 A Duplex, that's another terminology, fair. And I
 23 believe there were about 16 units in total. Those were already
 24 built and developed by the time, you know, I arrived and really
 25 not a big piece of this equation.

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1 The 71 units they clearly had a right to develop
 2 low-rise luxury townhouse units along the 18th fairway between
 3 the fairway and the parking lot of the golf club. So this was
 4 an opportunity, sizable opportunity, to develop luxury attached
 5 apartments right there on the grounds of the golf club.
 6 Q And the second sentence there says, "Moreover, the
 7 dates are critically important to us."
 8 Do you have an understanding as to why those dates were
 9 critically important to Eric Trump?
 10 A Well, I think it was obvious they were clearly
 11 contemplating a donation, conservation easement donation, and
 12 they were looking for my input on valuation of this 71-unit
 13 project. To the best of my knowledge the Phase I Friday,
 14 September 6th deadline was a verbal report. I believe the
 15 second date was the final report hard copy.
 16 Q One last question with this document. At the top of
 17 page two you've written, "new assignment for the McArdle team."
 18 Who is the McArdle team?
 19 A McArdle team is certainly me as the primary team member
 20 and I have a couple junior appraisers, licensed, that work for
 21 me. One of them is my nephew, Raymond, same last name, McArdle.
 22 Q And then, "Please use Eric Trump as client."
 23 So I think we've discussed this a bit, but you
 24 understood Eric Trump or the Trump Organization to be an
 25 ultimate client, but is -- you're writing -- I think who is Tina

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1 Schultheis and Nieves, and Maria Targi here?
 2 A They are administrators who manage the booking, the
 3 cash, the putting everything in what we call that job center
 4 program.
 5 Q So when you say "use Eric Trump as client" are you
 6 asking them to use Eric Trump as client in internal --
 7 A It's just an internal bookkeeping measure.
 8 Q An internal bookkeeping measure, okay. Thank you.
 9 So Mr. McArdle, I'd like to show you a document that
 10 plaintiffs have marked as Exhibit 3195. Do you recognize this
 11 document?
 12 A I recognize it, yes.
 13 Q Thank you.
 14 MR. GABER: I would like to move this document into
 15 evidence.
 16 MR. FIELDS: Objection. Statute of limitations.
 17 THE COURT: Overruled. It's in.
 18 (Whereupon, the item previously referred to is
 19 received and marked Plaintiff's Exhibit Number 3195 in
 20 evidence.)
 21 Q So can you tell me who Bob Leonard is?
 22 A Bob Leonard was an associate at Bingham McCutchen with
 23 Sheri Dillon.
 24 Q And so in this e-mail you're writing to Bob Leonard.
 25 You said, "Bob, I spoke with Eric yesterday and agreed to

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1 perform a discounted cash flow analysis reflecting a
 2 build/sellout scenario. We are targeting a 9/20 delivery date.
 3 I will speak with you soon, Dave."
 4 So I think you mentioned discounted cash flow analysis
 5 earlier. You're saying you agreed with Eric Trump to perform
 6 that analysis. This is -- do you remember whose suggestion it
 7 was to perform this sort of analysis?
 8 A Well, we suggested it when their objective was to value
 9 the -- that vacant land with this development potential. You
 10 know, as an experienced appraiser this is the right methodology
 11 to apply.
 12 Q Did that agreement come up after discussion with Eric
 13 Trump about what sort of methodology would be undertaken?
 14 A This is a complicated asset, especially when everything
 15 is on a proposed basis. So it's very important that we are
 16 aligned. You know, the appraiser and the owner or client is
 17 very much aligned in the approach. It's fair to Eric, it's fair
 18 to me so that there is no surprises at the end and I think
 19 everyone agreed that this was the approach to take.
 20 MR. GABER: Okay. I'm going to move on to a
 21 document marked Plaintiff's Exhibit 3204.
 22 Q Please take a look at that and tell me if you recognize
 23 it.
 24 A I do recognize this document.
 25 MR. GABER: I'd like to move this document into

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1 evidence.
 2 MR. FIELDS: Statute of limitations.
 3 THE WITNESS: Overruled. It's in evidence.
 4 MR. GABER: Okay.
 5 (Whereupon, the item previously referred to is
 6 received and marked Plaintiff's Exhibit Number 3204 in
 7 evidence.)
 8 Q Mr. McArdle, this is an e-mail from you to Eric Trump.
 9 You write to him saying, "Eric, this is a follow up to confirm
 10 that you will be providing support from your brokers for the
 11 potential pricing of the 71 residential units. We also
 12 discussed obtaining input from your construction contractors on
 13 the PSF cost to build the project. At this time we are moving
 14 forward with the discounted cash flow analysis and look forward
 15 to the pricing and cost estimates from your team. Enjoy the
 16 weekend."
 17 So you are following up to confirm Mr. Trump is going
 18 to provide you with the information described here. Is it
 19 normal to seek this sort of information from a client?
 20 A Very much so. Again, typically the property owner
 21 knows more about his property than we do going in. This was a
 22 very specific project that's already approved by the
 23 municipalities, so in terms of approvals, it was in a very much
 24 advanced stage. As a savvy appraiser, I couldn't help but think
 25 they had a tremendous amount of information already in their

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1 A Steven Olvany is a fellow appraiser formerly of Cushman
 2 & Wakefield and also a resident of either Westchester or the
 3 Greenwich, Connecticut area.
 4 Q And can you -- can you tell me what you're discussing
 5 with Mr. Olvany here?
 6 A This is part of our due diligence. As much as I am
 7 interested in hearing what the Trump Organization would retail
 8 these units at, it's my obligation to go out into the
 9 marketplace and do my own research and kind of test the market
 10 and gain a good understanding of, you know, what these luxury
 11 units would transfer for in the current marketplace.
 12 So Steve I considered a resource. It's commonplace.
 13 He's smart guy that, you know, I thought I could lean on for
 14 some unbiased market intelligence.
 15 Q So two questions here. Towards the bottom of that long
 16 first paragraph it says, "Of course Eric Trump has lofty ideas
 17 on value and assumes \$1,000 PSF," per square foot "is no
 18 problem". First, had Eric Trump communicated his understanding
 19 of what the values might be on this property?
 20 A Well, during the course of this engagement I did have
 21 conversations with Eric Trump. Some of it was about gathering
 22 the physical data that we just spoke to, you know, construction
 23 costs and building configurations and units and he did a great
 24 job of describing the physical nuances of the project and -- but
 25 importantly, you know, we ended up speaking about what they

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1 files. It's not up to me to guess or speculate as to what could
 2 be built here when we know for a fact they -- they're deep into
 3 the planning stage.
 4 So -- and with their professional advisors, there could
 5 be no better source than to go to the owner, Eric Trump, and try
 6 to secure this information, whether it be his pricing forecasts
 7 or on the expense side like we talked about before, you know,
 8 what's it going to cost to build these. And eventually that's
 9 going to get us, you know, a bottom line number and, you know,
 10 the profit potential and kind of gets us those inputs that we
 11 may need for this sellout analysis or ultimate discounted cash
 12 flow.
 13 Q I'm going to show you a document marked Plaintiff's
 14 Exhibit 3196. Again, please take a look at this and tell me if
 15 you recognize this.
 16 A Yes, I recognize this.
 17 MR. GABER: I'd ask this be moved into evidence.
 18 MR. FIELDS: Statute of limitations.
 19 THE COURT: Overruled. It's in.
 20 MR. GABER: Thank you.
 21 (Whereupon, the item previously referred to is
 22 received and marked Plaintiff's Exhibit Number 3196 in
 23 evidence.)
 24 Q So Mr. McArdle, this is an e-mail from you to Stephen
 25 Olvany. Can you tell me who Stephen Olvany is?

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1 could sell for. And, you know, Eric loved this project. He
 2 thought it was very special. I didn't disagree with him. I
 3 think it's a very unique project and it would definitely appeal
 4 to the high-end buyer interested in, you know, low rise attached
 5 housing with the amenities that this project might offer.
 6 So he shared his thoughts. He thought it was very
 7 special and unique. And at the time that \$1,000 per square foot
 8 price point was what he thought was reasonable, you know, and
 9 I'm perfectly willing to listen. I think it's -- owners are a
 10 great source of information, but ultimately, you know, I have to
 11 come up with my own conclusions.
 12 Transcript continues on the following page....
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D. MCARDLE - DIRECT(MR. GABER) Page 1935

1 Q Did you have any further discussion with him about the
2 lofty idea of value here?

3 A I think we went back and forth a little bit and, you
4 know, I -- I did my best to try to find like-kind projects
5 that, you know -- where we could understand what those were
6 selling for. You know, I tried to stay in Westchester. It
7 wasn't all that easy. This project was going to definitely be
8 at the top of the residential marketplace for what it is, so
9 we -- I think we reached out down into Nassau County where some
10 of those similar units might be selling. We looked at southern
11 parts of Westchester County and we did the best to gather, again
12 comps, you know, or like-kind properties.

13 Q Can I show you a document that plaintiffs have marked
14 3202. And, please, let me know if you recognize it. It is an
15 e-mail with an attachment beginning on page two of the document,
16 so please look at both if you would.

17 A Yes, I do recall this exchange.

18 MR. GABER: I'd ask this be moved into evidence.
19 MR. ROBERT: Statute of limitations.
20 THE COURT: Overruled. It is in evidence.
21 (Whereupon, the Document was marked in evidence as
22 Plaintiff's Exhibit 3202.)

23 Q So Mr. McArdle, it appears Eric Trump is sending you an
24 e-mail saying, "Attached, please find some comps for similar
25 product, type of product in Westchester." He then goes on to

D. MCARDLE - DIRECT(MR. GABER) Page 1936

1 say, "I suppose further describe the comparables."
2 But I'll ask you how did you understand Eric Trump's
3 e-mail and the comparables that he sent you?

4 A Well, like I've said a few times this morning, it's
5 important that we gather the best possible set-up data to make a
6 decision on, you know, our final sale price estimate for these
7 units. We looked -- we looked to various source social
8 security. We looked to public record. We looked to comparable
9 source -- comparable databases, our own databases and, you
10 know, we looked to market participants and I was perfectly
11 willing to receive some of Eric Trump's information for me to
12 analyze.

13 Some of the points he makes here are true and I clearly
14 accept that the amenities at this facility were unique. So I
15 think he was just, you know, showcasing his property in a fair
16 way. You know, this was a very unique project, so it gave me a
17 better understanding of what kind of amenities were there and
18 then it was up to me to absorb this in concert with all the
19 other comparable data that we had, and then again, it is up to
20 me to make that final value estimate.

21 Q So I am now going to go to an exhibit marked as
22 Plaintiff's 3201. Please take a look at this document and let
23 me know if you recognize it.

24 A Okay. I recall this.

25 MR. GABER: I ask that this be moved into evidence.

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1 MR. FIELDS: Statute of limitations.
2 THE COURT: Overruled. It's in.
3 (Whereupon, the Document was marked in evidence as
4 Plaintiff's Exhibit 3201.)

5 Q Mr. Weisselberg, looking to the bottom of the first
6 page of this, there is an e-mail from you to Eric Trump. The
7 header is a little bit cut off, but is this an e-mail to you
8 from Eric Trump at the very bottom of the first page here?

9 A Looks like it is from Eric to me, but it is a little
10 confusing.

11 Q I think the e-mail from Eric to you is the one that
12 says, "Can you do 330," perhaps?

13 A Right.

14 Q And then there's a lower e-mail where it says, "David
15 McArdle wrote"?

16 A That, I agree is from me to Eric.

17 Q It says, "Eric, I am prepared to share my valuation
18 conclusions with you. Are you available to talk this afternoon
19 or tomorrow morning."

20 First off, going back to our discussion from the
21 beginning of this engagement, you had mentioned that Bingham
22 McCutchen, L.L.P. was the formally engaged client, correct?

23 A Correct.

24 Q But you understand that the Trump Organization and
25 Donald J. Trump were intended users on the engagement letter?

D. MCARDLE - DIRECT(MR. GABER) Page 1938

1 A Correct.
2 Q And you understood Eric Trump to also be a client in
3 this matter, correct?

4 A Yes.

5 Q So you were sharing your valuation conclusions with
6 Eric here understanding that he is a client or related to the
7 client?

8 A Yes. At that time, there was -- it was clear that I
9 could have an open dialog with Eric.

10 Q And so what does it mean in appraisal terms, we
11 discussed this I think a bit generally, that you are prepared to
12 share your valuation conclusions with him?

13 A Well, there had been a long process. There were a lot
14 of assumptions and work that we had been performing and I
15 believe this is a lead-up to what may have been phase one in
16 that engagement where it was merely the verbal delivery.

17 Q Are you saying, I'm sorry, this could be shared
18 verbally --

19 A I think that's where we're headed with this, yes.

20 Q And then leading up the document, Eric Trump asks, "Can
21 you do 330." And then one more e-mail up, you say, "Yes,
22 perfect. I will call you." And then the top e-mail
23 here -- well, putting aside the top e-mail here now because
24 there seems there is a gap in the timing, did you, in fact,
25 speak with Eric Trump on or around September 30th as suggested

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1 by this e-mail?

2 A I can't be sure if I spoke to him that day.

3 Q I would like to show you a document marked Plaintiff's

4 3197. Do you recognize this document?

5 A Yes, I do.

6 MR. GABER: I'd like to move this into evidence.

7 MR. ROBERT: Statute of limitations.

8 THE COURT: Overruled. It is in.

9 (Whereupon, the Document was marked in evidence as

10 Plaintiff's Exhibit 3197.)

11 Q "Bob, the call went well and we are ready to move

12 forward with the written report." I'll note this was sent on

13 October 1, 2013. The last e-mail that we discussed in the

14 previous Exhibit 3201 was dated September 30, 2013. So

15 is -- this is the day after that last e-mail.

16 A Yeah. In reading this e-mail, it certainly suggests

17 that that call took place.

18 Q So does this refresh your recollection that the call

19 did take place?

20 A Yes, it does.

21 Q Thank you.

22 Do you remember what the value conclusion was that you

23 had reached at that point in this engagement?

24 A I think we were getting close and the values were

25 falling in the low 40 millions.

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1 Q Thank you. I'm going to hand you a document marked

2 Plaintiff's Exhibit 3218. Please take a look and let me know if

3 you recognize it. I saw a nod, but could you please answer

4 whether you recognize it for the record.

5 A I do recognize this.

6 Q Thank you.

7 MR. GABER: I ask that that be moved in evidence.

8 MR. FIELDS: Statute of limitations.

9 THE COURT: Overruled. It is in evidence. It is

10 in.

11 (Whereupon, the Document was marked in evidence as

12 Plaintiff's Exhibit 3218.)

13 Q So Mr. McArdle, as you can see, there is an e-mail here

14 dated October 1, 2013 from Eric Trump to you. It says, "David,

15 I have one question for you. Do you have a minute to speak at

16 some point today, Eric."

17 Do you recall whether you spoke with Eric Trump in

18 response to this e-mail?

19 A I don't recall that follow-up phone call.

20 Q Do you remember -- is there any other recollection you

21 have of whether Eric Trump had a question for -- what question

22 Eric Trump may have had for you, if he did, after the September

23 30th call?

24 A I do know that he was pursuing me to discuss some

25 issues with the appraisal, but I'm not sure what the content was

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1 all about.

2 Q So I'd like to move to Plaintiff's 3197. 3198 then.

3 Please take a look at this and let me know if you recognize it.

4 (Witness reviewing document.)

5 Q Do you recognize this?

6 A I do recognize it. I'm sorry.

7 Q No. It is quite all right.

8 MR. GABER: I ask that this be moved into evidence.

9 MR. FIELDS: Statute of limitations, although, the

10 witness has not said what it is, but, nevertheless, that's

11 all the objection is, Your Honor.

12 THE COURT: He should technically say what it is

13 before I let it into evidence.

14 MR. GABER: I thought -- okay. I can do that.

15 Q Do you know what this document is, Mr. McArdle?

16 A Yes, I do. It's an e-mail exchange between Bob Leonard

17 and myself.

18 THE COURT: About?

19 Q About?

20 A About a dialog pending dialog with Eric Trump.

21 MR. GABER: I'd like to move into document in

22 evidence.

23 MR. FIELDS: Statute of limitations.

24 THE COURT: Overruled. It is in evidence.

25 (Whereupon, the Document was marked in evidence as

D. MCARDLE - DIRECT(MR. GABER) Page 1942

1 Plaintiff's Exhibit 3198.)

2 MR. GABER: Thank you.

3 Q Mr. McArdle, it says, "Bob, I received a VM from Eric

4 yesterday. We need to talk. I am traveling the next Tuesday

5 days. I can call you up until 11:00 a.m. today or after

6 6:00 p.m. or any time tomorrow is great, Dave."

7 So this is dated October 15, 2013 and you note the

8 voicemail was yesterday, so that would be the 14th. Do you

9 recall what the voicemail was from Eric Trump?

10 A I don't. I think he wanted to go over some of the

11 assumptions in the model.

12 Q Do you recall whether you had a talk that day with Mr.

13 Leonard?

14 A I don't recall.

15 Q So next, I'd like to show you Plaintiff's Exhibit 3199.

16 Please take a look at it and first let me know if you recognize

17 it. Then I'll ask you what it is.

18 A I do recognize the document.

19 Q Can you describe the document, please?

20 A This is another e-mail exchange between myself and Bob

21 Leonard of Bingham McCutchen.

22 Q The subject line is "ET," correct?

23 A Correct.

24 THE COURT: That's the movie, right? ET, phone

25 home.

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1 MR. GABER: I think the witness needs to answer
 2 that, Judge.
 3 A Eric Trump.
 4 MR. GABER: I ask that this be moved into evidence.
 5 MR. FIELDS: Statute of limitations.
 6 THE COURT: Overruled. It is in evidence.
 7 (Whereupon, the Document was marked in evidence as
 8 Plaintiff's Exhibit 3199.)
 9 Q You write here, "Bob, he continues to call me. I am
 10 uncomfortable not replying. Please call him." Who are you
 11 referring to here?
 12 A Well, I'm talking to -- I'm referring to Eric Trump.
 13 Bob and Sherri work closely with us on the many aspects of this
 14 appraisal. Eric was sort of on the fringe. We're getting
 15 closer to value and, you know, I think Eric was anxious to
 16 discuss the assumptions and conclusions one more time and I had
 17 been spending more time with Bob and Sherri and I was sort of
 18 getting pinched in the middle here and I thought it was good
 19 business to reach out to Bob and just say, you know, this is
 20 what's going on. I can only hold off so long. I do want to be
 21 respectful to Eric Trump. So it was sort of -- we had to
 22 decide how to handle the inquiries.
 23 Q You said, "He continues to call me." This is dated
 24 October 16th. The previous e-mail we looked at is dated the
 25 15th and refers to a voicemail from the 14th. So over two days,

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1 did Eric Trump call you multiple times?
 2 A I believe it was multiple attempts to get a hold of me.
 3 Q So moving on, I would like to show you what I've marked
 4 as Plaintiff's Exhibit 1465. Please take a look at this and let
 5 me know if you recognize it.
 6 (Witness reviewing document.)
 7 A I'm familiar with that document.
 8 Q You're familiar with this document.
 9 Can you describe what this document is?
 10 A These are e-mail exchanges between Bob Leonard and
 11 Sherri Dillon of Bingham McCutchen in advance of a call with me
 12 regarding some final value conclusions.
 13 MR. GABER: I would ask that this be moved into
 14 evidence.
 15 MR. FIELDS: Statute of limitations.
 16 THE COURT: Overruled. It is in.
 17 (Whereupon, the Document was marked in evidence as
 18 Plaintiff's Exhibit 1465.)
 19 Q Mr. McArdle, could I direct your attention to the
 20 second page of this exhibit. There's an e-mail here from Sherri
 21 Dillon to you. She starts off saying, "I spoke to Eric and he
 22 is aware that the more supportable value at this point is around
 23 45 million."
 24 And then I would ask that maybe you could explain your
 25 understanding of the remainder of what Ms. Dillon is

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1 communicating to you here.
 2 THE COURT: Five-minute warning.
 3 MR. GABER: Thank you.
 4 A Sure. Sherri is acknowledging that, you know, our
 5 final value looks to be \$45 million for this 71-unit development
 6 project. At that point in time, you know, Eric had certain
 7 ideas about value. I think they may have been a little more
 8 lofty and above 45 million and I think the team of Sherri, Bob
 9 and myself clearly recognized that we were sort of at the end
 10 here and anything beyond 45 million would have put some people
 11 at risk. It would have not been credible. Certainly, I was
 12 comfortable with 45 million, but beyond that, I was concerned it
 13 would lose credibility.
 14 From an appraisal standpoint, you know, we had great
 15 support in there to get us to that value after doing a lot of
 16 research and analysis. I think Sherri also is suggesting here
 17 that this is going to come under a lot of scrutiny with the IRS
 18 or a court and the last thing we want to do is overreach and put
 19 Eric in a vulnerable position. So I think this was -- this was
 20 a setup to, you know, finally tell Eric that, you know, he
 21 should accept this value from the professionals that probably
 22 know this better than he.
 23 Q She writes at the bottom, "Eric knows that we have been
 24 in touch, but advised he would likely be talking to you this
 25 afternoon. I suggest calling him sometime after 4:30 or so."

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1 And then going to the first page of the document
 2 towards the bottom, your response here is, "Thanks, Sherri.
 3 This is a great summary of where we stand and glad we are
 4 aligned here. I will speak with Eric."
 5 Do you recall whether you spoke with Eric following
 6 this e-mail?
 7 A I don't -- I don't recall that conversation.
 8 Q Could I just right before the break, if I could direct
 9 you back to 3201 which -- now at the top of the page here, this
 10 is dated October 16, 2016, 8:03 p.m. I'll represent that the
 11 e-mail from Sherri to you that we just looked at was at
 12 3:45 p.m. So this is an e-mail from Eric Trump to you. It
 13 says, "David, per my conversation with Sherri cc'd, please
 14 finish, but hold off on sending the appraisal until further
 15 notice. I'm happy to discuss any time."
 16 Were you told why you should hold off on sending the
 17 appraisal?
 18 A I was not told to hold off. These engagements had a
 19 lot of stops and starts with attorneys involved. I just assumed
 20 it was, you know, they had their reason and I was perfectly
 21 fine, you know, abiding about by that.
 22 Q I believe -- can I just -- I believe that you said I
 23 was not told to hold off. So just if I could ask again, were
 24 you told why you should hold off on sending the appraisal as it
 25 is indicated by Eric Trump in this e-mail?

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1 A No, I was not told why to hold off.
 2 MR. GABER: We can take a break.
 3 THE COURT: Okay. Lunch break. See you all at
 4 2:15.
 5 (Witness exits the stand.)
 6 (Whereupon, a luncheon recess was taken.)
 7 A F T E R N O O N S E S S I O N
 8 * * * * *
 9 THE OFFICER: All rise. Part 37 is back in
 10 session. The Honorable Arthur Engoron presiding. Please be
 11 seated and come to order.
 12 THE COURT: Let's get the witness.
 13 THE COURT OFFICER: Witness entering.
 14 (Witness resumes the stand.)
 15 THE COURT: Let's continue with the direct
 16 examination of Mr. McArdle and I'll remind the witness, as I
 17 always do, that he's still under oath.
 18 THE WITNESS: Thank you.
 19 THE COURT: Please proceed.
 20 Q Good afternoon, Mr. McArdle. I would like to just go
 21 back to Plaintiff's Exhibit 3201 that we were looking at just to
 22 clarify the record. "David, per my conversation with Sherri
 23 cc'd, please finish but hold off on sending the appraisal until
 24 further notice."
 25 What is your understanding of the request being

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1 conveyed hereby Mr. Trump, Eric Trump?
 2 A I believe he's just confirming that -- to complete the
 3 assignment at the roughly \$45 million value that was discussed
 4 earlier. I don't think we were sending anything. It was verbal
 5 at that point.
 6 Q And were you told why you should hold off?
 7 A No, I was not told why.
 8 Q So I would like to move to Plaintiff's Exhibit 158.
 9 Mr. McArdle, I ask that you please look at this
 10 document and tell me if you -- if you recognize it. I'll note
 11 then, again, that this is an e-mail with an attachment beginning
 12 on page six of the exhibit.
 13 (Witness reviewing document.)
 14 A Yes, I'm familiar with the e-mail and document
 15 attached.
 16 Q Can you describe what they are?
 17 A Sure. The first page on the screen right now is,
 18 again, an internal set up at Cushman & Wakefield recognizing
 19 that I re-engaged with -- it is Sherri Dillon at Bingham
 20 McCutchen with the Trump Organization as an intended user. The
 21 engagement letter follows and in great detail outlines the scope
 22 of the assignment. This is the same property in Briarcliff
 23 within the country club confines and it is merely a request for
 24 a formal written appraisal related to a definite conservation
 25 easement or donation to the federal government for tax purposes.

D. MCARDLE - DIRECT(MR. GABER) Page 1949

1 Q This letter is dated February 14th, Valentine's Day,
 2 2014. The previous e-mail we just looked at was dated
 3 October 16, 2013. You said, "I believe that this was similar
 4 scope to the previous engagement," but this was successive. Did
 5 you understand this to be a continuation of that engagement?
 6 A I don't understand -- I don't recall the time lapse.
 7 Is that what you mean?
 8 Q It's a few months after the previous engagement --
 9 A Correct.
 10 Q -- correct?
 11 A Correct.
 12 Q And so did you understand this to be -- you said it
 13 was the same scope as well?
 14 A Yes, I did.
 15 Q Did you understand this to be a continuation of the
 16 earlier engagement?
 17 A Very much so.
 18 Q Looking at page six here, you had mentioned that the
 19 intended user was the Trump Organization. Are there any other
 20 intended users of the appraisal under the engagement?
 21 A Donald J. Trump.
 22 Q Thank you. Can we, Mr. McArdle, go to page seven of
 23 this document where it says, "general scope of work." Can you
 24 tell me what is to be valued under this scope of work?
 25 A Yes. The property is being valued under this scope of

D. MCARDLE - DIRECT(MR. GABER) Page 1950

1 work is the same 71-unit attached housing project that we had
 2 been previously discussing, but it also includes the adjacent
 3 18-hole golf club known as Trump National Golf Club Westchester,
 4 and it also owns -- includes a town home owned by Eric Trump on
 5 the perimeter of the property.
 6 Q Do you understand why the scope is expanded between
 7 this and the previous engagement?
 8 A Yes, I do. It was explained to me by Sherri Dillon
 9 that when a donation is being contemplated, there's also an
 10 obligation to understand the positive or negative impact on
 11 other properties the donor may own that are nearby. So it is
 12 pertinent that the value of the golf club and the town home are
 13 understood and we had to then towards the end of the assignment
 14 make a determination if any additional value or loss of value or
 15 neutral situation developed once that donation took place
 16 because there is a calculation that, you know, the IRS requires.
 17 MR. GABER: I'd like to move this in evidence.
 18 MR. FIELDS: Statute of limitations.
 19 THE COURT: Overruled. It is in evidence.
 20 (Whereupon, the Document was marked in evidence as
 21 Plaintiff's Exhibit 158.)
 22 Q So moving forward, I'm going to hand you a document
 23 marked Plaintiff's Exhibit 159. Please read it and let me know
 24 if you recognize this document.
 25 (Witness reviewing document.)

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D. MCARDLE - DIRECT(MR. GABER) Page 1951

1 A Yes, I do recall this e-mail.
 2 Q Can you describe what that e-mail is?
 3 A Sure. This is an e-mail to my colleague at Cushman &
 4 Wakefield who's another golf expert. His name is Richard
 5 Zbranek. He also is involved in what we call QC and that is
 6 quality control. Before we send any documents out the door to
 7 clients, we have a quality control process that requires a
 8 capable senior colleague appraiser to read our reports just as a
 9 safeguard, make sure we didn't make any errors and make sure
 10 methodology and all the -- the report is sound.
 11 So this is my e-mail to Rick explaining the upcoming QC
 12 relative to this appraisal that we're performing for the client.
 13 And, you know, I elaborated on the nuances since it was
 14 something a little bit different in that it was a -- an
 15 appraisal done for a conservation easement donation.
 16 Q So the last two sentences of this e-mail say, "Let me
 17 know what you think. It will be scrutinized by Sherri Dillon,
 18 Eric Trump and the IRS". Can you explain what you meant by
 19 this?
 20 A Sure. Rick is a very trusted colleague with deep, deep
 21 understanding of -- he is an MAI, deep understanding of this
 22 type of valuation particularly as it relates to golf and some
 23 residential development. I'm looking for him. I'm leaning on
 24 him for advice and just, you know, an assurance that we are
 25 putting out the right product.

D. McArdle - Plaintiff - direct (Gaber) Page 1953

1 MR. GABER: I'd like to move this document into
 2 evidence.
 3 MR. FIELDS: Statute of limitations.
 4 THE COURT: Overruled. It's in evidence.
 5 (Whereupon, the item previously referred to is
 6 received and marked Plaintiff's Exhibit Number 159 in
 7 evidence.)
 8 Q So Mr. McArdle, that e-mail is dated April 22, 2014. I
 9 just wanted to keep that date in mind as I hand you Plaintiff's
 10 Exhibit 3194. This is -- again, it's an e-mail with the
 11 included attachment, so please take a look at this and let me
 12 know if you recognize it.
 13 A Yes, I do recognize this document.
 14 Q Can you describe what this is?
 15 A This is the actual written report that we ultimately
 16 submitted to Sheri Dillon at Bingham McCutchen. It contains the
 17 valuation of the 71-unit residential development site. It also
 18 contains the final value of the golf course by itself, country
 19 club and it also includes the single-family residence of Eric
 20 Trump also on the property.
 21 Q And this cover e-mail, you're transmitting it to Sheri
 22 Dillon and Nick Zemil and you bcc Tina Schultheis. So is this
 23 your delivery of the report to the client?
 24 A This is our physical delivery of the report to the
 25 client.

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1 I mean, we're very conscientious and Cushman &
 2 Wakefield takes these very, very seriously and recognizing we
 3 have high-profile clients and we also have the IRS involved. We
 4 did everything we could to put out a very credible, sound report
 5 to the best of our ability.
 6 Q And it was your understanding by this, then, that Eric
 7 Trump would be, as you say, scrutinizing the appraisal report
 8 notwithstanding the fact that he wasn't the formally engaged
 9 client.
 10 A As the assignment played out, it was clear that Eric
 11 was active in the -- through the process and I thought it was
 12 fair to let Rick know that, you know, he's actively involved as
 13 an intended user.
 14 (Continued on the next page.)
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D. McArdle - Plaintiff - direct (Gaber) Page 1954

1 Q Okay.
 2 MR. GABER: I'd ask this be moved into evidence.
 3 MR. FIELDS: Objection. Not only statute of
 4 limitations, but also hearsay and relevance as to the
 5 attached report. The report's being offered for its truth.
 6 The Court has now heard testimony as recent as of yesterday
 7 that developers can value their own properties the way they
 8 see fit. It doesn't have to be what an appraised value is.
 9 The Court has also heard testimony about accounting in SAC
 10 274 and therefore it's offered for its truth. It is hearsay
 11 and irrelevant.
 12 MR. GABER: I don't think I offered the report for
 13 its truth.
 14 THE COURT: Well, let me ask you. For what purpose
 15 are you offering the document?
 16 MR. GABER: Primary -- I'm offering this for
 17 notice, but also to show this is the work product for
 18 Cushman & Wakefield prepared according to procedures that
 19 Mr. McArdle has outlined using inputs and data that he
 20 received from the client and other sources. These are
 21 business records of Cushman & Wakefield and to the extent
 22 there is information in here that came from defendants, then
 23 those are admissions as well.
 24 THE COURT: Objection overruled.
 25 MR. FIELDS: May I respond?

D. McArdle - Plaintiff - direct (Gaber) Page 1955

1 THE COURT: Sure, yes.

2 MR. FIELDS: First of all, in terms of it being a

3 business record, that protects the document but not

4 statements within the document. The notice would be -- I

5 guess the question is notice to whom and of what. The

6 direct -- the witness can answer that he did an appraisal

7 and what the appraised value was, but the entirety of the

8 document contains a ton of hearsay and there is no need --

9 there hasn't been a foundation laid for who needs to have

10 notice and what the notice is for and so respectfully, I

11 think it's being offered for its truth and it's hearsay.

12 THE COURT: The document is the notice. What the

13 document contains and what's in it is the -- is the notice

14 as being conveyed, right?

15 MR. FIELDS: But, Your Honor, notice to whom and of

16 what is the question.

17 THE COURT: Mr. Gaber, you want to answer that?

18 MR. GABER: In the first instance formally, this is

19 notice to Bingham and McCutchen LLP, the engagement letter

20 does list the Trump Organization and Donald J. Trump as

21 intended users, but Bingham McCutchen was a retained counsel

22 for the Trump Organization. They are an agent of the Trump

23 Organization. Knowledge of the agent is imputed to the

24 principal. This is something that was involved in

25 litigation in the special proceeding pursuing this action as

D. McArdle - Plaintiff - direct (Gaber) Page 1956

1 well. So I think the notice should be as against the Trump

2 Organization in addition to notice to their agent directly.

3 MR. ROBERT: If it's being introduced for notice

4 and I'll leave that for a second, but if it's being

5 introduced for the truth of the matter asserted, I agree

6 with my colleague that it's hearsay. And to the extent that

7 the government wants to say that they're admissions, what

8 are the admissions inside and who are they attributed to?

9 There are multiple defendants here. I don't know what

10 sentence or what statement within goes in there that

11 constitute an admission and respectfully, I think allowing a

12 document of that magnitude to come into evidence for the

13 truth of the matter asserted and/or to constitute an

14 admission we need to know what they're attributing to whom.

15 THE COURT: Let's -- maybe this is going back.

16 MR. GABER: I can ask some questions.

17 THE COURT: Let me just ask. Are you introducing

18 it to prove the truth of its contents?

19 MR. GABER: Are you asking if I am introducing it

20 to prove the --

21 THE COURT: I think that's basically the question

22 at hand.

23 MR. GABER: No. I'm introducing it to show that

24 that that value conclusion was one that was reached after a

25 process as outlined within the appraisal report and, you

D. McArdle - Plaintiff - direct (Gaber) Page 1957

1 know, the -- you as the factfinder can weigh that against

2 other evidence.

3 THE COURT: We can't have a trial over every single

4 defendant, whether it's 12, 15 as to, you know, what it can

5 be used for. You'll have plenty of time to discuss that.

6 MR. ROBERT: Well, Your Honor, respectfully, we do

7 think it's important because there are multiple defendants

8 here and as to who is ultimately potentially responsible for

9 what. The witness testified very competently as to his

10 process and what went into it, but again, to suggest that

11 this document is going to constitute some sort of an

12 admission, if we can agree that it's notice or it's the fact

13 that this gentleman prepared the appraisal itself, I don't

14 think there is any dispute about that. If you want to ask

15 him what the final value was, he can testify to that, that's

16 fine. But as far as the document itself, we would

17 respectfully submit that the physical appraisal itself is

18 inadmissible hearsay other than potentially for notice.

19 MR. GABER: I mean, I thought post-trial briefs

20 were due at the end of the trial.

21 THE COURT: That's just going to have to be

22 resolved later.

23 I do want to respond to something Mr. Fields said.

24 Yesterday, there was some testimony that an owner

25 can reach -- conclude whatever value they want. Yes, in the

D. McArdle - Plaintiff - direct (Gaber) Page 1958

1 abstract. If you own a house, you can say it's worth a

2 hundred thousand dollars or a million dollars, but that

3 doesn't really prove much one way or the other. So it's in

4 except for the truth of its contents. Let's move on.

5 Q Mr. McArdle, can I direct your attention to page four

6 of this document? This one's double sided.

7 In the first instance the final column under "Adjusted

8 Value of Conservation Easement" reading across from the row

9 there it says "final value conclusion of conservation of

10 easement, \$43,300,000." What does this number represent?

11 A That number -- well, that number represents the value

12 of the conservation easement donation. It accounts for before

13 and after, looks at the two other components we discussed, the

14 golf club and the townhouse. In both cases we analyzed the

15 impact on those two other components and concluded that by

16 building that building, that asset, you would have neutral

17 impact on both values. So it wasn't -- neither property gained

18 from it or neither property would have lost value from it.

19 Therefore, the before value of 43 million ends up being the same

20 43 million, you know, final value contribution.

21 Q And just for my clarification, the before and after --

22 the before and after is the -- are you gauging the impact of the

23 conservation easement donation on the townhouse and golf club?

24 Is that the idea?

25 A That's exactly right.

D. McArdle - Plaintiff - direct (Gaber) Page 1959

1 Q Okay. So if they donate this -- this part -- this land
 2 as a conservation easement, then is the value of the golf club
 3 impacted by virtue of that donation?
 4 A That's correct.
 5 Q Okay. Thank you.
 6 A Exactly.
 7 Q And so the before and after values of the golf club
 8 there, it says -- well, could you just tell me what the before
 9 and after values of the golf club are that you came to?
 10 A Sure. Absent the before value for the golf club is
 11 16,500,000 and after the donation we maintain the same 16-5; in
 12 other words, no impact on value.
 13 Q Okay. And I see there is some -- above the "final
 14 conclusion" -- "final value conclusion of golf club" row there
 15 is a row that says "sales comparison approach" and a row that
 16 says "income capitalization approach discounted cash flow."
 17 Can you explain what's being represented here?
 18 A Certainly. For -- in our view, the country club needed
 19 two approaches to value. It wasn't just a one-prong method.
 20 And this is pretty much standard in our industry. We deem the
 21 sales comparison approach and the income capitalization approach
 22 as the two most applicable approaches to value.
 23 Sales comparison approach is merely a comparison of
 24 other country -- golf and country clubs, preferably in, you
 25 know, in the local area and we compare them just like you would

D. McArdle - Plaintiff - direct (Gaber) Page 1960

1 single-family homes, you know, it's an adjust -- percentage
 2 adjustment analysis, sometimes a qualitative analysis.
 3 We're just kind of testing the market as to what other
 4 clubs are selling for and we -- ultimately, we make a conclusion
 5 there. Typically it's on a per whole basis. So we were
 6 comfortable with 16-5 from that approach.
 7 And then the more detailed approach is the income
 8 capitalization approach. And, again, we use a discounted cash
 9 flow there and that analysis is more, you know, income and
 10 expense oriented. We literally look at the operations of the
 11 country club and by that I mean, you know, revenues secured
 12 through dues and initiation fees and food and beverage, some of
 13 those big, big income lines and then we reduce it by operating
 14 expenses.
 15 Typically the larger categories would be clubhouse
 16 expenses, the food and beverage expenses, course maintenance
 17 expenses and we project out number of years, usually five, and
 18 we run a discounted cash flow analysis on that pro forma and
 19 this accounts for all the membership flows in and out. We're
 20 looking at membership trends coming in, going out, all the fees
 21 that they pay going in daily fees, greens fees, catering food,
 22 beverage and then typically there is a matching expense,
 23 departmental expense.
 24 And like I said, it's a DCF we forecast out about five
 25 years, develop an NOI for each of those five years and then

D. McArdle - Plaintiff - direct (Gaber) Page 1961

1 discount it back by a market oriented discount rate.
 2 Q And the inputs for that income capitalization approach
 3 that you just mentioned, the revenues and the costs, you get
 4 those numbers -- who do you get those numbers from?
 5 A I got those numbers from the Trump Organization. They
 6 have to be property specific. This is isn't something we can
 7 just estimate. Every club is unique in itself, so I was
 8 provided financial information.
 9 Again, we typically look for the major, you know,
 10 revenue sources where they're coming from. And again, it's
 11 initiation fees, it's membership dues, various other smaller
 12 income lines and we take a hard look at it and again apply the
 13 expenses to it, just try to get comfortable with forecasting
 14 going forward.
 15 Q Can I direct your attention to page 25 of this
 16 document? So here this is apart of the introduction under
 17 "Scope of Work." The last paragraph is where I want to draw
 18 your focus to.
 19 It says, the first sentence, that "this appraisal
 20 employs the sales comparison approach and the income
 21 capitalization approach," which you just discussed to me.
 22 But I want to go to the sentence starting with
 23 "therefore" here in the middle of the paragraph.
 24 So it says, "therefore, we have not utilized the cost
 25 approach to develop an opinion of market value. More

D. McArdle - Plaintiff - direct (Gaber) Page 1962

1 specifically, we utilize the sales comparison approach and the
 2 income capitalization approach for both the conservation
 3 easement valuation and the golf club valuation."
 4 Can you tell me why you -- oh, I'm sorry. In the
 5 preceding sentence, forgive me, says "typical purchasers do not
 6 generally rely on the cost approach when purchasing such a
 7 property as the subject of this report."
 8 So can you understand or can you tell me your
 9 understanding of this language here?
 10 A Sure. The cost approach is one of three widely
 11 recognized approaches to value in the appraisal industry.
 12 The cost approach is effective for certain properties;
 13 others, not so much. Golf and country clubs are really in our
 14 view not suitable for the cost approach. There is a number of
 15 reasons cost approach requires an underlying land value. It
 16 also requires very subjective calls for building costs and then
 17 associated rates of depreciation for all various components of a
 18 golf course, which is a very wide mix. So it's -- there is a
 19 lot of sensitivity there that kind of, you know, weakens the
 20 approach. But probably the biggest driver is that we try to
 21 follow market behavior.
 22 I don't invent approaches. It's -- appraisers want to
 23 parallel the market and we're not making the market. We're
 24 really following the market and watching the behavior of market
 25 participants, buyers and sellers of golf courses.

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1 We know for a fact buyers and sellers of golf courses
 2 do not utilize the cost approach for various reasons, so it's
 3 very fair to limit that approach and in this case we eliminated
 4 the cost approach.
 5 MR. GABER: Thank you.
 6 Q So going back to the top of this document. I think as
 7 we discussed this is an e-mail to Bingham McCutchen delivering
 8 this draft appraisal in April of 2014.
 9 Can you tell me what happened after you delivered this
 10 draft appraisal?
 11 A To the best of my knowledge things went rather silent.
 12 I don't believe there was much communication beyond.
 13 Q Did you ever issue a final appraisal report?
 14 A No, we did not. We did not issue a final.
 15 Q One more question about cost approach.
 16 A Sure.
 17 Q Would you say that's synonymous with a fixed cost
 18 approach?
 19 A I'm not familiar with that exact -- it's appraisal
 20 terminology.
 21 Q It's not appraisal terminology?
 22 A Not really, no.
 23 Q That's fine.
 24 So if I could now draw your attention to Plaintiff's
 25 Exhibit 132, and please take a look at this document and tell me

D. McArdle - Plaintiff - direct (Gaber) Page 1964

1 if you recognize it.
 2 A Yes, I am familiar with it.
 3 Q Can you tell me what this document is?
 4 A Excuse?
 5 Q Can you tell me what this document is?
 6 A This is another letter of engagement between Cushman &
 7 Wakefield's Valuation Group and in this case Eric Trump and the
 8 Trump Briarcliff Manor Development LLC as client.
 9 MR. GABER: I'd like to move this document into
 10 evidence.
 11 MR. FIELDS: Statute of limitations.
 12 THE COURT: Overruled. It's in.
 13 (Whereupon, the item previously referred to is
 14 received and marked Plaintiff's Exhibit Number 132 in
 15 evidence.)
 16 Q You mentioned that this is with Eric Trump as client.
 17 So in this case Mr. Eric Trump was your client for this
 18 engagement?
 19 A That is correct.
 20 Q But the engagement relates to the same property that we
 21 were just discussing in the last April engagement?
 22 A That is correct.
 23 Q And the intended use here under the engagement letter,
 24 it says "to document the value of a conservation easement placed
 25 on a parcel of land for federal and state income tax purposes."

D. McArdle - Plaintiff - direct (Gaber) Page 1965

1 Is that similar to the previous engagement's scope?
 2 A Yes. I think all the engagements were headed towards
 3 this direction. They were contemplating this conservation
 4 easement donation and this is one of the final requests.
 5 MR. GABER: If we turn to page two of this
 6 document. And maybe we can put that up side by side with
 7 page seven of Plaintiff's 158.
 8 Q I just want to ask you towards the bottom of the
 9 paragraph beginning with "client intends," it appears that there
 10 is some difference in the scope of work here, but I was hoping
 11 that you could read these two scopes of work and explain to me
 12 what, if anything, is different between the Eric Trump
 13 engagement and the Bingham McCutchen engagement?
 14 A Which is the Eric Trump engagement? Is it the one on
 15 the left?
 16 Q Yes.
 17 A Okay. Well, clearly, the language is slightly
 18 different. I do know that with Eric Trump's engagement, the one
 19 on the left, we were getting much closer to the donation. Sheri
 20 Dillon was involved with some guidance on the nuances and
 21 content that the IRS would be looking for and I knew -- I know
 22 he did spend some time on real specific language that needed to
 23 be in these documents for it to comply to the IRS's regulations,
 24 so.
 25 Q So the document on the left, which is the later

D. McArdle - Plaintiff - direct (Gaber) Page 1966

1 engagement with Eric Trump, it says, "The appraisal will also
 2 determine the enhancement, if any, to the value of any other
 3 property owned by the client," dot, dot, dot, "specifically" and
 4 it lists the golf club and the town home.
 5 Is this different than the prior engagement which said
 6 that it would determine the value of any other property? So on
 7 one hand determine the enhancement to the value versus determine
 8 the value?
 9 A Yes, that's a great point, and that did come up through
 10 our work with the two clients. There was some confusion over
 11 whether or not the golf course and town homes had to be valued
 12 individually or whether it was a matter of just defining any
 13 impact on value, up or down. I.
 14 Think at the end of the day, if my memory serves me, we
 15 concluded that we did not have to specifically value the country
 16 club or the townhouse for the final submission, so you make a
 17 great point. I think that's what they were driving towards
 18 there.
 19 Q Can you turn towards page six of the Ladder engagement
 20 letter? That signature there, do you recognize that signature?
 21 Who signed it?
 22 A Eric Trump.
 23 Q Thank you.
 24 I'm going to hand you, Mr. McArdle, Plaintiff's
 25 Exhibit 3217, and ask you to familiarize yourself with it and

D. McArdle - Plaintiff - direct (Gaber) Page 1967

1 tell me if you recognize the document.
 2 A I do recognize the document.
 3 Q Can you tell me what it is?
 4 A This is a document pertaining to the same topic. It is
 5 an appraisal of the conservation easement, 71 units and this
 6 references to the adjacent properties we've been discussing, the
 7 golf course and the town home.
 8 MR. GABER: I'd ask that this be moved into
 9 evidence.
 10 MR. FIELDS: To preserve the record, same here
 11 standing statute of limitations objection.
 12 THE COURT: Overruled. It's in evidence.
 13 MR. GABER: Thank you.
 14 (Whereupon, the item previously referred to is
 15 received and marked Plaintiff's Exhibit Number 3217 in
 16 evidence.)
 17 Q Mr. McArdle, on page five of this document where your
 18 signature would be, it says "draft" there. Is this a draft
 19 appraisal?
 20 A Yes, it is.
 21 Q Do you know if a final appraisal report was ever issued
 22 under this engagement?
 23 A I don't believe it was ever issued.
 24 MR. GABER: Can we go to page four of this
 25 document?

D. McArdle - Plaintiff - direct (Gaber) Page 1968

1 Q So here under "market value of conservation easement"
 2 it says \$43,300,000. I believe that's the same value that you
 3 placed on the conservation -- for the conservation easement in
 4 the prior appraisal draft; is that correct?
 5 A That's correct.
 6 Q Okay. But then going up here, the table -- I think
 7 it's called the final value of reconciliation is slightly
 8 different than the previous engagement. Is that due to the
 9 difference in the scope of work we discussed?
 10 A That's exactly right. The presentation -- I mean, as
 11 they went through this process they were trying to conform to
 12 the rigorous standards of the IRS in understanding exactly the
 13 content that was required. Sheri Dillon determined that once
 14 again we did not have to define the values of the golf club
 15 townhouse. It would merely be a presentation where whether or
 16 not the -- whether or not they gained value or lost value. So
 17 there is no impact to those assets and that's why they were
 18 zeroed out.
 19 Q Can we go to page 16, please? So the second to last
 20 paragraph on this scope of work section of the introduction it
 21 begins with "because data on comparable sales." And I wanted to
 22 draw your attention towards the middle of the paragraph.
 23 Again, it says "typical purchasers do not generally
 24 rely on the cost approach when purchasing a property such as the
 25 parcel. Therefore, we have not utilized the cost approach to

D. McArdle - Plaintiff - direct (Gaber) Page 1969

1 develop an opinion of market value. More specifically, we
 2 utilized the income capitalization approach and the sales
 3 comparison approach in connection with the before and after
 4 method for the conservation easement valuation."
 5 We looked at similar language I believe in the prior
 6 appraisal report. Is this expressing a similar -- or can you
 7 tell me your understanding of this language in this appraisal
 8 report?
 9 A This part of the scope remains the same for the same
 10 reason I previously reported. Full-blown cost approach would
 11 not be appropriate here, so it was merely carried into this
 12 document as it was in the other for the same exact reason.
 13 Buyers and sellers, you know, would not be looking at a
 14 traditional cost approach for these assets.
 15 Q So despite the fact that you're not -- the difference
 16 in the presentation of the value conclusion we just discussed
 17 between the two letters or two appraisal reports, one of them
 18 valuing the townhouse and the golf club; the other one valuing
 19 the change in value to the townhouse and golf club. So in this
 20 case were you valuing the change in value to the townhouse and
 21 golf club. Are you still -- are you still looking at the value
 22 of those using the income capitalization and sales approach?
 23 A Yes, I'm still maintaining those same approaches.
 24 Q So the same -- is it fair to say that the same analysis
 25 is done in both despite the change in the scope of work language

D. McArdle - Plaintiff - direct (Gaber) Page 1970

1 that we discussed?
 2 A Yes, it is safe to say that.
 3 Q And so this draft appraisal is addressed to Mr. Eric
 4 Trump, you e-mailed it to Ms. Dillon. Is it your understanding
 5 that Mr. Eric Trump received this draft appraisal report?
 6 A Yes. I'm quite sure he was aware that I was sharing it
 7 with Sheri Dillon. We were very careful about that the
 8 exchanges and they were working hand in hand, so I believe
 9 that's why it was sent to her.
 10 Q Okay. So at this point, Mr. McArdle, we've seen two
 11 examples where you had an initial engagement that was prepared
 12 with Ms. Dillon's firm as the sort of formal client on the
 13 engagement letter and then a subsequent engagement letter for
 14 the same type of engagement or thereabouts with Mr. Eric Trump
 15 listed as the client?
 16 MR. ROBERT: Objection.
 17 THE COURT: Let's hear it.
 18 MR. ROBERT: Mischaracterizes the evidence. The
 19 testimony has been internally. They referred to as Eric
 20 Trump as the client, but documents clearly say who the
 21 client was. In this last one, it was the Briarcliff entity
 22 signed by Eric Trump.
 23 Plaintiff's Exhibit 132, "Client, Trump Briarcliff
 24 Manor Development LLC" and it was signed by Eric Trump as
 25 executive vice president. So the client was not Eric Trump.

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1 The question keeps saying "your client Eric Trump, your
 2 client Eric Trump." So if he wants to change that because
 3 the document in evidence is clear as to who the client is.
 4 THE COURT: Would you like to dispute that or agree
 5 with that?
 6 MR. GABER: Mr. McArdle has testified that he
 7 understood Eric Trump to be his client for all of these
 8 engagements and in some sense it's a distinction, not a
 9 difference. It's his understanding. He worked with
 10 Mr. Trump. He's testified to that.
 11 MR. ROBERT: I believe the testimony was internally
 12 when the first billing set of e-mails came in it was the --
 13 internally to Eric Trump as the client, but clearly when
 14 Cushman & Wakefield enters into an engagement letter there
 15 is a specific client.
 16 MR. GABER: That was not the testimony, Mr. Robert.
 17 He actually -- the internally, yes, but also beyond that he
 18 said he understood Eric Trump to be his client on these
 19 engagements.
 20 THE COURT: Objection overruled on the ground just
 21 stated, but I understand the point, as usual.
 22 Q So I just want to ask you if it is a standard practice
 23 for the appraisal work that you performed for the Trump
 24 Organization and their counsel to have this first appraisal,
 25 second appraisal like you just described.

Page 1972

1 A It was a -- for the work we did for them, it was the
 2 pattern, yes.
 3 Q Do you have an understanding as to why that was?
 4 A My understanding was confidentiality.
 5 Q Can you elaborate on that?
 6 A I'm not well versed in the legal reasons for doing it,
 7 but clearly it was involving confidentiality.
 8 Q I'm just -- I don't need you to give a legal response.
 9 When you say "confidentiality," what do you as a layperson mean
 10 by that or what do you understand by that, if you have an
 11 understanding of it?
 12 A Well, we've seen -- I've seen other attorneys do it to
 13 try to keep a distance between the law firm and their client,
 14 potential owner, let's say.
 15 Q Thank you.
 16 I'll move on to Plaintiff's Exhibit 134. I'll hand
 17 this to you and ask you if you recognize it.
 18 A Yes, I do recognize it as another engagement letter
 19 between Eric Trump and Trump Briarfield -- Briarcliff Manor
 20 Development LLC and my firm Cushman & Wakefield.
 21 Transcript continues on the following page...
 22
 23
 24
 25

D. MCARDLE- DIRECT(MR. GABER) Page 1973

1 MR. GABER: I'd ask this be moved into evidence.
 2 MR. FIELDS: Statute of limitations.
 3 THE COURT: Overruled. It is in evidence.
 4 (Whereupon, the Document was marked in evidence as
 5 Plaintiff's Exhibit 134.)
 6 Q Mr. McArdle, this is dated June 3, 2015 nearly one year
 7 after the June 23, 2014 engagement letter that we just looked at
 8 that was marked as Plaintiff's Exhibit 132. Can you take a look
 9 at this document and tell me what you understand the scope of
 10 work of this engagement to be? If you'd like, I could put them
 11 up side by side if it is easier for you to compare.
 12 A Yeah. This engagement looks to be very parallel to the
 13 one a year ago encompassing the same real property components to
 14 be valued for the conservation easement and clearly, there's
 15 been a passage of time, but it appears to be very much the same
 16 scope.
 17 Q On page six of this document, is that your signature
 18 there?
 19 A That is my signature.
 20 Q And do you know whose signature that is below?
 21 A I really don't.
 22 Q But it says, "Executive Vice President Development and
 23 Acquisitions for Trump Briarcliff Manor Development, L.L.C."?
 24 A I don't recognize this signature.
 25 Q That's fine, but you see where it says, "executive vice

D. MCARDLE- DIRECT(MR. GABER) Page 1974

1 president"?
 2 A I do, certainly.
 3 Q Are you aware -- I believe Mr. Robert just told us that
 4 Eric Trump was the -- recognize the signature of Donald Trump
 5 Jr.?
 6 A No.
 7 Q Are you aware of whether Trump Briarcliff Manor, L.L.C
 8 had any executive vice presidents other than Eric Trump?
 9 A No, I'm not.
 10 Q So at this time, I would like to hand you Plaintiff's
 11 Exhibit 910.
 12 MR. GABER: I'd like to move to admit Plaintiff's
 13 134 into evidence. Oh, I did.
 14 MR. FIELDS: Statute of limitations.
 15 THE COURT: Overruled. It is in evidence.
 16 A I am aware of the e-mail. I'm familiar with the e-mail
 17 and the accompanying appraisal product that we delivered.
 18 Q Appraisal product for which property?
 19 A This is again the same Briarcliff Manor assets involved
 20 in the conservation easement donation.
 21 MR. GABER: I'd ask that this be moved into
 22 evidence.
 23 MR. FIELDS: Same objection; statute of
 24 limitations.
 25 THE COURT: Same overruling. It's in evidence.

PEOPLE OF THE STATE OF NEW YORK v. DONALD J. TRUMP, et al

JACK WEISSELBERG, DAVID MCARDLE October 19, 2023

D. MCARDLE- DIRECT(MR. GABER) Page 1975

1 Q On page four of this document, the date here is

2 September 1, 2015, as of September 1, 2015. The e-mail is dated

3 August 28, 2015. Is it common to date a report differently than

4 the date of its transmission?

5 A That September 1st should be the date of value, the

6 September 1st.

7 Q Okay.

8 THE COURT: That doesn't answer the question at

9 all. Do you care?

10 MR. GABER: I was tripped up by my microphone

11 turning itself off.

12 THE COURT: The question was whether it was common

13 for the date to be the same --

14 MR. GABER: You're getting ahead of me, Judge. I'm

15 happy to let you finish up the exam.

16 THE COURT: I will defer to you.

17 MR. GABER: Thank you.

18 Q I think the judge said it best, but is it common for

19 the date of value to be different than the transmission date of

20 appraisal?

21 A Yes, it is very common.

22 Q On page five of this document, can you describe what

23 this letter is on page five?

24 A This is called the letter of transmittals outlining the

25 clients involved. It's simply a letter explaining the

D. MCARDLE- DIRECT(MR. GABER) Page 1976

1 engagement, some of the nuance, some of the regulations we're

2 following; certainly, a brief summary of the scope, the project

3 at hand. In this case, outlining the components of the real

4 estate and then it goes on to give some detail on the process,

5 the scope and our appraisal process itself.

6 Q Looking at page six, you see a table here, "valuation

7 summary." It looks slightly different than the value

8 reconciliation I think that we saw on the last draft. Can you

9 explain what this is here or what this table represents?

10 A Again, the presentation that the Trump Organization

11 attorney Sherri Dillon was fluid. They were making a concerted

12 effort to make sure they adhered to all of the IRS guidelines

13 and, you know, that was challenging. It is a lot of red tape

14 and, you know, there were some suggestions on the presentation.

15 I was comfortable with it. The values were consistent and it

16 all seemed reasonable to me, so we kind of crafted a summary

17 that was a little more conforming to IRS requests and

18 guidelines.

19 Q And again, because the presentation is slightly

20 different here, row D says, "Less value enhancement to non-TBMD

21 holdings with a triple asterisk," that following it down says,

22 "After condition property value reflects any value enhancement

23 to golf club or Eric trumps townhome." Can you just explain

24 what this means?

25 A That's simply what we talked about before. We had to

D. MCARDLE- DIRECT(MR. GABER) Page 1977

1 make a determination if there would be any positive of value

2 improvement or detractor to value with the 71 units next door.

3 So we did a thorough analysis and weighed all the pluses and

4 minuses and at the end of the day, we believed it was -- had a

5 neutral impact.

6 Q Different presentation just in terms of the table, but

7 same analysis?

8 A Yes.

9 Q Can we go to page 17 really quickly. So the second to

10 last paragraph again, middle of the paragraph, is the sentence,

11 "Typical purchasers do not generally rely on the cost approach

12 when purchasing a property such as the parcel as a building cost

13 analysis is not normally applicable for a vacant land

14 valuation."

15 This is slightly different than the previous draft

16 appraisal. Do you understand this sentence to have also taken

17 into account the same analysis regarding country clubs and golf

18 clubs that you described with the previous two?

19 A Looks like the terminology is slightly different, but

20 it gets to the same point. We're just explaining that it's just

21 not -- the cost approach is just not applicable for this

22 appraisal.

23 Q Is that because of the golf club component?

24 A Yes.

25 THE COURT: Five-minute warning.

D. MCARDLE- DIRECT(MR. GABER) Page 1978

1 MR. GABER: Maybe we should -- can we take a break

2 later or sooner?

3 THE COURT: It doesn't really matter, five or ten

4 minutes.

5 MR. GABER: If we could break now.

6 THE COURT: It is very easy to calculate. We will

7 be back at 3:30. Okay, break time.

8 (Witness exits the stand.)

9 (Whereupon, a recess was taken.)

10 THE COURT OFFICER: All rise. Part 37 is back in

11 session. Please be seated and come to order.

12 THE COURT: I guess we should start with the

13 plaintiff. What do you intend to do with whom and when?

14 MR. AMER: I think it's clear that we will not get

15 to our next witness today because we have at least another

16 half-hour with this witness and then there's

17 cross-examination.

18 THE COURT: Will there be cross?

19 MR. ROBERT: Half-hour or so. Nothing extensive.

20 THE COURT: Not enough for another witness.

21 MR. AMER: So the next witness is Mr. Flores, he is

22 actually here. We were going to tell him he could leave for

23 the day.

24 THE COURT: All agreed? Yeah.

25 MR. AMER: I think realistically he will be the

D. MCARDLE- DIRECT(MR. GABER) Page 1979

1 entire morning. We could start him even first thing
 2 tomorrow morning because I probably have -- well, I would
 3 say I have an hour and-a-half or so, maybe two hours with
 4 Mr. Flores. Is it okay if we end when he ends? We could
 5 play a video if we need to, but --
 6 MR. ROBERT: That works with us. We just don't
 7 want to have people wasting time. That's fine. I just want
 8 to know where we are on Monday. On Tuesday, we have Kelly
 9 first and then Cohen second?
 10 MS. GREENFIELD: Are you going to have any cross on
 11 Mr. Flores?
 12 MR. ROBERT: No. We are going to call him back on
 13 our case if we need to.
 14 MR. AMER: I prefer to not have to start something
 15 without finishing it over the weekend if, for example, Ms.
 16 Mouradian's video. I think it makes sense to do Mr. Flores
 17 tomorrow and whenever we're done, we're done.
 18 MR. ROBERT: That's fine. Just for clarity,
 19 though, Tuesday we have blocked out Kelly first and then
 20 Cohen. Who is on the deck for Monday, so we can prepare?
 21 MS. FAHERTY: We will e-mail you.
 22 MR. ROBERT: As long as we know by tomorrow morning
 23 to prepare for Monday, that's fine.
 24 THE COURT: Bring him in.
 25 THE WITNESS: Witness entering.

D. MCARDLE- DIRECT(MR. GABER) Page 1980

1 THE COURT: Okay, let's continue with the direct of
 2 Mr. McArdle.
 3 Q Welcome back, Mr. McArdle. I'd like to move on to
 4 discuss a 2014 consulting engagement for the Seven Springs
 5 Estate. Do you recall that engagement?
 6 A I do recall that engagement.
 7 Q I am handing you 131. I ask you to review it and let
 8 me know if you recognize it.
 9 (Witness reviewing document.)
 10 A So I do recognize these documents. The first document,
 11 again, is an interoffice e-mail between myself and the
 12 administrators recognizing that we have a new engagement
 13 underway with Sherri Dillon of Vinson & Elkins. Ms. Dillon
 14 shifted law firms, so it is the same individual. She's now
 15 affiliated with a new firm. The engagement involves consulting
 16 services at another Trump property identified as Seven Springs
 17 Estate.
 18 MR. GABER: I'd ask that this be moved into
 19 evidence.
 20 MR. FIELDS: Statute of limitations.
 21 THE COURT: Overruled.
 22 (Whereupon, the Document was marked in evidence as
 23 Plaintiff's Exhibit 131.)
 24 Q So Mr. McArdle, I would like to direct your attention
 25 to page three of this document. So first off, the previous

D. MCARDLE- DIRECT(MR. GABER) Page 1981

1 engagement letters that we have seen were on Cushman & Wakefield
 2 letterhead. This one is on Vinson & Elkins letterhead. What do
 3 you understand by that difference?
 4 A We can engage with clients either way. There's no hard
 5 and fast rule on which party provides the engagement letter.
 6 Our large corporate clients provide their own. For smaller
 7 clients, we take the liberty of drafting it and they appreciate
 8 that. So this was a shift from previous practices working with
 9 Ms. Dillon, but it was not something that we found
 10 objectionable, and we let her craft the engagement letter. Of
 11 course, we scrutinized it, approved it, and I ultimately signed
 12 on.
 13 Q The first sentence here, it says, "Dear Dave, we are
 14 pleased to confirm the engagement of Cushman & Wakefield, Inc.
 15 C&W by Vinson & Elkins, LLP or the client in its capacity as
 16 legal counsel for Seven Springs, L.L.C, the owner of the Seven
 17 Springs estate."
 18 How did you understand that Vinson & Elkins was acting
 19 as legal counsel for Seven Springs, LLC?
 20 A Well, much like other engagements with Sherri Dillon
 21 and her law firms, it was obvious to me that it was a similar
 22 arrangement where Sherri Dillon would act as a representative of
 23 one of the Trump entities in this initial engagement.
 24 Q Go to the next sentence. It says, "This engagement
 25 effective as of June 17, 2014 is to provide consulting services

D. MCARDLE- DIRECT(MR. GABER) Page 1982

1 related to an analysis of the estimated value of a potential
 2 conservation easement on all or part of the Seven Springs
 3 estate."
 4 What do you understand by "provide consulting services
 5 related to an analysis of estimated value "here"?
 6 A This assignment was described to me as a very
 7 preliminary effort with our assistance to further understand the
 8 potential value of the lots that were being subdivided on this
 9 200-plus acre estate that were surrounded by two substantial
 10 single-family residences. So this was a -- this was a land
 11 valuation. That's the way we would -- went into understanding
 12 it.
 13 Q So following your formal engagement by this letter, can
 14 you describe the process that you undertook in beginning your
 15 work to fulfill the terms of the engagement and perform the
 16 analysis you just described?
 17 A Sure. Recognizing this was another very large, unique
 18 trophy asset owned by the Trump Organization or an entity
 19 thereof, it was very important for us to get our arms around
 20 exactly what are we appraising, exactly what is the status of it
 21 legally, wanted to take a deep dive into physical
 22 characteristics. So I had a lot of questions in the beginning,
 23 very important that I view the site, so we did all sorts of
 24 early maneuverings for me to take a speed course on this
 25 property which was so important to me. So I did visit the

D. MCARDLE- DIRECT(MR. GABER) Page 1983

1 property. I was escorted around and I started to, you know,
 2 gain a good understanding of the asset itself and what their
 3 objective was.
 4 This was a pending subdivision with a lot of moving
 5 parts. So in addition to physically looking at the property,
 6 there are a lot of behind-the-scenes data that I had to confirm
 7 that would play into preparing the credible appraisal report.
 8 Q Was Eric Trump involved in this kind of early
 9 information-gathering phase that you just described?
 10 A He was.
 11 Q Can you describe his involvement?
 12 A Yes. I think Eric assisted in giving me an overview of
 13 the property, its history, some of the locational attributes,
 14 some of the nuances, some of the, you know, high points, if you
 15 will. Ultimately, he did share some data with me or pointed me
 16 to the right professional to confirm some important data.
 17 Q Can you speak more to the nature of that data? At a
 18 high level is fine?
 19 A Sure. As an appraiser doing a residential subdivision
 20 that is fluid and not approved, it was critical that I quickly
 21 grab hold of the map, as we call it, you know, and so I wanted
 22 to understand the layout, you know, from like a survey
 23 perspective and understand the configuration of all the lots
 24 that would be ultimately approved at the site because this was
 25 going to be -- the request was to value the lots on a retail

D. MCARDLE- DIRECT(MR. GABER) Page 1984

1 level, if you will, just to -- in other words, what you would
 2 sell them to an end user for. It was more of an exercise of
 3 selling the lots to individual homeowners.
 4 Q So did Eric Trump -- you discussed previously in this
 5 that you often undertook a comparable sales analysis in these
 6 valuations?
 7 A You know, the scope of the appraisal assignment was to
 8 value these lots on a retail level and give the client a sense
 9 of what they would sell for individually and also on -- in an
 10 aggregate value. This type of appraisal really only needs to
 11 focus on the sales comparison approach. Later on, there's
 12 elements of the income approach, but no cost approach like we
 13 talked about before and a heavy weighted sales comparison
 14 approach. Very simply, we want to find similar single-family
 15 home sites that are like-kind as best we can, you know,
 16 comparable landsites for luxury homes.
 17 Q Did Eric Trump provide you with any proposed
 18 comparables?
 19 A He did. He did. You know, the early phone calls with
 20 Eric Trump were with him explaining the site as I mentioned in
 21 grate detail which I expected him to do and which was very
 22 helpful because as we said before, typically the property owners
 23 know their properties better than the appraisers at the onset.
 24 So I welcomed his input, did a great job of explaining,
 25 you know, some of the physical characteristics, neighboring

D. MCARDLE- DIRECT(MR. GABER) Page 1985

1 properties, lake next door, couple of mansions on the property.
 2 And then he recognizing we needed to support, the values with
 3 comparables, he was willing to supply me with what he thought
 4 were good comparable sales and I had absolutely no problem
 5 receiving that type of data from him. Ultimately, I'm going to
 6 do a lot of research on my own, but there was absolutely no
 7 problem, you know, accepting what he was suggesting were good
 8 comps.
 9 Q Did you find him to be knowledgeable, kind of in the
 10 realm of valuing these comparables?
 11 A Did I find Eric knowledgeable? Yeah, I think he
 12 understood his property. He had a very high opinion of the
 13 property which didn't surprise me. You know, we deal with a lot
 14 of trophy asset property owners and they love their properties
 15 and typically know a lot about them as I said. And in some
 16 cases, they're entitled to their opinion of what they're worth.
 17 And he was of the mindset that there were only a few
 18 comps out there and he pointed me towards some subdivisions in
 19 Greenwich, most notably Conyers Farms. Sent me some other
 20 information on different home sites, but he believed Conyers
 21 Farms in Greenwich was a fabulous comp, you know. Of course,
 22 that's across the state lines and, you know, had to quickly do
 23 my homework on that subdivision. I was familiar with it, but I
 24 really wanted to get extra familiar to make sure it was truly a
 25 like-kind property to Seven Springs. Would you like me to

D. MCARDLE- DIRECT(MR. GABER) Page 1986

1 expand on this topic?
 2 Q I was going to ask you. Yes, could you explain the
 3 homework that you did?
 4 A Yeah. Sure. Although, I feel like I have a
 5 very -- I'm very competent to appraise this type of property, I
 6 live on Long Island. I was -- I wasn't quite in my backyard,
 7 did as much homework as possible, but I thought it would be very
 8 appropriate to bring in a local expert.
 9 Q Who was that expert?
 10 A The local expert was I selected was a gentleman named
 11 David Turner from a highly-regarded large residential brokerage
 12 firm in the Westchester area called Houlihan Lawrence. So David
 13 was one of the top producers in the luxury marketplace that
 14 would include home sales and land. I approached him and asked
 15 him if he would be interested in helping me with my
 16 understanding of land values in Bedford and he quickly agreed.
 17 We scheduled an appointment to visit the site. We got
 18 permission to go back. I brought David to the property. He
 19 already had known about it, but we thought a detailed
 20 walk-through was appropriate. Spent quite a few hours at the
 21 property and he felt he now had a better understanding of the
 22 property and he could assist me with comparables, sets of
 23 comparables that he thought, you know, might be appropriate to
 24 consider.
 25 I definitely talked to him about the potential of using

D. MCARDLE- DIRECT(MR. GABER) Page 1987

1 Conyers Farms sales and he took the assignment very seriously.
 2 Took a while, but with some back-and-forth communication, he
 3 ultimately did reach some -- had some strong opinions on this
 4 site and where the range of value should fall.
 5 Q Do you recall generally what those were?
 6 A Yeah. I mean, he came from a lot of different angles
 7 which I really appreciated. We were talking about value per
 8 site, you know, and the building sites did vary in size and I
 9 think some of the Conyers Farms comps may have suggested well
 10 over \$3 million per parcel and he wasn't -- he really was not a
 11 believer in that, so he -- he didn't believe that was truly
 12 comparable for a lot of different reasons and then he provided
 13 me with a plethora of comps and justification for a value that
 14 would be well below \$3 million per lot.
 15 I had been doing my own homework. We have comparable
 16 services readily available as well, so by collaborating with
 17 David, doing my own work, I have family in residential that are
 18 very, very active as well, I came to the conclusion -- you
 19 know, to a range of value for this assignment.
 20 Q So maybe at this point, we can get into some of
 21 the -- those ranges. I'm going to introduce Plaintiff's
 22 Exhibit 181 which is a spreadsheet provided to us natively. So
 23 it is just a cover sheet that I'm going to hand to you, but if
 24 we could look at the monitor here and let me know if you need
 25 anything blown up. But as a general matter, I'll just ask you

Page 1989

1 this is -- these are my notes to myself.
 2 Q Can you help summarize looking at the spreadsheet kind
 3 of where the -- what conclusions, if any, you derived from this
 4 exercise?
 5 A Sure. The top of the chart represents the Bedford
 6 lots. There were more lots in Bedford than the other
 7 municipalities, so at the time, we believed there were nine and
 8 then the second column is the acreage of each lot ranging from
 9 roughly five acres to eleven, so they did vary in size and then
 10 out to the right, I'm just penciling in like where that range
 11 might fall. That very first lot, B2, you know, we were thinking
 12 million-five to \$2 million retail value of that lot.
 13 (Continued on the next page.)
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 25

D. MCARDLE- DIRECT(MR. GABER) Page 1988

1 if you recognize this spreadsheet.
 2 A I do recognize this spreadsheet.
 3 MR. GABER: I just want to make sure that I move
 4 the prior Exhibit 131 into evidence.
 5 MR. FIELDS: Objection; statute of limitations.
 6 THE COURT: Overruled. It is in.
 7 (Whereupon, the Document was marked in evidence as
 8 Plaintiff's Exhibit 131.)
 9 Q I'm sorry, Mr. McArdle. I cut you off. Could you
 10 repeat --
 11 A I do recognize the spreadsheet.
 12 Q What do you recognize the spreadsheet as?
 13 A Well, let me emphasize that this assignment, again, was
 14 a verbal assignment. The expectation was that we would get on
 15 call at the end of my findings and conclusions and just discuss
 16 it verbally, but as appraisers, we do have an obligation to
 17 build a work file and I certainly couldn't keep everything in my
 18 head. So this is my own internal work file, a rough idea on,
 19 you know, the configuration or the number of lots. We're
 20 dealing with three municipalities, so I tried to divide up the
 21 different sets of lots and then come to just a range of value
 22 for these properties based on what we were just talking about,
 23 my interaction with Eric Trump, David Turner, myself some of my
 24 family members that sell real estate. I started to get warmer
 25 and closer to where I thought the value was going to fall and

D. McArdle - Plaintiff - direct (Gaber) Page 1990

1 A And you just continue to go further down the list into
 2 the two different other municipalities, New Castle and North
 3 Castle.
 4 Q And you do the same analysis for both of those?
 5 A Same analysis, a little more compressed.
 6 Q So where -- what is your final sort of --
 7 A Excuse me?
 8 Q Where do you end up at this top line number? Do you
 9 have any here?
 10 A I do have totals here. Column J represents the total
 11 of the low end of the range at 36 million. Column L is the high
 12 end of that range that I did that day on the spreadsheet and
 13 that would be 50 million.
 14 Q Okay. So between 36 and 50 million was the range by
 15 this analysis?
 16 A There is few important points I want to make about
 17 this, though.
 18 Q Absolutely.
 19 A This was a map in progress. It had not been fully
 20 approved and very important for us to -- the number of lots is a
 21 critical component of value here, especially if at the end of
 22 the day you're trying to develop an aggregate value before
 23 discounting it, at least get a general sense of what this thing
 24 might be worth once the sellout is complete, right, full
 25 sellout.

D. McArdle - Plaintiff - direct (Gaber) Page 1991

1 You'll See in New Castle we were a little unsure of
 2 whether or not they would yield five lots or six lots.
 3 Q I see that, yes.
 4 A Bedford we were pretty confident with nine based on the
 5 information we provided. And North Castle, ten. So at that
 6 time we believed there were approximately 24 to 26 lots
 7 available. I -- multiple times. This was a very big concern of
 8 mine. I needed to totally understand the configuration and the
 9 number of lots as, again, that plays heavily into the final
 10 value.
 11 Not only did I ask Sheri Dillon and Eric Trump about
 12 the lot yield, as we call it, I asked to speak to their
 13 engineer. So I always like to go to a third party who's been in
 14 the ground, measuring, calculating, deeply involved with zoning
 15 regulations and they quickly directed me to a company called
 16 Insight. And I had at least one or two phone calls and my --
 17 the objective of those phone calls was to get comfortable with
 18 the lot yield, the number of lots that would be yielded absent
 19 the two homes.
 20 Q So this was a process of you attempting to gather
 21 information from the client about how to conduct -- the inputs
 22 that you needed to conduct analysis?
 23 A I needed a lot of input for this because this was not a
 24 final map, so it's always fluid and there are obstacles and I
 25 elected to, you know, I thought Insight was a great source and

D. McArdle - Plaintiff - direct (Gaber) Page 1992

1 spoke to, of course, Sheri and Eric Trump and all parties kind
 2 of led me to the conclusion that we were dealing with, you know,
 3 there might be some movement, but it seemed like it was 24 to 26
 4 lots.
 5 Q Sorry. Just going kind of back. I appreciate the
 6 explanation. When you were discussing this range of values I
 7 think you said this is before discounting?
 8 A Yes.
 9 Q Can you explain what that means?
 10 A Sure. Similar to the Briarcliff analysis we were
 11 talking about earlier it's basically the same sellout analysis
 12 except this is more simplistic. This just assumes the
 13 absorption or sales to individual lots to individual
 14 homebuilders or homeowners over the course of time. So it's
 15 merely, you know, you gather your number of lots, you have an
 16 estimated value per lot and you just chart them out over a time
 17 horizon in a DCF model.
 18 Q So this hasn't been discounted?
 19 A This has not been discounted.
 20 Q Can I now put up and show you PX 182? It's another
 21 spreadsheet. And before we leave that one, I'd like to move to
 22 admit Plaintiff's 181 into evidence.
 23 MR. FIELDS: Statute of limitations.
 24 THE COURT: Overruled. It's in evidence.
 25 (Whereupon, the item previously referred to is

D. McArdle - Plaintiff - direct (Gaber) Page 1993

1 received and marked Plaintiff's Exhibit Number 181 in
 2 evidence.)
 3 Q Mr. McArdle, let me know whether you recognize this
 4 spreadsheet.
 5 A I do recognize the spreadsheet.
 6 Q And can you very briefly tell me what it is and then we
 7 can ask some questions about it.
 8 A Yes. This is the sellout analysis spreadsheet that I
 9 contained in my work file in preparation for a verbal delivery
 10 to the client. It's basically a compressed version of what we
 11 just looked at on the previous exhibit. Here, we're assuming
 12 eight lots in Bedford, six lots in New Castle and ten lots in
 13 North Castle.
 14 We also decided based on market conditions that it
 15 would probably take six years to sell these lots. This type of
 16 analysis not only does it account for the sale of the lots, but
 17 looks like the other project we discussed it -- you are going to
 18 incur expenses as you go along and the rows in the bottom left
 19 of this exhibit are just that, you know, the expenses that we
 20 would normally deduct for this type of analysis would be, you
 21 know, your property taxes, any kind of dues related to the
 22 homeowner's association, if there is one. Certainly sales
 23 commissions and soft costs; legal, marketing, overhead, site
 24 costs. So they are all deducted from the gross retail proceeds
 25 which leaves you with a net cash flow each year and then from

D. McArdle - Plaintiff - direct (Gaber) Page 1994

1 there we just discount back the -- those proceeds from each year
 2 and you can see after discounting the final value estimate was
 3 close to just under \$30 million.
 4 Q Thank you.
 5 MR. GABER: I'd ask this be admitted into evidence.
 6 MR. FIELDS: Statute of limitations.
 7 THE COURT: Overruled. It's in evidence.
 8 (Whereupon, the item previously referred to is
 9 received and marked Plaintiff's Exhibit Number 182 in
 10 evidence.)
 11 Q So following these two analyses, the valuation you did
 12 and the subdivision analysis, were you prepared to present range
 13 of values to the client to complete the engagement as made out
 14 in the engagement letter?
 15 A Yes, I was. These sheets were developed for me
 16 internally, so I could have a fruitful, you know, verbal phone
 17 call with the client.
 18 MR. GABER: So I'd like to now show the witness
 19 Plaintiff's Exhibit 3188.
 20 Q Mr. McArdle, let me know if you recognize this
 21 document.
 22 A Yes, I recognize these documents as e-mails between
 23 myself, Eric Trump and Sheri Dillon trying to establish a good
 24 time to discuss my findings.
 25 MR. GABER: I would ask this be admitted into

D. McArdle - Plaintiff - direct (Gaber) Page 1995

1 evidence.

2 MR. FIELDS: Statute of limitations.

3 THE COURT: Overruled.

4 (Whereupon, the item previously referred to is

5 received and marked Plaintiff's Exhibit Number 3188 in

6 evidence.)

7 Q Okay. So Mr. McArdle, the top e-mail here is from Eric

8 Trump. It's to you and Sheri Dillon. Eric Trump says:

9 "Sheri, by that point ideally, you will have seen the

10 draft appraisal. Assuming we are all in the same ballpark after

11 the call, we can finalize and hopefully put this to bed."

12 Can you understand -- can you tell me what you

13 understood by Eric Trump's message here?

14 A It's a little confusing. The final product under this

15 engagement was merely a verbal phone call, me conveying our

16 final value conclusions to the client. So finalizing and

17 putting it to bed, that -- I think Eric's using some loose

18 language there. I can't really -- I don't know what he was

19 thinking, but in my mind we were -- this was the -- we were at

20 the finish line.

21 Q So your understanding was you were setting up a call to

22 convey the results of your --

23 A Absolutely.

24 Q So I'd like to now show you -- this is Plaintiff's

25 Exhibit 3206. Let me know if you recognize this.

D. McArdle - Plaintiff - direct (Gaber) Page 1996

1 A Looks like just another e-mail from Eric to me setting

2 up the final call.

3 Q Okay.

4 MR. GABER: I would ask that this be moved into

5 evidence.

6 MR. FIELDS: Statute of limitations.

7 THE COURT: Admitted into evidence. Objection

8 overruled. It's in.

9 (Whereupon, the item previously referred to is

10 received and marked Plaintiff's Exhibit Number 3206 in

11 evidence.)

12 MR. GABER: I'm handing the witness Plaintiff's

13 Exhibit 169 for identification.

14 Q Mr. McArdle, let me know if you recognize this.

15 A This is an internal Cushman & Wakefield e-mail from

16 myself to our top administrator in New York and my nephew who

17 works with me just explaining that this consulting assignment

18 has been completed, reminding her there is no report to --

19 written report to put in our files and the verbal consulting was

20 completed.

21 Q What do you mean by "the verbal consulting was

22 completed?"

23 A I mean we would have had a call with Sheri and Eric

24 regarding the final values.

25 Q And you would have conveyed the value -- the 29 and a

D. McArdle - Plaintiff - direct (Gaber) Page 1997

1 half million dollar value that you had in your spreadsheet to

2 Eric Trump and Sheri Dillon on that call?

3 A Most likely, yes.

4 Q When you say "most likely," can you elaborate on or be

5 more specific?

6 A Yes. The focus was more on the retail, what they could

7 sell retail. So I know we talked about the ranges and I think

8 ended up being around \$2 million per lot.

9 The sellout analysis is a secondary concern to them,

10 but it was -- I think they wanted to get comfortable with, you

11 know, what each lot was worth. I mean, certainly throughout

12 most of the assignment that's where their focus was.

13 Q And the retail analysis is the first spreadsheet that

14 we looked at, that's correct?

15 A That's right.

16 Q So that range was 30 to \$50 million?

17 A That was 30 to 50. However, I did elect to lean

18 towards the 50, which was in my mind very, very well supported

19 based on all the research that we talked about.

20 Q As an undiscounted retail?

21 A Undiscounted, correct.

22 Q Okay.

23 MR. GABER: I ask that Plaintiff's 169 be moved

24 into evidence.

25 MR. FIELDS: Statute of limitations.

D. McArdle - Plaintiff - direct (Gaber) Page 1998

1 THE COURT: Overruled.

2 (Whereupon, the item previously referred to is

3 received and marked Plaintiff's Exhibit Number 169 in

4 evidence.)

5 Q So Mr. McArdle, I'm going to show you what we've marked

6 as Plaintiff's Exhibit 911. Please read it and let me know if

7 you recognize it.

8 A Yes, I'm familiar with these e-mails between Eric Trump

9 and myself and Sheri Dillon as well.

10 Q Okay.

11 MR. GABER: I'd ask this be moved into evidence.

12 MR. FIELDS: Statute of limitations.

13 THE COURT: Overruled. It's in evidence.

14 (Whereupon, the item previously referred to is

15 received and marked Plaintiff's Exhibit Number 911 in

16 evidence.)

17 Q So Mr. McArdle, just put this in front of you. Just to

18 confirm, the second e-mail from you to Eric Trump asks for

19 dial-in instructions for a 9:00 a.m. call on the 25th of August.

20 The top e-mail says: "Thanks, David. Speak to you soon." It

21 looks like it was at 8:30 a.m. Is this the -- would this be the

22 date of the call that you had mentioned that you had with Sheri

23 Dillon and Eric Trump where you communicated the range of

24 values?

25 A I honestly don't know if that was the date of the call.

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1 Q You don't know if it was -- does it seem likely that
 2 this could have been that call?
 3 A It could have been, but I don't have a hundred percent
 4 recall.
 5 Q Okay. But when you wrote on the 8th of September that
 6 all verbal consulting had been completed and you just told me
 7 that you did have that call, you just not certain of the exact
 8 date of it, but you --
 9 A I definitely had that call.
 10 Q Okay. Add this point I'd like to show you Plaintiff's
 11 Exhibit 133. Take a look at it, please, and let me know if you
 12 recognize it.
 13 A Yes, I am familiar with this. It's a letter of
 14 engagement again between myself and Cushman & Wakefield and Eric
 15 Trump of Seven Springs LLC.
 16 MR. GABER: I'd ask this be moved into evidence.
 17 MR. FIELDS: Statute of limitations.
 18 THE COURT: Overruled. It's in evidence.
 19 (Whereupon, the item previously referred to is
 20 received and marked Plaintiff's Exhibit Number 133 in
 21 evidence.)
 22 Q And Mr. McArdle, is the scope of work for this
 23 engagement, which is on Cushman & Wakefield letterhead this time
 24 and addressed to Eric Trump, as you said, is it the same or
 25 similar to the engagement where you were just discussing the

D. McArdle - Plaintiff - direct (Gaber) Page 2000

1 consulting engagement?
 2 A This is an extension of the work that I started at the
 3 property. The scope is very different. As we know my
 4 involvement was very preliminary factfinding for the family and
 5 Sheri Dillon to make a business decision on going forward with
 6 the conservation easement.
 7 This engagement I believe is intended to take it to the
 8 next step and start to -- and produce a written report with a
 9 more comprehensive report to get them closer to a potential
 10 conservation easement donation.
 11 Q Do you know if this engagement was completed?
 12 A Yes, it was.
 13 Q Maybe I can clear things up.
 14 Mr. McArdle, I'd like to show you Plaintiff's
 15 Exhibit 185. Do you recognize this e-mail?
 16 A I may have been mistaken. There was a termination.
 17 I'm getting ahead of myself. They're so similar. I believe
 18 there was a termination of the idea of producing that written
 19 report.
 20 Q Okay.
 21 A And this appears to prove that.
 22 Q I'm glad I can refresh your recollection.
 23 A Thank you.
 24 MR. GABER: I'd ask that this document be moved
 25 into evidence.

D. McArdle - Plaintiff - direct (Gaber) Page 2001

1 MR. FIELDS: Statute of limitations.
 2 THE COURT: Overruled. It's in evidence.
 3 (Whereupon, the item previously referred to is
 4 received and marked Plaintiff's Exhibit Number 185 in
 5 evidence.)
 6 Q I'd like to hand you Plaintiff's Exhibit 104. Please
 7 take a look at it and let me know if you recognize that.
 8 We caught up to yourself perhaps. Do you know what
 9 this document is?
 10 A This is again an engagement for Seven Springs between
 11 Cushman & Wakefield and Eric Trump. This is the document I
 12 thought I had in my hands a couple minutes ago. This is a
 13 request to go forward with a full comprehensive appraisal report
 14 for the subject property we've been discussing.
 15 MR. GABER: I'd ask that this document be moved
 16 into evidence.
 17 MR. FIELDS: Statute of limitations.
 18 THE COURT: Overruled. It's in evidence.
 19 (Whereupon, the item previously referred to is
 20 received and marked Plaintiff's Exhibit Number 104 in
 21 evidence.)
 22 Q Could you look at page six, Mr. McArdle?
 23 A Okay.
 24 Q So in addition to your signature on the Cushman &
 25 Wakefield, there is another signature here. Can you explain

D. McArdle - Plaintiff - direct (Gaber) Page 2002

1 whose signature that is?
 2 A Sure. At this point it would've been logical for me to
 3 continue with this engagement but I had a tremendous workload at
 4 the time and elected to bow out of continuing my work on the
 5 Seven Springs property. I have a very capable, competent senior
 6 appraiser in my office that I asked to continue with this task,
 7 so I sort of served as a conduit here maintaining the
 8 relationship with Cushman & Wakefield, the Trump Organization,
 9 Sheri Dillon. So I assisted with this new engagement
 10 recognizing that Tim Barnes was going to take over and complete
 11 the assignment in its entirety and I would exit from the whole
 12 process. So we thought it was not appropriate to not only have
 13 me sign it but Tim as well since Tim would be signing the final
 14 document.
 15 Q Is there anything else you remember about the
 16 transition of this engagement to yourself from Mr. Barnes?
 17 A Well, it's a unique assignment, a unique property, so
 18 we did have some discussions early on, kind of called it the
 19 hand off, handing off these one assignment from me to Tim.
 20 I recall some brief conversations giving him a brief
 21 overview on the property itself and some of the work I had
 22 performed, which is logical. He's now got to step in and he's a
 23 very independent appraiser and I did not have a lot of
 24 interaction with him after that. He took hold of it
 25 wholeheartedly and performed the assignment.

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1 Q Okay. So Mr. McArdle, just about done, but -- so we
 2 talked about a number of engagements related to Seven Springs
 3 and Briarcliff that you undertook, you know, with Sheri Dillon
 4 and with Eric Trump and Trump Organization entities as your
 5 clients, yes?
 6 A Correct.
 7 Q So I just wanted to show you a short clip from the
 8 deposition of Eric Trump and just ask you a question about it
 9 after it's played. This is starting from page 198, line ten of
 10 the deposition.
 11 (Whereupon, there is a pause in the proceedings.)
 12 Q Mr. McArdle, is this consistent with your recollection
 13 of Eric Trump's involvement in the engagements we've been
 14 discussing today?
 15 MR. ROBERT: Objection.
 16 THE COURT: I don't think that's a proper question.
 17 Is it consistent? I mean, you can ask something similar,
 18 but is it consistent, that's, I guess, for the trier of
 19 fact.
 20 Q Was Mr. Eric Trump --
 21 THE COURT: Wait.
 22 MR. ROBERT: Furthermore, Your Honor, two things:
 23 One, is the government representing that the document
 24 Mr. Trump is looking at there is Plaintiff's Exhibit 104
 25 that the witness has here? Because this is from 2015. The

D. McArdle - Plaintiff - direct (Gaber) Page 2004

1 question appears to be 2014 that you asked on the video.
 2 So is Mr. Trump looking what the witness has now?
 3 THE COURT: Yes, I don't think that matters?
 4 MR. AMER: I don't think that matters.
 5 MR. ROBERT: It does.
 6 THE COURT: No, it doesn't. He's asking does he
 7 know who he is, did he work with him. It doesn't matter
 8 what year.
 9 MR. ROBERT: But if you listen to the words
 10 Mr. Trump is saying, he's talking about Sheri Dillon's name
 11 and I don't see Sheri Dillon on this document. That's why I
 12 want to know if it's the same document or not.
 13 MR. AMER: Again, it doesn't matter, Your Honor.
 14 He was asked questions, he gave testimony. This is
 15 evidence. It's a party admission against interest. It's
 16 evidence, it comes in.
 17 MR. ROBERT: Evidence of what?
 18 MR. GABER: We can turn to the CPLR.
 19 MR. ROBERT: Please.
 20 MR. GABER: 3117 (A) (2): "The deposition
 21 testimony of a party or of any person who was a party when
 22 the testimony was given or of any person who at the time the
 23 testimony was given was an officer, director, member,
 24 employee, a managing or authorized agent."
 25 THE COURT: Wait.

D. McArdle - Plaintiff - direct (Gaber) Page 2005

1 MR. ROBERT: That's --
 2 MR. GABER: Mr. Robert, I'm happy to tell you -- if
 3 you let me finish.
 4 THE COURT: One at a time, guys.
 5 MR. ROBERT: I am not disputing the fact that you
 6 can use a party's deposition for a purpose you want. What
 7 I'm asking is for a point of clarification. Mr. Trump is
 8 combing through a document, that's what you've asked the
 9 witness about. I want to know if it's the same document the
 10 witness has in front of him, that's all. Just so that
 11 nothing is misleading. That's all my question is.
 12 THE COURT: It doesn't matter, so objection
 13 overruled. If that's the objection --
 14 MR. ROBERT: Thank you, Judge.
 15 Q Now, do you recall that or do you believe that Eric
 16 Trump was not involved in appraisals that you worked on?
 17 MR. KISE: Objection. He never said Mr. Trump.
 18 Never said he wasn't involved. He said he didn't remember,
 19 so he's assuming facts not in evidence.
 20 Q "I really haven't been involved in the appraisal work
 21 on this property," 199:06, 199:07.
 22 Does that conform to your recollection of events?
 23 A No.
 24 MR. GABER: Thank you. No further questions.
 25 THE COURT: Counselors, what next?

D. McArdle - Plaintiff - direct (Gaber) Page 2006

1 MR. FIELDS: Your Honor, it's 4:22. Would the
 2 Court's preference be to begin tomorrow morning?
 3 THE COURT: I couldn't tell who said that.
 4 MR. FIELDS: That's okay. I'm used to people not
 5 remembering my voice, which is generally a good thing.
 6 THE COURT: You are being blocked also by the
 7 screen. We're not going to be done, but we can use the
 8 eight minutes. Let's use it. We only have another two and
 9 a half months.
 10 Okay, let's proceed with the cross examination of
 11 this witness by Mr. Field -- it's Fields; right?
 12 MR. FIELDS: Yes, Your Honor.
 13 THE COURT: I'm sorry. I said Field. It's Fields.
 14 Transcript continues on the following page....
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D. MCARDLE - CROSS(MR. FIELDS) Page 2007

1 THE COURT: Let's go to 4:40 today considering
 2 everything including breaking early tomorrow. So you have
 3 15 minutes.
 4 MR. FIELDS: Thank you, your Honor.
 5 Q Good afternoon, Mr. McArdle. My name is Lazaro Fields.
 6 I represent some of the defendants in this action. I am going
 7 to ask you a few questions. Is that okay?
 8 A Yes.
 9 Q I just want to be clear that you recall being shown
 10 several appraisals and draft appraisals by the government in
 11 your examination?
 12 A Correct.
 13 Q And are all of the appraisals that the government
 14 showed you related to conservation easements?
 15 A Yes, they were.
 16 Q So the testimony that you gave on direct examination
 17 was just limited to conservation easements, correct?
 18 A The appraisal data we went over today was related to
 19 conservation easements.
 20 Q Is that an area that you focus in, that you specialize
 21 in?
 22 A Yes, I have.
 23 Q And are those conservation easements different than
 24 standard market value appraisals that other Cushman & Wakefield
 25 professionals may perform?

D. MCARDLE - CROSS(MR. FIELDS) Page 2008

1 A Yes, there's a nuance to them.
 2 Q Could you just briefly describe what the differences
 3 are between the two?
 4 A Well, we talked about it today a little bit. Large
 5 majority of the appraisal for conservation easement is
 6 fundamental real estate valuation. Talked about valuation of
 7 general valuation of land, valuation of potential build-out of a
 8 townhouse project, talked about single-family home valuation.
 9 We talked about the golf and country club valuation, the
 10 differences in some of the adjustments that have to take place
 11 after those values are established in some determinations or
 12 estimates on how one value might impact the other.
 13 Q What are some of the differences among the adjustments
 14 that have to be made?
 15 A Well, in looking at the Briarcliff, for example, we had
 16 to weigh whether or not the potential condominium project or
 17 townhouse project would benefit the golf club or detract from
 18 it. And in that report, there's great detail given to and
 19 thought given to some of the positive attributes and some of the
 20 negatives.
 21 Q And is there a recordkeeping practice among appraisers
 22 in terms of maintaining records that you use to conduct an
 23 appraisal?
 24 A Very much so. We're obligated to maintain files.
 25 Q And is that under the USPAP guidelines?

D. MCARDLE - CROSS(MR. FIELDS) Page 2009

1 A It is.
 2 Q And just generally, what is that requirement under
 3 USPAP?
 4 A Seven years.
 5 Q But what does the guideline provide? What does it
 6 suggest to you that you need to keep or maintain?
 7 A Oh -- well, whatever we feel is relevant and pertinent
 8 to the assignment at hand. It is mostly electronic nowadays.
 9 Any kind of research or pertinent information, surveys, photos,
 10 some -- any kind of notes that we take, we try to, you know,
 11 deposit them in the folder at the end of the assignment.
 12 Q So then would it be fair to say that anything that you
 13 relied on in an appraisal would be contained within that file or
 14 would there be things not contained within the file that you may
 15 have relied on in an appraisal?
 16 A There might be things that don't quite make it in there
 17 in this day and age. You know, reading it through that
 18 articles. Electronic articles don't always make it in there
 19 but, you know, you're building a file mentally and also you have
 20 an obligation to, you know -- anything physical to, you
 21 know -- you might put in there.
 22 Q In terms of Cushman & Wakefield's recordkeeping
 23 practice, is there an electronic database that you use to
 24 maintain your files?
 25 A Yes, there certainly is. We have a network drive.

D. MCARDLE - CROSS(MR. FIELDS) Page 2010

1 Q Is that network drive assessable -- withdrawn.
 2 Can you as a Cushman & Wakefield employee access the
 3 files of another appraiser at Cushman & Wakefield?
 4 A Yes, if it is within the same office. In other words,
 5 New York colleagues can access other New York colleagues' work.
 6 Q And are there instances in which an appraiser is walled
 7 off from obtaining the file of another appraiser?
 8 A No. I mean, some people have subfolders. There are
 9 basically two depositories, so, you know, it may be in one of
 10 two areas for the most part, but they're not very difficult to
 11 obtain.
 12 Q And would you agree with me that in conducting
 13 appraisals, that you rely on engineers and architects, among
 14 others, to inform you as to material issues within an appraisal?
 15 A Depending on the complexity of the asset, we
 16 often -- you know, in addition to the client, we're often
 17 directed to a professional such as an engineer, surveyor or
 18 construction manager. However, it relates to the project at
 19 hand. So yes, third parties are critical sources for us.
 20 Q And when conducting a conservation easement appraisal,
 21 are you permitted to assume hypothetical conditions?
 22 A I think you'd have to be a little more specific on
 23 that.
 24 Q Sure. So, for instance, with zoning, if you're
 25 conducting a conservation easement appraisal and there's a

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D. MCARDLE - CROSS(MR. FIELDS) Page 2011

1 zoning issue on day one, does that necessarily mean that on day
2 two, that zoning issue would sill persist and how does that
3 factor into your approach?
4 A Let me say every assignment is different and we treat
5 them on a case by case basis. Sometimes there is a need for a
6 hypothetical condition or extraordinary assumption especially
7 when things are not black and white and may be in transition.
8 Q You said hypothetical condition and/or extraordinary
9 assumption. Are they the same or are they different terms?
10 A They are slightly different.
11 Q What are the differences?
12 A Hypothetical would be the condition absolutely does not
13 exist and we're going to bypass it and make an exception or make
14 an assumption. An extraordinary assumption is softer, something
15 that, you know, it is a fair judgment to make to move the
16 appraisal to the finish line and it's sort of a flag that we
17 raise to the client that, you know, we -- we had to assume
18 this. There might have been a bit of information that was
19 lacking and in order to complete the appraisal, we feel like
20 it's appropriate to use this assumption. And by the way, you
21 know, it's bolded in many, many places in the report.
22 Q Did you employ any extraordinary assumptions in the
23 appraisals or draft appraisals that you discussed with
24 government counsel on direct examination?
25 A I'm not sure I understand the question.

D. MCARDLE - CROSS(MR. FIELDS) Page 2012

1 Q Well, were there any extraordinary assumptions -- was
2 the term "extraordinary assumptions"?
3 A Yes.
4 Q Did you assume any extraordinary assumptions in the
5 appraisals that you discussed with government counsel on direct
6 examination?
7 A I think we may have made some assumptions on Seven
8 Springs because that property was in transition at the time.
9 MR. KISE: One quick housekeeping point that we
10 just missed. So the video clip that they played of Eric
11 Trump, the record has it starting at page 198, line ten in
12 the deposition, but it doesn't say when it ended. Do we
13 know what the last -- where it went through just so we have
14 it because it is not in the record and they, of course,
15 didn't type out --
16 MR. GABER: It was at the bottom of the video,
17 but --
18 MR. GABER: Page 199, line 20.
19 THE COURT: Please continue.
20 Q Mr. McArdle, at the beginning of your examination with
21 Mr. Gaber, you discussed the Briarcliff appraisal. Do you
22 recall that generally?
23 A Certainly.
24 Q And you had a discussion with Mr. Gaber about how
25 important it was to know your client. Do you remember that?

D. MCARDLE - CROSS(MR. FIELDS) Page 2013

1 A I do.
2 Q And you also testified, I believe, that a property
3 owner knows the property just about better than anybody else; is
4 that accurate?
5 A Oftentimes, that is the case.
6 Q And that's why a property owners for you are crucial to
7 communicating with to understand the property better, right?
8 A They are a big part of our, you know, exploratory work.
9 THE COURT: Five-minute warning.
10 Q And would you agree that the client has input in the
11 value that you ultimately arrive at?
12 A No, I would not agree with that.
13 Q The client has no input?
14 A He has input in the physical description of the
15 property, but ultimately, it's our conclusion based on a number
16 of facts that we discovered and got comfortable with over the
17 process of writing the appraisal, so...
18 Q Fair. And I'm not trying to suggest that the client's
19 value has to be your value. My question is more is it standard
20 practice for a client to advocate for their property to their
21 appraiser.
22 A I would not call it standard practice, but, you know,
23 I've seen it before over my long career and, you know, it
24 was -- you know, it happens. It happens as a course of doing
25 business.

D. MCARDLE - CROSS(MR. FIELDS) Page 2014

1 Q And it is not unusual for that to happen?
2 A It's not unusual.
3 Q And, of course, a client can have their own opinion of
4 value that may differ from your opinion of value, correct?
5 A Well, absolutely.
6 Q And that is, I'm sure, common practice in your
7 experience as well?
8 A It's common practice, but ultimately, we're the ones
9 calling the value.
10 Q You also discussed with Mr. Gaber the highest and best
11 use analysis. Do you recall that?
12 A Sure.
13 Q And I think you said there are four steps perhaps. The
14 first was legally permissible; the second, physically possible;
15 and the third, feasible; finally, the fourth most profitable?
16 A That's correct.
17 Q Is that a standard set of steps that you undertake into
18 valuing a conservation easement?
19 A Yes, because, you know, ultimately, it was the
20 valuation of the land. Whether it was for conservation or not,
21 that test was still very relevant in the process.
22 Q And would you agree with me that different appraisers
23 could look at these factors differently?
24 A In some cases, but I think on a lot of properties, the
25 appraisers often default to a very similar highest and best use.

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D. MCARDLE - CROSS(MR. FIELDS) Page 2015

1 Q And in terms of specifically conservation easement
 2 appraisals, would you agree with me that there are
 3 subjectivities that appraisers have to comb through, authorized
 4 to come to a conclusion on value?
 5 A There is some subjectivity. There is some objectivity
 6 in the beginning and then there is some subjectivity more
 7 towards the end with the final value conclusion.
 8 Q And again, reasonable appraisers exercising their
 9 judgment could differ as to some of the subjectivities in
 10 valuating a property?
 11 A More times than not, we gravitate towards each other if
 12 we are given the same set of circumstances or property. The
 13 variances are really -- normally not too wide.
 14 Q But it is possible?
 15 A It is possible.
 16 Q You discussed with Mr. Gaber briefly the subdivision
 17 sell-out analysis. Do you recall that?
 18 A I do.
 19 Q When you are conducting a subdivision sell-out
 20 analysis, are you assuming -- you are assuming a set of facts
 21 as to how many homes could be built, right? Is that fair?
 22 A Yeah, that's one component of it. Certainly, we want
 23 to put our arms around how many units are in play for sure.
 24 Q And where does that information come from generally?
 25 A That information -- my first source would be the owner

D. MCARDLE - CROSS(MR. FIELDS) Page 2017

1 continuing tomorrow.
 2 Just one quick observation. Common sense tells me
 3 that different appraisers could appraise a different
 4 property different. How differently, that's another
 5 question. To ask every witness over and over again could
 6 different appraisers appraise a given property differently
 7 seems to me to just be wasting time.
 8 MR. KISE: The only point I'll make on that is
 9 we've listened to what I would say in the last two days
 10 excruciating questions from the government asking about
 11 who's on the "re" line and who's on the "bcc" line.
 12 I don't recall you respectfully hurrying them, so
 13 we are trying to move through our examination efficiently,
 14 but there are points we believe we need to make. We will
 15 take your advice as we always do, but it always seems like
 16 when there's a hurry up on the clock, it's our side that's
 17 being hurried up and not theirs.
 18 THE COURT: Well, I'm sorry you feel that way. I
 19 want everybody to be efficient and I just want to make clear
 20 what I said initially here. I'm not stopping you from doing
 21 it.
 22 MR. KISE: I know.
 23 THE COURT: You know me well enough.
 24 MR. KISE: I do. Thank you.
 25 THE COURT: All right. Tomorrow at ten o'clock.

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1 and again, they typically own their property, know their
 2 property better than anybody, and if it is a complex property,
 3 the -- they often direct us to their third-party surveyors,
 4 engineers, contractors and we always like to get verification.
 5 Rarely will we just take an owner's word for it. We also go to
 6 step two to, you know, assure ourselves that the information is
 7 well supported from a third party.
 8 THE COURT: One-minute warning.
 9 Q Mr. McArdle, Mr. Gaber showed you an e-mail at the
 10 beginning of his examination where you wrote to Eric Trump,
 11 "Thank you for the opportunity." Do you generally recall that
 12 e-mail?
 13 A Yes, I do.
 14 Q Were you excited about the opportunity to work on some
 15 of these Trump properties?
 16 A Yeah. We're a large firm and we were proud to be
 17 working with the Trump Organization.
 18 Q You hadn't done work with them before? This was a new
 19 client for you?
 20 A I had done work with them before. The company had been
 21 working with them and we were delighted to join up again on a
 22 new assignment.
 23 MR. FIELDS: Your Honor.
 24 THE COURT: Okay. I'll direct the witness not to
 25 discuss this case or your testimony because you'll be

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1 See you all then.
 2 (Witness exits the stand.)
 3 (Whereupon, the trial was adjourned to October 20,
 4 2023 at 10:00 a.m.)
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Table with 5 columns: Term, Readings, Dates, Recordings, and Registrations. Includes terms like 'qualifications (1)', 'read (7)', 'received (28)', 'recording (1)', 'regard (1)', etc.

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In The Matter Of:
PEOPLE OF THE STATE OF NEW YORK v.
DONALD J. TRUMP, et al

DAVID MCARDLE, RAY FLORES
October 20, 2023

NICOLE C. ROBINSON

Original File 102023TRUMP.txt

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 COUNTY OF NEW YORK : CIVIL TERM : PART 37
 2 ----- X
 3 PEOPLE OF THE STATE OF NEW YORK, BY
 LETITIA JAMES, ATTORNEY GENERAL OF
 THE STATE OF NEW YORK,
 4
 Plaintiff,
 5
 Index No.
 6 -against- 452564/2022
 7 DONALD J. TRUMP; DONALD TRUMP, JR.; ERIC TRUMP;
 IVANKA TRUMP; ALLEN WEISSELBERG; JEFFREY MCCONNEY;
 8 THE DONALD J. TRUMP REVOCABLE TRUST; THE TRUMP
 ORGANIZATION, INC.; TRUMP ORGANIZATION, LLC;
 9 DJT HOLDINGS, LLC; DJT HOLDINGS MANAGING MEMBER;
 TRUMP ENDEAVOR 12, LLC; 401 NORTH WABASH VENTURE,
 10 LLC; TRUMP OLD POST OFFICE, LLC; 40 WALL STREET,
 LLC.; AND SEVEN SPRINGS, LLC,
 11
 Defendants. ----- X
 12 Supreme Courthouse
 60 Centre Street
 New York, New York
 October 20, 2023
 13
 B E F O R E :
 14 HONORABLE ARTHUR F. ENGORON,
 Justice, Supreme Court
 15
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 22
 23
 24
 25 (Appearances continued on the next page.)

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PROCEEDINGS

1 THE COURT OFFICER: All rise. Part 37 is now in
 2 session. The Honorable Judge Arthur Engoron presiding.
 3 Make sure all cellphones are on silent. Laptops and
 4 cellphones will be permitted, but only to members of the
 5 press. There's absolutely no recording or photography of
 6 any kind allowed in the courtroom. Now, be seated and come
 7 to order.
 8 THE COURT: On October 3rd, during a break in this
 9 trial, defendant Donald Trump posted to his social media
 10 account an untrue, disparaging, and personally identifying
 11 post about my principal law clerk. I spoke to defendants,
 12 both on and off the record.
 13 Off the record, I ordered Donald Trump to remove
 14 the post immediately. Approximately ten minutes later,
 15 Donald Trump represented to me that he had taken down the
 16 offending post and that he would not engage in similar
 17 behavior going forward. I then, on the record, imposed on
 18 all parties to this action a very limited gag order,
 19 "forbidding all parties from posting, e-mailing or speaking
 20 publicly about any members of my staff," emphasizing, quite
 21 clearly, that "personal attacks on members of my court staff
 22 are unacceptable, inappropriate, and I will not tolerate
 23 them under any circumstances."
 24 I further made clear that "failure to abide by this
 25 directive will result in serious sanctions." Despite this

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 24
 25 NICOLE C. ROBINSON, CSR
 JANELLE LONDON, RMR, CRR

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1 clear order, last night I learned that the subject offending
 2 post was never removed from the website "DonaldJTrump.com,"
 3 and, in fact, had been on that website for the past 17 days.
 4 I understand that it was removed late last night, but only
 5 in response to an e-mail from this Court.
 6 In the current overheated climate, incendiary
 7 untruths can, and in some cases already has, led to serious
 8 physical harm and worse.
 9 I will now allow defendants an opportunity to
 10 explain why this blatant violation of a gag order should not
 11 result in serious sanctions including financial penalties
 12 holding Donald Trump in contempt and/or possibly imprisoning
 13 him.
 14 Defendants.
 15 MR. KISE: Good morning, Your Honor.
 16 THE COURT: Good morning.
 17 MR. KISE: Let me begin by saying what I am going
 18 to tell you is based on my understanding.
 19 THE COURT: Sure.
 20 MR. KISE: Because as my staff will clearly affirm,
 21 I am the least technological person. I don't even have my
 22 corporate e-mail on my phone. So based on my understanding,
 23 what has happened here is truly inappropriate. So there
 24 were no new postings of any kind after October 3rd. The
 25 Truth Social post was taken down as of when President Trump

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1 represented in court, absolutely.
 2 My understanding of what happens, though, with the
 3 campaign machinery is as follows. So the Truth Social post,
 4 and I believe this happens with all social posts, they are
 5 captured and published on the website as what's called an
 6 ICYMI e-mail, which is an "In Case You Missed It" e-mail,
 7 which is what the link was that you sent last night.
 8 The campaign communication team sends out press
 9 releases as a matter of course as I understand. They are
 10 just packaged all and I think -- I will get to that in a
 11 minute. The press releases take the "truths" and they're
 12 marked [sic] up in Nucleus, that's the web provider Nucleus,
 13 and then they're teed up as an FYI e-mail that is sent in
 14 e-mail via Nucleus to the e-mail, the campaign e-mail list.
 15 THE COURT: Just let me interrupt one second. Do
 16 we know how many people are on the campaign e-mails?
 17 MR. KISE: I do not at this moment, but I can find
 18 that out for the Court. That's a fair question and the
 19 Court -- I think you noted this at the hearing because you
 20 stated, and this was based on our conversations I think off
 21 record, that I have since ordered the post deleted.
 22 Apparently, it was, but it was also e-mailed out to
 23 millions of other recipients. I think that's right. I
 24 could get you the precise number, but as you observed that
 25 day, that apparently is what happens, is that Truth and then

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1 it is packaged up by Nucleus and it is just sent out as an
 2 e-mail. Those e-mails cannot be recalled. The Truth post
 3 was taken down. Nothing further has been posted on Truth.
 4 President Trump has not made any statements of any kind
 5 about court staff, has abided by the order completely; but
 6 it appears no one also took down the ICYMI, In Case You
 7 Missed It, link that's in the campaign website in the back
 8 pages.
 9 So, again, this is my understanding, so bear with
 10 me, if you go to the website, there's a link for news and
 11 then you go to the link for news, that brings up other
 12 things and then part of that is a whole bunch of these
 13 ICYMI, In Case You Missed It links. So that link was
 14 not -- it appears was not taken down from the campaign
 15 website. The link has now been taken down as you observed
 16 and there is nothing else out there and I will get further
 17 confirmation of this, but I had confirmation last night and
 18 again this morning that we have no control over what is
 19 being published.
 20 So truly, this appears to be inadvertent between
 21 the campaign Nucleus and it is a very large operation. I'm
 22 not offering that by way of excuse. I'm just explaining the
 23 circumstances. It is clear that President Trump directed
 24 that this be done. I mean, he did it in my presence. He
 25 did it in your presence. He affirmed that he was taking the

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1 post down and it would be removed.
 2 So this is just part of the, for lack of a better
 3 word, unfortunate part of the process that is built into the
 4 campaign structure as I understand it, that all of his Truth
 5 posts are wrapped up and sent out by Nucleus and then sent
 6 out in these "In Case You Missed It" e-mails.
 7 So it is unfortunate. I certainly apologize on
 8 behalf of my clients and I can get further assurance from
 9 the tech people as to the number the e-mail went out to and
 10 re-confirmation that anything we have control over has been
 11 completely removed and deleted.
 12 THE COURT: I take issue with one thing you said,
 13 which I don't know, but when you said that he -- that
 14 Donald Trump ordered the post removed in my presence, no, he
 15 didn't. He went outside --
 16 MR. KISE: Okay. Okay. That's fair. He may not
 17 have. I don't remember the chain of events. I know that he
 18 did. I can assure you that he did and his communications, I
 19 believe, so there was no intention to evade or circumvent or
 20 ignore the order. I can assure you that. I just know that
 21 this is a very large machine and this is how it is. One of
 22 the reasons, frankly, I don't have social media because
 23 these things get away from you very, very rapidly, quite
 24 honestly, but that's it. It has been taken down and we
 25 don't have any other -- there were no subsequent postings,

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1 meaning that since the order was entered, my understanding
 2 is that there was nothing -- no further comment, no
 3 further -- it was all part of this process that sent it out
 4 and left it on the website in the back pages.
 5 THE COURT: Thank you.
 6 Mr. Robert, anything to add?
 7 MR. ROBERT: On behalf of my clients, I join in
 8 what Mr. Kise said. Thank you, your Honor.
 9 THE COURT: Plaintiff, anything to -- any
 10 comments?
 11 MR. WALLACE: Nothing from the Attorney General,
 12 Your Honor.
 13 THE COURT: I'll take this under advisement, but I
 14 want to make clear that Donald Trump is still responsible
 15 for the large machine even if it is a large machine.
 16 All right. We have some scheduling issues. I'm
 17 turning the microphone over to my principal law clerk.
 18 MS. GREENFIELD: We received, I know the parties
 19 are aware, we received a motion that was submitted last
 20 night by counsel for Ivanka Trump and I wanted to talk
 21 briefly to the parties about a briefing schedule for that.
 22 We'd like to obviously escalate that as quickly as possible
 23 and our intent as for right now is to try to schedule oral
 24 argument on that on a trial day, but to begin at 9:30 so as
 25 to not waste witness testimony.

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1 OAG and defendants, to the extent that you want
 2 brief on this issue, if you could let us know how soon you
 3 can get that done. We'd like to get this oral argument on
 4 the motion scheduled for next week, if possible.

5 MR. WALLACE: Would you like us to huddle first?
 6 We will do so during the break.

7 MS. GREENFIELD: Thank you.

8 MR. KISE: One more minor scheduling. I mean, as
 9 long as we are on scheduling. Judge Cannon in the case in
 10 south Florida has ordered a hearing on November 1st.
 11 There's going to be some dialog. I understand that they are
 12 in court today on another issue unrelated to my client, but
 13 I'm trying to find out if Judge Cannon will allow me to
 14 appear on a Monday or Friday or perhaps by video on
 15 Wednesday. I just want to alert the Court that I'm -- I
 16 may ask you to be excused from trial for one of those days,
 17 whatever day the hearing is.

18 THE COURT: All right. Thanks for the notice. We
 19 will deal with it if and when it comes out.

20 MR. ROBERT: One other mechanical thing, Your
 21 Honor, if I may. We are going to be submitting to you the
 22 pro hac application of Ivan Feris and Jennifer Hernandez to
 23 help with the depositions next week since we are doing deps
 24 and trial. The Attorney General has no opposition and since
 25 one of the depositions is Monday, we would just ask that the

D. MCARDLE - CROSS(MR. FIELDS) Page 2029

1 Farm subdivision; is that accurate?
 2 A He did.
 3 Q And this was, again, related to Seven Springs, right?
 4 A Related to Seven Springs, correct.
 5 Q This was Mr. David Turner?
 6 A Yes, it was.
 7 Q Would you agree that it is common in your industry to
 8 rely on real estate brokers for comparables?
 9 A It all depends on the assignment at hand. This
 10 assignment was unique. I wanted to make sure that I did the
 11 correct level of due diligence and I felt it was appropriate to
 12 bring in someone very local who had an understanding of the
 13 immediate land values in Bedford, New Castle, North Castle as an
 14 assist for the process. So in this case, it was appropriate to
 15 lean on a real estate broker.
 16 Q In large part, it was appropriate and it was in this
 17 case because the real estate broker has an appreciation for the
 18 local values of the land; is that fair?
 19 A It is fair.
 20 Q If I could, Mr. McArdle, if we could put up Plaintiff's
 21 132 that was admitted yesterday. I certainly don't intend this
 22 to be a Perry Mason moment, but I want to ask a clarifying
 23 question. If you recall there was some questioning with Mr.
 24 Gaber regarding the engagement and who the client was on the
 25 engagement. Do you generally recall that line of questioning?

R FLORES - DIRECT(MR. AMER) Page 2028

1 Court sign the order as soon as possible. We will be UCF-g
 2 it this morning. Thank you.

3 THE COURT: Granted.

4 MR. ROBERT: Thank you.

5 THE COURT: Let's get the witness.

6 MR. FIELDS: We took Your Honor's direction to
 7 heart last night. This cross-examination will be
 8 exceedingly brief and we will get Mr. McArdle out for an
 9 early weekend and we can move forward.

10 THE COURT: Okay.

11 THE OFFICER: Witness entering.

12 THE COURT: I will advise the witness, as I always
 13 do, that he is still under oath. Let's continue the
 14 examination by Mr. Fields.

15 MR. FIELDS: Thank you, Your Honor.

16 CROSS-EXAMINATION
 17 BY MR. FIELDS: (CONT'D)

18 Q I have a series of short questions for you and we will
 19 have you on your way for the weekend.
 20 A Thank you.
 21 Q You testified yesterday, I believe it was, relating to
 22 Seven Springs, that you reached out to a real estate broker in
 23 the Connecticut area; is that correct?
 24 A He was based in Westchester County.
 25 Q And he had -- did he have knowledge of the Conyers

D. MCARDLE - CROSS(MR. FIELDS) Page 2030

1 A Yes.
 2 Q Okay. Just for the record, where it says, "the parties
 3 to this agreement," in the middle of the page, would you agree
 4 with me that the two parties listed there are Cushman &
 5 Wakefield Affiliated Company and Trump Briarcliff Manor
 6 Development, LLC?
 7 A Yes those are the parties to the agreement.
 8 Q If you would flip to the sixth page of the engagement
 9 letter.
 10 A Okay.
 11 Q Again, in the middle where it says, "agreed," it lists
 12 the client as Trump Briarcliff Manor Development, LLC, it has
 13 Mr. Eric Trump's signature and then underneath that, it says,
 14 "title EVP."
 15 Did you understand that to mean that he was signing as
 16 executive vice-president of that particular LLC?
 17 A Yes, that was my understanding.
 18 Q Thank you.
 19 MR. FIELDS: I apologize.
 20 THE COURT: "Thank you" isn't so bad. It is the
 21 "great" that I objected to.
 22 Q Again, also, Mr. McArdle, you worked with Sherri Dillon
 23 who was an attorney on behalf of some of the Trump related
 24 entities; is that fair?
 25 A That's correct.

D. MCARDLE - CROSS(MR. FIELDS) Page 2031

1 Q Would you agree with me that Ms. Dillon is meticulous?
 2 A I would agree with that.
 3 Q Would you agree with me that Ms. Dillon is a good,
 4 diligent attorney?
 5 A Based on my experience with her, she appeared to be.
 6 MR. FIELDS: If I may, I'm going to hand up to the
 7 witness what's been marked for identification as Plaintiff's
 8 175.
 9 Q Take a look at this and let me know if you recognize
 10 it.
 11 A I do recognize this e-mail.
 12 Q And is this an e-mail between you and Mr. Timothy
 13 Barnes?
 14 A This is an e-mail from myself to a colleague at Cushman
 15 & Wakefield, Timothy Barnes.
 16 MR. FIELDS: Your Honor, I move to admit
 17 Plaintiff's 175.
 18 MR. ROBERT: Again, this is one of the times when
 19 introducing an exhibit subject to our statute of limitations
 20 because questions were brought out on direct. Same as we've
 21 done in the past.
 22 THE COURT: I understand. The objection is noted.
 23 Overruled.
 24 MR. GABER: I want to note that there is a -- it
 25 is unclear whether or not this was a draft or whether it was

D. MCARDLE - CROSS(MR. FIELDS) Page 2032

1 sent.
 2 THE COURT: You may ask the witness.
 3 (Whereupon, the Document was marked in evidence as
 4 Plaintiff's Exhibit 175.)
 5 Q Would you note, Mr. McArdle -- I will represent to you
 6 this was produced to us as you can see on the bottom -- scroll
 7 to the bottom.
 8 There is a Cushman & Wakefield Bates number on the
 9 bottom, C&W, do you see that?
 10 A Yes.
 11 Q I'll represent to you that this was produced as part of
 12 this litigation from Cushman & Wakefield, but do you see at the
 13 top that there's a blank space next to the from? Do you have
 14 any idea why that would be blank?
 15 A No. I've seen this before and I don't understand the
 16 reason for it.
 17 Q Fair enough. Neither do I, but, nevertheless, you sent
 18 this e-mail to Mr. Barnes; is that fair?
 19 A That is fair.
 20 Q This was in May of 2015. Would it be fair to say that
 21 you were reaching out to Mr. Barnes to inquire whether he was
 22 interested on working on the Seven Springs conservation easement
 23 appraisal?
 24 A That is correct.
 25 Q You noted that you had been working with this outside

D. MCARDLE - CROSS(MR. FIELDS) Page 2033

1 legal staff for several years. Would that be Ms. Sherri Dillon?
 2 A That's correct.
 3 Q You noted that the assignment was not a great fit for
 4 you for several reasons. Was one of those reasons that you were
 5 extremely busy around this time?
 6 A That's correct. I had a very heavy workload and it
 7 really was not a good fit. I was hoping to serve some other
 8 clients, you know, do the right thing for them as well.
 9 Q And would it also be fair to say that Mr. Barnes had a
 10 little bit more subject matter expertise regarding this easement
 11 appraisal?
 12 A I wouldn't necessarily say he had more experience, but
 13 he was clearly competent and I believed that he could get the
 14 job done.
 15 Q And then the second to last line, Mr. McArdle, you note
 16 that the attorney is excellent. Who are you referring to when
 17 you refer to the attorney?
 18 A Sherri Dillon.
 19 Q And regarding Seven Springs, would you agree with me
 20 that Mr. Eric Trump had a view that when Seven Springs was
 21 developed, it would be equally comparable to Conyers Farms?
 22 A That was his view.
 23 Q And that's Mr. Trump felt that was one of the best
 24 comps to compare Seven Springs to; is that fair?
 25 A It was one of his favorite comps to promote.

D. MCARDLE - CROSS(MR. FIELDS) Page 2034

1 THE COURT: Remember, try to use first names
 2 because Mr. Trump could refer to several people.
 3 MR. FIELDS: Yes, sir.
 4 Q I'm referring to Mr. Eric Trump.
 5 MR. FIELDS: Thank you, Your Honor. I apologize.
 6 Q Would you agree that as an owner of the property, Mr.
 7 Trump, Eric Trump is entitled to have his view?
 8 A Yes. We always seek out an opinion. It's fair to
 9 obtain their input.
 10 Q There was also an issue regarding litigation in Seven
 11 Springs, an access road? Do you generally recall that there was
 12 some litigation involving an access road in Seven Springs?
 13 A I do.
 14 Q And would you agree with me that that litigation was
 15 just a piece of information that went into your overall analysis
 16 for these --
 17 MR. GABER: This is going beyond the scope of the
 18 direct at this point and so I'm just wondering if they're
 19 taking Mr. McArdle for their case at this point out of turn
 20 or what's going on.
 21 MR. FIELDS: We can. I was just going to ask him
 22 about the Seven Springs conservation easement appraisal.
 23 THE COURT: Is it outside the scope of direct and
 24 if so, are you addressing him as your witness?
 25 MR. FIELDS: Well --

D. MCARDLE - CROSS(MR. FIELDS) Page 2035

1 MR. KISE: I don't think it is outside the scope of
 2 direct at all. I mean, I certainly don't, but to the extent
 3 that that makes everyone happier, then we can say fine. We
 4 certainly don't want to trouble this witness with bringing
 5 him back, but I don't see that it's at all outside the scope
 6 of direct. It relates to Seven Springs and the appraisals
 7 and the conservation easement. It is all the same subject
 8 matter.
 9 MR. GABER: If that's the case and the
 10 representation, that's fine by us.
 11 MR. KISE: Yes.
 12 THE COURT: Okay. So we will just continue with
 13 the vague sense of yeah, just go ahead and do it.
 14 Q So let me restate the question, if I could, Mr.
 15 McArdle. Would you agree with me that the litigation involving
 16 the access road was just a piece of information that went into
 17 your overall analysis for the property?
 18 A Yes, it was. I was gathering a lot of facts and this
 19 was -- this was -- I was aware of that at the time.
 20 Q But the litigation involving the access road was not a
 21 dispositive issue in your analysis because there were
 22 alternatives that were suitable and reasonable; is that right?
 23 A Could you repeat that?
 24 Q Sure. The litigation involving the access road was not
 25 a dispositive issue for you because there were alternatives that

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1 were suitable and reasonable; is that right?
 2 A That's correct.
 3 MR. FIELDS: Thank you very much. Have a wonderful
 4 weekend.
 5 THE COURT: Is that it for defense? Any re-direct?
 6 MR. GABER: No, Judge.
 7 THE COURT: I may have one question. Hold on.
 8 Mr. McArdle, my one question and you've probably
 9 been asked this before, are you related to Andrea McArdle,
 10 Broadway's first Annie?
 11 THE WITNESS: No. It has been asked many times,
 12 but I'm not.
 13 THE COURT: Oh, shucks.
 14 THE WITNESS: I do have some redheads in the
 15 family.
 16 THE COURT: Thank you. You're excused.
 17 THE WITNESS: Thank you.
 18 (Witness excused.)
 19 THE COURT: I think he is on his way here, but
 20 plaintiff, would you like to call your next witness.
 21 MR. AMER: We would, Your Honor. The people call
 22 Raymond Flores.
 23 (Continued on the next page.)
 24
 25

R. Flores - Plaintiff - direct (Amer) Page 2037

1 THE COURT OFFICER: Witness entering.
 2 (Whereupon, the witness enters the courtroom and
 3 approaches the witness stand.)
 4 THE COURT OFFICER: Please raise your right hand.
 5 Do you solemnly swear or affirm any testimony you
 6 give will be the truth, the whole truth and nothing but the
 7 truth?
 8 THE WITNESS: I do.
 9 THE COURT OFFICER: Please have a seat. Please
 10 state your full name and either home or business address on
 11 the record.
 12 THE WITNESS: Raymond Flores. Home address is 525
 13 West 52nd Street, Apartment 14D, New York, New York 10019.
 14 THE COURT: And I'll direct the witness you need to
 15 speak right into the mic, like, this loudly, clearly,
 16 slowly.
 17 And let's start with the questions.
 18 MR. AMER: Thank you.
 19 DIRECT EXAMINATION
 20 BY MR. AMER:
 21 Q Good morning, Mr. Flores. My name is Andrew Amer. I'm
 22 with the Attorney General's Office.
 23 Can we start with just having you summarize for the
 24 Court your educational background after high school?
 25 A I graduated from the University of Pennsylvania in

R. Flores - Plaintiff - direct (Amer) Page 2038

1 2010.
 2 Q And what was your degree in?
 3 A Bachelor's of science and economics.
 4 Q And subsequent to graduating have you received any
 5 professional certifications or licenses?
 6 A No.
 7 Q And can you take us through your employment history
 8 following your graduation from Wharton?
 9 A I worked with Moody's Investors Service from November
 10 of 2010 through June of 2012. Subsequently, I joined the Trump
 11 Organization from June of 2012 through March of 2022, and I'm
 12 currently employed by Brev Management as of March of 2022 to
 13 today.
 14 Q Let me just go back and fill in some details.
 15 For the year and a half that you were at Moody's what
 16 was your title?
 17 A I believe I was an associate analyst.
 18 Q And what area were you an analyst in?
 19 A The commercial real estate finance team.
 20 Q And when you joined the Trump Organization in June of
 21 2012, what was your title that you started at?
 22 A I was an analyst.
 23 Q And were you an analyst within any particular team?
 24 A I believe it was the acquisitions and development team.
 25 Q And can you just tell us very generally what your role

R. Flores - Plaintiff - direct (Amer) Page 2039

1 was as an analyst with the acquisitions and development team?
 2 A At that point in time it was -- I was responsible for
 3 primarily financial analysis for the real estate investments of
 4 the company.
 5 Q Did it include analysis for underwriting new
 6 acquisitions?
 7 A It did.
 8 Q Did it include analysis for development opportunities?
 9 A It did.
 10 Q Did your title change over the course of your
 11 employment at the Trump Organization?
 12 A Yes.
 13 Q And can you just walk us through the various title
 14 changes you had and approximately when those titles changed?
 15 A I believe my title changed in 2014 to associate and in
 16 2016 to vice president.
 17 Q And with all those title changes did you remain within
 18 the acquisitions and development team?
 19 A I did.
 20 Q And was there any change in responsibilities with each
 21 of those promotions?
 22 A Overall the job remained supporting acquisitions and
 23 development, but the scope went beyond financial analysis to
 24 negotiating agreements related to financings and the asset
 25 management of the properties.

R. Flores - Plaintiff - direct (Amer) Page 2040

1 Q And between June of 2012 when you joined the Trump
 2 Organization and March of 2022 when you left, can you tell us
 3 who you reported to and if it changed over time when?
 4 A From June of 2012 to sometime in 2016, I forget the
 5 approximate date, I reported to David Orowitz. Following
 6 Mr. Orowitz's departure I reported to Don, Jr. and Eric Trump.
 7 Q At any point in time did you report to Ivanka Trump?
 8 A I believe directly from the point of David Orowitz's
 9 departure in 2016 to Mrs. Trump's departure from the company in
 10 2016.
 11 Q And when did Mr. Orowitz leave?
 12 A Sometime fall of 2016, I believe.
 13 Q Did you have any dotted-line reporting responsibilities
 14 to Eric Trump during the period of time that you were at the
 15 Trump Organization?
 16 A Can you define "dotted line?"
 17 Q Well, not a direct reporting relationship, but a
 18 reporting relationships nonetheless?
 19 A And can you repeat the first part of that question?
 20 Q Sure. Did you have any dotted-line reporting
 21 relationship with Eric Trump during any period of time that you
 22 were at the Trump Organization?
 23 A Well, I reported directly to Eric Trump from -- I guess
 24 -- from the fall of 2016 to my departure I did report directly
 25 to Eric Trump.

R. Flores - Plaintiff - direct (Amer) Page 2041

1 Q So from 2016 to your departure you reported directly to
 2 Eric Trump, yes?
 3 A Correct.
 4 Q And Donald Trump, Jr. did you report to him directly
 5 during that period as well?
 6 A Correct.
 7 Q Did you ever report to Allen Weisselberg?
 8 A I did not.
 9 Q Okay. Did you ever report directly to Jeff McConney?
 10 A I did not.
 11 Q And prior to 2016 when you said that you had a direct
 12 reporting relationship with Eric Trump and Donald Trump, Jr.,
 13 did you ever have a dotted line reporting relationship to either
 14 of them?
 15 A So I did not have a direct reporting relationship to
 16 Eric -- I think your question was before 2016.
 17 Q Yes, but my question was a dotted line reporting
 18 relationship.
 19 A I believe they were indirect, yes.
 20 Q So just to circle back to make sure the record is
 21 clear, prior to 2016 when you began directly reporting to Eric
 22 Trump and Donald Trump, Jr. you had a dotted line reporting
 23 relationship to both of them. Is that fair?
 24 A Yes.
 25 Q And focusing on the period of time when you were vice

R. Flores - Plaintiff - direct (Amer) Page 2042

1 president, did you interact with Mr. Weisselberg at all?
 2 A I did.
 3 Q And how often?
 4 A I believe once a week.
 5 Q And can you describe generally the nature of your
 6 interactions with Mr. Weisselberg during that period of time?
 7 A I believe it was relating to existing assets within the
 8 portfolio.
 9 Q Can you just tell us, though, what the nature of the
 10 interaction was with Mr. Weisselberg?
 11 A I can -- can you provide more context to that question?
 12 Q Sure. What was the business purpose for you to be
 13 interacting with him?
 14 A I think Allen at points in time would reach out for
 15 information regarding certain properties that I had a role in
 16 managing and overseeing.
 17 Q Generally speaking what were the properties that you
 18 had a role in managing or overseeing?
 19 A It was the Old Post Office redevelopment in Washington,
 20 D.C.; there was a golf resource in Doral, Florida; hotel in
 21 Chicago or the primary properties that I helped manage.
 22 Q And during the period of time that you were vice
 23 president did you have any interactions with Mr. McConney?
 24 A I did.
 25 Q And how often would you interact with Mr. McConney?

R. Flores - Plaintiff - direct (Amer) Page 2043

1 A Probably a handful of times in a given month.

2 Q And can you generally describe the nature of your

3 interactions with Mr. McConney?

4 A Similar to the types of interactions with

5 Mr. Weisselberg, Mr. McConney would reach out for information

6 regarding the properties that I was responsible for managing and

7 I was primarily the outreach.

8 Q So prior to leaving the Trump Organization in March of

9 2022, were you ever involved in the preparation of

10 Donald J. Trump's Statements of Financial Condition?

11 A I was. I believe I was involved beginning in --

12 towards the end of 2020 in the preparation of the Statement of

13 Financial Condition presented to outside parties in 2021, but

14 prior to that I was not involved with the preparation of that

15 statement.

16 Q Just so we're clear, because you said presented in

17 2021, but if -- the statement you began working on in late 2020

18 was that the statement that was as of June 2020?

19 A I don't recall. I believe it was, but I don't recall.

20 Q And was there a second statement that you were involved

21 in that would have been as of June 30, 2021 that you

22 participated in working on before you left in March of '22?

23 A I don't recall.

24 Q You do recall, though, beginning work on the Statement

25 of Financial Condition as early as late 2020; is that right?

R. Flores - Plaintiff - direct (Amer) Page 2044

1 A That's correct.

2 Q Prior to your involvement in the preparation of the

3 June 30, 2020 Statement of Financial Condition were you aware

4 that such a document existed within the company?

5 A I was not aware that that document existed.

6 Q And can you describe for us what the nature of your

7 involvement was in the preparation of that initial statement

8 that you were involved in, the one that was in late 2020?

9 A I believe Alan Garten, chief legal officer of the

10 company reached out to ask for me to review the statement -- the

11 preparation of the Statement of Financial Condition.

12 Q So my question's a little different. It wasn't about

13 how you first got involved. It was just to describe for me the

14 nature of what you did in connection with your role in the

15 preparation of the statement.

16 A I reviewed the statement and the underlying assumptions

17 that went in the valuations.

18 Q Let me pause on the first half of your answer.

19 You said you reviewed the statement. Did you review

20 the -- we've seen two documents, one called the Jeff Supporting

21 Data spreadsheet and then the actual spreadsheet itself. So

22 when you said you reviewed the statement, what were you

23 referring to?

24 A I believe I reviewed -- I believe I reviewed

25 descriptions of the property valuations that went into the

R. Flores - Plaintiff - direct (Amer) Page 2045

1 statement. I don't actually recall reviewing the final

2 statement.

3 Q Do you recall reviewing an Excel spreadsheet?

4 A Can you be more specific about the Excel spreadsheet?

5 Q We'll look at some -- so maybe that's the better way

6 and we'll see if you can help me out on that.

7 When you say that you reviewed assumptions, what

8 assumptions did you review?

9 A Primary assumptions were the parables that supported

10 specific valuations.

11 Q Do you recall if there were specific assets that you

12 reviewed the assumptions for?

13 A I believe one of the primary assets was 40 Wall Street,

14 the Old Post Office and the Old Post Office in Washington, D.C.

15 Q Any others?

16 A Not that I can recall.

17 Q Did you review any assumptions for the golf courses?

18 A I did not, no.

19 Q How about Mar-A-Lago?

20 A I recall reviewing assumptions on comparables for that

21 property.

22 Q As you sit here today, do you recall reviewing

23 assumptions for any assets other than what we've just discussed?

24 A No.

25 Q And did you -- when you reviewed assumptions, did you

R. Flores - Plaintiff - direct (Amer) Page 2046

1 also review in addition to -- I think you said comps. Did you

2 review capitalization rates?

3 A I believe so.

4 Q Who did you work with in connection with your

5 participation on the 2020 Statement of Financial Condition?

6 A It was Allen Garten, Adam Rosen, Allen Weisselberg,

7 Jeff McConney, and Patrick Birney.

8 Q Do you recall -- just to see if it refreshes your

9 recollection, did you look at any assumptions in connection with

10 the assets held by the Vornado Partnership Interests, 1290

11 Avenue of the Americas and 555 California Street?

12 A I don't believe so, no.

13 Q Did you review any language of the 2020 Statement of

14 Financial Condition in draft form?

15 A I believe I reviewed some excerpts that were meant to

16 go into the draft of the Statement of Financial Condition.

17 Q And who provided you with those excerpts?

18 A I don't recall.

19 Q To your understanding when you were working on the

20 preparation of the 2020 Statement of Financial Condition, who

21 had final approval of the methodologies used and the assumptions

22 made?

23 A I don't know.

24 Q So you didn't have any understanding among the group

25 that you were working with who had final approval?

R. Flores - Plaintiff - direct (Amer) Page 2047

1 A No, I did not.

2 Q And you continued to work on the preparation of the

3 statement through March of 2022 when you left; is that right?

4 A I recall working on the 2020 statement. I can't recall

5 if I worked on the 2021 statement.

6 Q And my question was a little bit different, though.

7 I just want to know if you have a recollection of

8 continuing to work with the group on the preparation of the

9 statement all the way through when you left in March of 2022?

10 A No, I don't recall.

11 Q Do you recall participating in a call in the fall of

12 2021 with others to discuss valuation methods?

13 A I don't recall.

14 Q Let's go ahead and talk about some work you did with

15 respect to the golf clubs.

16 Were you aware that for some golf clubs members paid a

17 refundable membership deposit?

18 A I do.

19 Q And were the refundable membership deposits something

20 that you were tasked to keep track of?

21 A I was.

22 Q And who tasked you to keep track of those membership

23 deposits?

24 A I believe it was Eric Trump.

25 MR. AMER: Let's go ahead and mark Plaintiff's

R. Flores - Plaintiff - direct (Amer) Page 2048

1 Exhibit 2041.

2 Q Mr. Flores, do you see page one and page three are

3 e-mail exchanges that you are included on?

4 A I see that.

5 Q And the second and fourth pages are slip sheets for the

6 attachments that are native files.

7 MR. AMER: Your Honor, I ask that this be admitted

8 into evidence.

9 MR. ROBERT: Objection. Statute of limitations.

10 THE COURT: Overruled. It's in.

11 (Whereupon, the item previously referred to is

12 received and marked Plaintiff's Exhibit Number 2041 in

13 evidence.)

14 Q Let's look at the third page. And this is an e-mail to

15 -- from Ian Gillule to Eric Trump and you are cc'd on this

16 e-mail?

17 A Correct.

18 Q And the subject is "Trump Westchester Membership

19 Deposit and Resignation Spreadsheet." Is that the same golf

20 course that's also known as Briarcliff?

21 A I believe so.

22 Q And Mr. Gillule writes in the second paragraph:

23 "Per your e-mail to Karen, I've put together the

24 information you've requested. Please see the attached

25 spreadsheet containing two tabs, one with membership deposit

R. Flores - Plaintiff - direct (Amer) Page 2049

1 information and the second tab with the resignation lists."

2 Do you see that?

3 A Yes.

4 Q To your knowledge was membership deposit information

5 something that Eric Trump was interested in tracking?

6 A Yes.

7 Q And do you have an understanding as to why he was

8 interested in tracking that information?

9 A I don't know.

10 Q I think you testified, though, that he tasked you with

11 tracking the information; correct?

12 A Beyond tracking the information, I don't know why he

13 wanted me to do that.

14 Q He asked you to do it but he never told you why he

15 wanted you to do it?

16 A Correct.

17 Q Okay. If you go to the e-mail on the first page, the

18 bottom e-mail, that's from Eric Trump to you; correct?

19 A Correct.

20 Q And he says to you: "I wanted to introduce you to

21 Brian, our new GM at Trump National Westchester. Brian is going

22 through all the files and getting everything perfectly

23 organized. Why don't you link up next week and take him through

24 all of your spreadsheets for the property. He is working on a

25 few addendum as we speak and they probably need to be update" --

R. Flores - Plaintiff - direct (Amer) Page 2050

1 should be, I think, "updated as it was probably a year ago that

2 these were created. I leave it to you to connect."

3 See that?

4 A Yes, I see this.

5 Q And then you write to Brian in the top e-mail:

6 "Hope all is well and welcome to the team. Per Eric's

7 e-mail below, I've attached a workbook I put together last

8 summer when Eric asked me to coordinate with all the clubs to

9 summarize membership liabilities." Do you see that?

10 A Yes.

11 Q So is it correct that in the summer of 2014 you were

12 asked by Eric Trump to coordinate with all the clubs to

13 summarize membership liabilities?

14 A That's what the e-mail says, but I can't recall.

15 Q Do you have any reason to believe based on what you've

16 written to Brian that that wasn't the case?

17 A No.

18 Q And is the workbook being referenced here material that

19 was tracking the membership deposit liabilities?

20 A It was one form of tracking the liabilities. I believe

21 the accounting team at the property also tracked the liabilities

22 as well.

23 Q Okay. So this was something you started doing in the

24 summer of 2014; correct?

25 A I don't recall when I started tracking the liabilities

R. Flores - Plaintiff - direct (Amer) Page 2051

1 for this club.
 2 Q Well, you wrote to Brian saying that you started
 3 working on the attached workbook last summer; right?
 4 A That's what that e-mail says, but I -- the starting
 5 point of tracking, I can't recall if that summer or might have
 6 been prior to that.
 7 Q It was at least as far back as the summer of 2014?
 8 A I believe so.
 9 MR. AMER: Let's put up Exhibit 2041, native one.
 10 Q Do you recognize this, Mr. Flores, as one of the
 11 spreadsheets that was an attachment to this e-mail?
 12 A This tab looks familiar.
 13 MR. AMER: Your Honor, I'm not sure if we're
 14 admitting separately the native files or whether they're all
 15 in with the initial e-mail.
 16 THE COURT: It's simpler with the initial e-mail, I
 17 think.
 18 MR. ROBERT: I figured it was with the initial
 19 e-mail.
 20 THE COURT: Good.
 21 Q And then if we go to native two of the Exhibit 2041.
 22 This is entitled registration list.
 23 And then if you click on the first tab -- I'm sorry --
 24 "Resignation List." And then the first tab is "membership
 25 refundability." Do you see that?

R. Flores - Plaintiff - direct (Amer) Page 2052

1 A Yes, I can see that.
 2 Q And so is this -- are these spreadsheets the
 3 spreadsheets you created to track membership deposit
 4 liabilities?
 5 A Not this spreadsheet, no.
 6 Q Was this one of the attachments to the e-mail as far as
 7 you could tell?
 8 A I don't know.
 9 Q Does this track membership deposit liabilities?
 10 A That's what it appears to track, but I did not produce
 11 this.
 12 Q Do you know who did prepare this?
 13 A I don't know.
 14 Q Did you prepare spreadsheets like this to track the
 15 membership deposit liabilities?
 16 A Yes, they contain similar types of information, but I
 17 did not produce this document.
 18 MR. AMER: Let's look at Row 345.
 19 Q So based on your familiarity with preparing
 20 spreadsheets that track membership liabilities are you familiar
 21 with what this row is reflecting?
 22 A Can you scroll back up to the top, please? And can you
 23 scroll back to Row 345? I don't know what that row number
 24 represents.
 25 Q Well, it says "total," right?

R. Flores - Plaintiff - direct (Amer) Page 2053

1 A It is a total but -- yes, it's a sum of columns E and
 2 F.
 3 MR. AMER: Let's look at another document, PX 2040.
 4 Q Mr. Flores, this is a series of e-mail exchanges you
 5 have with Heidi Brzyski at TrumpNational.com; correct?
 6 A It appears to be what this is.
 7 Q And it has some slip sheets for some attachments that
 8 are part of this e-mail exchange.
 9 MR. AMER: I'd move to admit this into evidence
 10 with the attachments.
 11 MR. ROBERT: Statute of limitations.
 12 THE COURT: Overruled.
 13 (Whereupon, the item previously referred to is
 14 received and marked Plaintiff's Exhibit Number 2041 in
 15 evidence.)
 16 Q Mr. Flores, let's look at the bottom e-mail on
 17 page one. You're writing to Ms. Brzyski. And who is she, by
 18 the way?
 19 A According to this e-mail she is the general manager of
 20 Colts Neck.
 21 Q That's one of the Trump golf courses; correct?
 22 A I believe -- correct.
 23 Q And you write to her:
 24 "Hope all is well. I'm working with Eric to update our
 25 records on the total membership refundability across our

R. Flores - Plaintiff - direct (Amer) Page 2054

1 courses. Can you please send us your current spreadsheet and
 2 full resignation list with names, refund amounts, and any other
 3 permutations or notes for everyone with a refund obligation;"
 4 correct?
 5 A Yes, that's what this e-mail says.
 6 Q So this was October 2015 and this was part of your
 7 undertaking to update records on total membership refundability;
 8 correct?
 9 A I believe so.
 10 Q So did you send similar e-mails to managers of other
 11 golf courses within the Trump Organization to collect similar
 12 information to allow you to update the records on membership
 13 refundability?
 14 A I did.
 15 Q And you were doing that in connection with direction
 16 given to you by Eric Trump; correct?
 17 A Correct.
 18 Q And in the top e-mail she sends you back the refundable
 19 deposit list and resignation list; correct?
 20 A That's what the e-mail says, correct.
 21 MR. AMER: Let's go ahead and mark 3212.
 22 Q You see this is -- the top e-mail is an e-mail exchange
 23 that includes you as a carbon copy; correct?
 24 A That's what the e-mail says, correct.
 25 Q And the subject is "golf liabilities." Do you see

R. Flores - Plaintiff - direct (Amer) Page 2055

1 that?

2 A Correct.

3 MR. AMER: Your Honor, I ask that this be admitted

4 into evidence.

5 THE COURT: Granted.

6 (Whereupon, the item previously referred to is

7 received and marked Plaintiff's Exhibit Number 3212 in

8 evidence.)

9 Q Let's look at the top e-mail that you were copied on.

10 Says, "Hope all is well." And this is being sent in March of

11 2017. Do you see that?

12 A Yes.

13 Q And it's from Jonathan Etra at the Trump Organization.

14 He's -- is he somebody who is within the same team as you?

15 A Yes, he was.

16 Q He writes to a woman named Gina Galeros, "Hope all is

17 well. Per Eric Trump's instruction we are having each golf

18 property with membership liabilities begin utilizing the

19 corporate liabilities matrix attached which is based off

20 information provided by you and updated as of 12/31/2016."

21 Was this matrix that Mr. Etra is referring to something

22 that you and he began using to track membership deposit

23 liabilities?

24 A I don't -- do you have a copy of the attachment? I

25 don't know what it looks like.

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1 Q I'm just asking for your best recollection, Mr. Flores.

2 A No, I can't recall if the attachment referenced in this

3 e-mail was what you're asking.

4 Q So I'm not -- my question wasn't specific to the

5 attachment. It was just very generally do you have a

6 recollection of using a matrix in this time frame to reach out

7 to the golf clubs for tracking membership deposit liabilities?

8 A Yes.

9 Q And was Mr. Etra working with you on this project at

10 this point in time?

11 A I believe so.

12 Transcript continues on the following page....

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R. FLORES - DIRECT(MR. AMER) Page 2057

1 Q And again, this project using this matrix to track

2 membership deposit liabilities was something that was being done

3 per Eric Trump's instruction, correct?

4 A Yes.

5 Q Did you continue to be involved in tracking the

6 refundable membership liability -- the membership deposit

7 liabilities at golf courses that had such deposits until you

8 left in March of 2022?

9 A Yes.

10 Q And throughout that time, it was being done by you and

11 others on your team at Eric Trump's direction; is that right?

12 A Yes.

13 Q Let's look at the 2017 Statement of Financial Condition

14 which is in evidence as Plaintiff's Exhibit 755. So Mr. Flores,

15 I think we established that you were not aware of this document

16 at the time that it was issued, correct?

17 A That's correct.

18 Q In connection with your work on the 2020 Statement of

19 Financial Condition, you did see excerpts from the then in draft

20 statement, correct?

21 A I believe for prior statements, I reviewed a

22 spreadsheet with underlying information.

23 Q My question was a little different, and I thought I

24 heard you testify before that for the actual Statement of

25 Financial Condition that you were working on in 2020, you did

R. FLORES - DIRECT(MR. AMER) Page 2058

1 see some excerpts from it?

2 A Correct; but for prior statements, I had not.

3 Q Right.

4 Let's go to page 11 of 24 in this exhibit and let's go

5 to the Colts Neck section. If you scroll up a little bit. I

6 just want to read to you the last couple of sentences in that

7 paragraph. And we were looking, by the way, at the exchange

8 with the manager for Colts Neck about tracking the membership

9 liabilities. Do you recall that?

10 A Yes.

11 Q Okay. In this Statement of Financial Condition, this

12 is the final version that was issued for 2017. It says, "Prior

13 to June 1, 2010, one condition of membership was the

14 contribution of a non-interest-bearing deposit that does not

15 require repayment until certain terms are met and then only upon

16 the member's resignation. The fact that Mr. Trump will have the

17 use of these funds for that period without cost and that the

18 source of repayment will most likely be a replacement membership

19 has led the trustees to value this liability at zero and not its

20 present value." Do you see that?

21 A Yeah, that's what this document says.

22 Q Is it the case, Mr. Flores, that while the trustees

23 were valuing the membership deposit liabilities at zero, you and

24 others were working to track the membership deposit liabilities

25 across the clubs at Eric Trump's direction?

R. FLORES - DIRECT(MR. AMER) Page 2059

1 A That's correct.

2 Q Just to make sure the court reporter got it, you said

3 "that's correct"?

4 A Yes.

5 MR. AMER: Okay. Can we put up next to this, side

6 by side, the 2020 statement which is Exhibit 856 in

7 evidence. If we could go to -- I think it's page 9 of 21,

8 but it is the Colts

9 Neck -- yes.

10 Q You'll see, Mr. Flores, the same language appears in

11 this document. Prior to June 1, 2010, one condition of

12 membership was the contribution of a non-interest-bearing

13 deposit that does not require repayment until certain terms are

14 met and then only upon member's resignation. The fact that Mr.

15 Trump will have the use of these funds for that period without

16 cost and that the source of repayment will most likely be a

17 replacement membership has led the trustees to value this

18 liability at zero and not its present value." Same language,

19 right?

20 A That's correct.

21 Q Was this language language that you reviewed in

22 connection your work in preparing the 2020 Statement of

23 Financial Condition?

24 A No.

25 Q But it does appear that while the trustees were valuing

R. FLORES - DIRECT(MR. AMER) Page 2060

1 the membership deposit liabilities at zero for purposes of the

2 2020 Statement of Financial Condition, that you yourself were

3 helping to prepare -- you and others were tracking those deposit

4 liabilities at Eric Trump's direction, correct?

5 A Correct.

6 Q I want to shift to a different topic. Do you recall

7 that there came a point in time when you were helping prepare

8 the Statement of Financial Condition, that the methodology for

9 valuing golf clubs in 2020 changed?

10 A I don't recall.

11 Q Okay.

12 MR. AMER: Why don't we put up the 2021 supporting

13 data spreadsheet and it is Exhibit 352 in evidence. I would

14 like to look at Briarcliff which begins on row 289.

15 Q So let me first ask looking at this spreadsheet, is

16 this the spreadsheet format that you reviewed in connection with

17 your work helping to prepare the Statements of Financial

18 Condition?

19 A I believe for the 2020 statement, correct.

20 Q If you look at row 308, you'll see it says, "6/30/20,

21 upon the advice and guidance of Marcus & Millichap, golf course

22 industry experts, we left the golf course value unchanged from

23 2019." Do you see that?

24 A Yes, that's what the document says.

25 Q Then if you look at row 306, it says, "Upon the advice

R. FLORES - DIRECT(MR. AMER) Page 2061

1 and guidance of Marcus & Millichap, golf course industry

2 experts, a normal golf course with a negative EBITDA trades at

3 two to three times gross revenue. We took on average of three

4 times gross revenue and net fixed assets." Do you see that?

5 A That's what the document says.

6 Q Do you recall participating in a telephone call with

7 Marcus & Millichap where the subject of this new methodology was

8 discussed?

9 A No.

10 Q You have no recollection at all about participating in

11 that telephone call?

12 A I don't.

13 Q You see where it says, "We took an average of three

14 times gross revenue and net fixed assets." Did you play any

15 role in the decision to average those two numbers for purposes

16 of the valuation in 2021?

17 A No.

18 Q So the idea of averaging the net fixed assets and the

19 three times gross revenue, you're certain that would not have

20 been a suggestion that came from you?

21 A I -- I don't believe so.

22 Q Well, as you sit here today, do you have any

23 recollection whatsoever of suggesting to anybody who was working

24 with you in preparing the statement that those two figures

25 should be averaged for purposes of preparing the valuation for

R. FLORES - DIRECT(MR. AMER) Page 2062

1 the golf courses?

2 A I -- I can't recall.

3 Q Let's look at -- well, did you have any discussion

4 with people who you were working with in preparing the Statement

5 of Financial Condition at any point in time prior to when you

6 left the company about using two to three times gross revenue

7 where there was a negative EBITDA to value golf courses?

8 A I don't recall, no.

9 Q Do you have any recollection of discussions about how

10 to value the golf courses where the golf course had a positive

11 EBITDA?

12 A I don't recall.

13 Q Let's look at row 363, which is for Colts Neck. You

14 see in this row it says under the note, "6/30/21, upon the

15 advice and guidance of Marcus & Millichap, golf course industry

16 experts, a normal golf course with a consistently positive

17 EBITDA trades at six to eight times EBITDA, but the last few

18 purchases have been nine to ten times. Based on the quality of

19 Trump courses could sell at ten times EBITDA." Do you see that?

20 A Yes, that's what the document says.

21 Q And then you'll see under rows 375 to 376, this is a

22 calculation that, in fact, uses this multiplier ten times

23 EBITDA. Do you see that?

24 A That's what the spreadsheet says.

25 Q Do you have any recollection of discussing with those

R. FLORES - DIRECT(MR. AMER) Page 2063

1 individuals who you worked with in preparing the Statements of
 2 Financial Condition at any time prior to leaving the
 3 organization in March of 2022 this method of calculating values
 4 for courses with a positive EBITDA?
 5 A No.
 6 Q I just want to be clear about this. If we have had
 7 testimony from others in this case that you participated in a
 8 telephone call with Marcus & Millichap where these valuation
 9 methodologies were discussed, does that refresh your
 10 recollection at all that you were a participant in those
 11 discussions?
 12 A No.
 13 Q And if we have testimony in this case from others that
 14 it was your idea to average the net fixed assets with the two to
 15 three times gross revenue multiplier for purposes of valuing
 16 golf course assets, does that refresh your recollection?
 17 A No.
 18 Q Do you have any recollection whatsoever at any point in
 19 time working on the valuation of the preparation of the
 20 valuations for the statements of discussing these valuation
 21 methods that are attributed to Marcus & Millichap?
 22 A No.
 23 Q Let me focus your attention on the Jupiter Golf Course.
 24 You're familiar with that course down in Florida, correct?
 25 A Correct.

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1 MR. AMER: Let's mark 3216.
 2 Q You see this as an e-mail from Michael Corbiciero to
 3 you?
 4 A Yes, that's what in appears to be.
 5 Q And this is sent in August of 2020, correct?
 6 A Correct.
 7 Q You see the subject is the "Jupiter appeal
 8 recommendation"?
 9 A Correct.
 10 Q And who is Mr. Corbiciero?
 11 A I believe he was a consultant, a tax certiorari with
 12 Marvin F. Poer.
 13 Q You said he was a consultant for the Trump
 14 Organization, correct?
 15 A Correct.
 16 MR. AMER: Your Honor, I move this exhibit into
 17 evidence.
 18 THE COURT: It is in.
 19 (Whereupon, the Document was marked in evidence as
 20 Plaintiff's Exhibit 3216.)
 21 Q And the firm he is with Marvin F. Poer & Company. If I
 22 just refer to that as Poer & Company, is that okay? Can we
 23 refer to that as Poer & Company?
 24 A Yes.
 25 Q I think you mentioned tax certiorari. Is that a fair

R. FLORES - DIRECT(MR. AMER) Page 2065

1 characterization of one of the services that they provided?
 2 A Yes.
 3 Q And did that firm handle property tax assessment
 4 appeals in Florida for the Trump Organization?
 5 A They did.
 6 Q And Mr. Corbiciero is sending you the 2020 proposed tax
 7 notice for Jupiter; is that right?
 8 A I believe so.
 9 Q You see in the first line of the e-mail it says, "We
 10 hope this e-mail finds you both well. Attached are the 2020
 11 proposed tax notices for the Trump National Jupiter Golf Course
 12 as well as some appeal review information for your reference."
 13 So he's sending you the proposed 2020 tax notices for Jupiter,
 14 right?
 15 A Yes.
 16 Q So what was your role in regard to the Jupiter 2020 tax
 17 notices?
 18 A I believe I was working with Poer to review the
 19 assessment and whether to appeal the assessment.
 20 Q At this point in time, you would have been reporting to
 21 Eric Trump and Donald Trump Jr.; is that right?
 22 A Correct.
 23 Q Mr. Corbiciero goes on to say, "The 2020 combined
 24 proposed market value is \$16,672,472 which is a two percent
 25 increase over last year's value;" is that right?

R. FLORES - DIRECT(MR. AMER) Page 2066

1 A That's what the e-mail says.
 2 Q So when you read this e-mail, you understood that the
 3 value was a proposed market value for Jupiter, correct?
 4 A That's correct. That was coming from the tax assessor.
 5 Q And then the next paragraph starting in the second
 6 sentence of that paragraph says, "Using the same methodology as
 7 in previous years" and let me just stop here and ask. Had you
 8 been involved in this process in prior years for the Jupiter tax
 9 notices?
 10 A Yes.
 11 THE COURT: Five-minute warning.
 12 Q So when Mr. Corbiciero writes, "using the same
 13 methodology as the previous years," you would have been aware of
 14 what those -- what that same methodology had been, right?
 15 A I believe so.
 16 Q And he goes on -- so he goes on to say, "Using the
 17 same methodology as in previous years, we determined a GIM of
 18 1.38 which is below the average of 1.45 from the SGA report."
 19 Did you understand GIM to mean gross income multiplier?
 20 A Yes.
 21 Q Is that synonymous with gross revenue multiplier?
 22 A I don't know.
 23 Q Did you understand that GIM was a multiplier that would
 24 be multiplied by the gross income for the club?
 25 A Yes.

R. FLORES - DIRECT(MR. AMER) Page 2067

1 Q And do you know what he's referring to when he refers
 2 to the SGA report?
 3 A I don't recall.
 4 Q He goes on to say, "We also reviewed the most
 5 comparable assessments which mostly increase between one to four
 6 percent over last year's values and support a range of 503,778
 7 per hole to 1,335,269 per hole." Do you see that?
 8 A I do.
 9 Q And Jupiter is an 18-hole golf course, correct?
 10 A I don't recall the exact number of golf holes.
 11 MR. AMER: I don't think it is a matter in dispute,
 12 so I'll represent that it is an 18-ole course.
 13 Q Now, in terms of the methodology that is described
 14 here, you would agree with me there's no mention of using a
 15 different methodology other than the gross income multiplier
 16 method, do you?
 17 A Sorry. Can you repeat the question?
 18 Q Sure. The only methodology that Mr. Corbiciero is
 19 referencing here is the methodology that uses a gross income
 20 multiplier; isn't that right?
 21 A He also references a comparable assessment approach.
 22 Q Nothing about a fixed assets approach, though, correct?
 23 A Not in this e-mail, no.
 24 Q Then in the fourth paragraph, he says, "Based on the
 25 information provided and current market data, our analysis of

R. FLORES - DIRECT(MR. AMER) Page 2068

1 the subject property indicates that the market value is
 2 reasonable." Do you see that?
 3 A I do.
 4 Q The market value that he's telling you he believes is
 5 reasonable is the value -- market value of 16.7 million, right?
 6 A Yes.
 7 MR. AMER: If -- am I at my time, Your Honor?
 8 THE COURT: Well, you have two minutes or you can
 9 quit now.
 10 MR. AMER: I was going to put up another exhibit,
 11 so maybe it makes sense to --
 12 THE COURT: It makes sense to break now. Okay.
 13 15 minutes, everybody. See you at a quarter to noon.
 14 MR. KISE: I will hopefully have an update for you
 15 on the question you asked earlier before the witness comes
 16 in after the break on the numbers.
 17 THE COURT: I understand. Great.
 18 (Witness exits the stand.)
 19 (Whereupon, a recess was taken.)
 20 THE COURT OFFICER: All rise. Part 37 is back in
 21 session. Please be seated and come to order.
 22 MR. KISE: I do have some numbers. There is some
 23 good news under the circumstances.
 24 THE COURT: I'd love to hear them.
 25 MR. KISE: Again, this is my understanding just to

R. FLORES - DIRECT(MR. AMER) Page 2069

1 be clear. I'm not the tech person, but this is what I've
 2 been advised this morning. So the e-mail that goes out, the
 3 ICYMI, In Case You Missed It, e-mail does not go out on the
 4 broader distribution list. That's a press e-mail. It is
 5 25,810 recipients. So while that is still a number, it is
 6 not millions. It is not -- it's not what -- what we had
 7 talked about before. It doesn't go -- that's not the broad
 8 distribution list.
 9 So there were 25,810 recipients on that e-mail link
 10 or e-mail chain. Of that, there were 6,713 that opened the
 11 e-mail and then we go from there to the website
 12 because -- so that covers the e-mails. There's 25,810
 13 e-mails, 6,713 that were opened.
 14 The e-mail sends you to the link, the link. So
 15 between October 3rd and October 19th, there were a little
 16 over 114 million visitors to the campaign website, total
 17 visitors to the campaign website. However, only 3,701,
 18 3-7-0-1, viewed the -- they're called unique views, viewed
 19 the posting, viewed this posting that is the subject of what
 20 we're talking about today. That would include anyone that
 21 received the e-mail. So they're not separate. So of the
 22 6713 folks that got the e-mail, if they were to click on the
 23 link, they would have been counted in that 3,701 individuals
 24 that viewed the post.
 25 But again, of the 114 million plus visitors to the

R. FLORES - DIRECT(MR. AMER) Page 2070

1 website, they didn't view the post. You have to click
 2 through layers to get there, but that's -- and if the Court
 3 has further questions about the numbers, but that is the
 4 breakdown that I have for now. I may be able to break it
 5 down by day, October 3, October 4, 5. I just don't know if
 6 it would matter.
 7 THE COURT: That wouldn't matter.
 8 MR. KISE: But there are 3,701 total viewers of the
 9 post that is in question which again, as I've said, has
 10 since been taken down.
 11 THE COURT: Well, you and I are both becoming more
 12 tech savvy from all this.
 13 MR. KISE: Apparently. Thank you, Judge.
 14 THE COURT: Witness, please.
 15 THE COURT OFFICER: Witness entering.
 16 (Witness resumes the stand.)
 17 MR. KISE: Just one thing. I know the witness is
 18 there, but it won't relate to testimony. I'm looking at the
 19 realtime. The 3701 is the number of people that did view
 20 the post, not did not.
 21 THE COURT: We understood.
 22 MR. KISE: I know, but on the record, it said
 23 didn't view the post, so that's an important distinction.
 24 THE COURT: 180 degrees.
 25 MR. KISE: Yes.

R. FLORES - DIRECT(MR. AMER) Page 2071

1 THE COURT: And 114 million people. All right.
 2 Let's continue with the direct examination of Mr. Flores.
 3 Q Welcome back, Mr. Flores. We were looking at
 4 Exhibit 3216. I did want to point one thing out before we go to
 5 the next exhibit.
 6 You were correct to note that in addition to the gross
 7 income multiplier method, Mr. Corbiciero also looked at comps,
 8 right?
 9 A Correct.
 10 Q And if we go to page 10 of 14, in the -- in this
 11 exhibit, page 10 of 14, this is a chart of comps and I did want
 12 to point out, so that nobody has to take my word for it, in
 13 fact, the Jupiter Country Club, line nine, has 18 holes. You
 14 see that?
 15 A That's what the document says.
 16 Q Okay. And well, we'll come back to that in a minute.
 17 MR. AMER: Let's go ahead and put up -- go back to
 18 the first page of the exhibit, so we could see Mr.
 19 Corbiciero's e-mail and let's put up the 2021 Jeff
 20 supporting data spreadsheet which is Exhibit 1352. We can
 21 do that next to this e-mail. And let's go to row 547, which
 22 is where we find the Jupiter club. Let's just go up, so we
 23 can see that it is the Jupiter club and if we could see 547
 24 and then slide it over, so we see the two values.
 25 Q So Mr. Corbiciero's letter references market value

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1 holes, you end up with about 24 million.
 2 THE COURT: Okay. I'll accept that subject to any
 3 correction MR. AMER: Thank you.
 4 (Continued on the next page.)
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R. FLORES - DIRECT(MR. AMER) Page 2072

1 which he views as reasonable of 16 -- roughly 16.7 million and
 2 in the Statement of Financial Condition value for 2020, it is
 3 73.6 million roughly and in 2021, it's 67.7 million. Do you see
 4 that?
 5 MR. KISE: Objection. I'm not sure that
 6 characterizes the two exhibits accurately.
 7 MR. AMER: I think the numbers are what they are.
 8 If he has an argument to make at closing whether those
 9 numbers are numbers that should be compared, that seems to
 10 be something that should wait for closing.
 11 THE COURT: Or cross-examination.
 12 MR. AMER: Or cross-examination, but I think they
 13 said they weren't going to cross-examine this witness.
 14 MR. KISE: Not today, certainly.
 15 THE COURT: Not even one question?
 16 MR. KISE: I don't think so. Why would we keep us
 17 here any longer?
 18 THE COURT: I'll overrule the objection subject to
 19 any correction that somebody comes up with.
 20 Q Now, if we go back to the e-mail on the comparable
 21 assessments method, there is a range that Mr. Corbiciero
 22 provides for price per hole. Do you see that?
 23 A Yes.
 24 Q I'll represent some math to the Court that if you take
 25 even the high end of the range and you multiply it by 18 for 18

R. Flores - Plaintiff - direct (Amer) Page 2074

1 Q And you had received Mr. Corbiciero's e-mail prior to
 2 the time that you began working on preparing the 2020 Statement
 3 of Financial Condition; correct?
 4 A I believe so.
 5 Q Well, you received the e-mail in August and I think we
 6 established you began to prepare -- your work preparing the 2020
 7 Statement of Financial Condition sometime in late 2020; right?
 8 A Yes.
 9 Q Okay. Now, on the subject of your work helping to
 10 prepare the 2020 statement about how much time would you say you
 11 devoted to that endeavor?
 12 A In late 2020, I believe it was maybe two to three hours
 13 a week.
 14 Q And over the course of how many weeks?
 15 A I don't recall.
 16 Q Was it months?
 17 A It could have been.
 18 Q Let's turn to a different property, the property called
 19 Niketown here in New York.
 20 You're familiar with that property; correct?
 21 A Yes.
 22 MR. AMER: Let's put up the 2020 Jeff Supporting
 23 Data. It's Exhibit 857 in evidence, and let's go to Row 88,
 24 which is where Niketown begins.
 25 Q Do you see that?

R. Flores - Plaintiff - direct (Amer) Page 2075

1 A Yes.

2 Q And I want to focus on the difference between the

3 valuation that was used in 2020 and the valuation method that

4 was used in 2019. You'll see there is a number of rows and

5 steps that go into the calculation in 2019 that start on Row 88

6 and go all the way through 103 and lead to a value of 445

7 million. Do you see that?

8 A Yes.

9 Q And for 2020 there is a single row, Row 104, that says,

10 "Value per 20-year discounted cash flow from Ray Flores."

11 Do you see that?

12 A That's what the document says.

13 Q Did you perform such an analysis on Niketown for 2020?

14 A I don't recall.

15 Q Do you have any recollection whether related to the

16 Statement of Financial Condition or not of preparing a 20-year

17 discounted cash flow analysis for the property?

18 A No, I don't recall.

19 Q Did you prepare a 20-year discounted cash flow analysis

20 for Niketown in any prior years to the best of your

21 recollection?

22 A I may have, but can't recall the specific cash flow.

23 Q Can you think of any business purpose for why you would

24 have been preparing a 20-year discounted cash flow analysis for

25 Niketown?

R. Flores - Plaintiff - direct (Amer) Page 2076

1 A Not that I can recall.

2 Q If we go down you'll see starting in Row 110 there is a

3 discussion. It says "6/3/2020." It says "4-6 East 57th." Is

4 that the Niketown address?

5 A Yes.

6 Q Says "it has historically been occupied by a single

7 tenant given the current tenant's lease expiration in May '22,

8 the discounted cash flow takes into account a new single tenant

9 user." Do you see that?

10 A Yes, that's what the document says.

11 Q And it's referring to the 20-year discounted cash flow

12 and it claims to be from you. Do you see that?

13 A That's not what that references, a discounted cash

14 flow.

15 Q For 6/30/2020 in the notes in Row 106, which is where

16 the value from 6/30/2020 comes from, says, "Value per 20-year

17 discounted cash flow from Ray Flores;" right?

18 A That's what the document says, but the row in 110

19 doesn't reference 20 years nor my name.

20 Q It references a discounted cash flow, doesn't it?

21 A Yes.

22 Q Does reading that refresh your recollection that you

23 prepared a 20-year discounted cash flow analysis for Niketown?

24 A No, I don't recall.

25 Q It goes on to say that it used the 2020 Gucci renewal

R. Flores - Plaintiff - direct (Amer) Page 2077

1 as the most recent comparable given close proximity to 4-6 East

2 57th Street and similar luxury retail presence on both blocks.

3 Does that refresh your recollection that you prepared a 20-year

4 discounted cash flow analysis for Niketown?

5 A No, can't recall.

6 Q And then it says, "Kandell ground lease is subject to a

7 pending rent reset to be determined by an appraisal proceeding."

8 Do you see that?

9 A Yes.

10 Q Do you recall a rent reset appraisal proceeding that

11 involved the Kandell ground lease?

12 A Yes.

13 Q And the ground lease is one of the two ground leases

14 that Niketown was subject to?

15 A Yes.

16 Q And what was your involvement in connection with the

17 appraisal proceeding to determine the rent reset?

18 A I believe I interacted with the appraiser that the

19 company engaged in relation to this process.

20 Q And do you have any recollection of incorporating a

21 rent reset into an analysis that you did of the property?

22 A I don't recall.

23 Q That doesn't ring a bell for you?

24 A No.

25 Q Okay. And then it goes on to say, "In the absence of

R. Flores - Plaintiff - direct (Amer) Page 2078

1 the final determination we assume the same amount of the prior

2 period." Do you have any recollection of using the rent from

3 the prior period for a going-forward analysis pending the reset

4 appraisal proceeding?

5 A No, I don't recall.

6 MR. AMER: Let's go ahead and mark Plaintiff's

7 Exhibit 860 in native. It's just a slip sheet placeholder

8 for this spreadsheet.

9 Q You will see that this is a 20-year cash flow analysis;

10 correct?

11 A Can you scroll to the right, please?

12 Q Sure.

13 MR. AMER: Scroll all the way to the right.

14 A Can you continue to scroll, please?

15 Q That's as far as it goes.

16 A Okay. That's leaves 20 periods.

17 MR. AMER: And go back to the left.

18 Q And you see Row 4, "20 years." See that?

19 A That's what the document says.

20 Q Okay. Do you recognize this as a spreadsheet you

21 prepared that's a 20-year cash flow analysis for Niketown?

22 A It looks familiar. I'm not sure. I didn't put this

23 together.

24 Q Well, do you recognize it as your work or not,

25 Mr. Flores?

R. Flores - Plaintiff - direct (Amer) Page 2079

1 A I don't -- I don't know.

2 Q You don't know? You can't tell us whether you did this

3 or somebody else did this?

4 MR. KISE: Objection. Leading. This is direct and

5 argumentative.

6 MR. AMER: Well, first, I don't think it's leading

7 because I didn't suggest the answer.

8 THE COURT: Overruled. Not leading.

9 Q Can you answer the question?

10 A I don't recall if I put this together.

11 Q Let's look under the "value" tab.

12 Do you see that there is an NPV value in Row 14?

13 A Yes, this is what the document says.

14 Q And do you looking at this spreadsheet understand

15 that's net present value?

16 A Yes.

17 MR. AMER: Your Honor, I move this exhibit into

18 evidence.

19 THE COURT: Granted. It's in.

20 (Whereupon, the item previously referred to is

21 received and marked Plaintiff's Exhibit Number 857 in

22 evidence.)

23 MR. KISE: What was the date of this again? It's

24 not on the sheet. Year, do we know?

25 MR. AMER: It's 2020.

R. Flores - Plaintiff - direct (Amer) Page 2080

1 MR. KISE: 2020, okay. Fine.

2 MR. AMER: And actually, one way to do that is if

3 we go back to the -- go back to the Jeff Supporting Data and

4 we can split the screen.

5 Q And you see the value for June 30, 2020 is 252.8? Do

6 you see that?

7 A That's what the document says.

8 Q And that comes -- that matches the number if we go back

9 to the cash flow analysis that's on the NPV line; correct?

10 A Can you put the documents side by side, please? And

11 scroll to the right to the document? On the right.

12 MR. AMER: I think we need to go down to see the --

13 we're in a different -- we're on Wall Street, so we need to

14 go back to Niketown and go to the right for Row 106.

15 Q Same number, right?

16 A Yes. The number in cell H 106 on the right hand

17 matches the figure D in cell D 14 on the left hand.

18 Q If we go back to the spreadsheet, the -- sorry.

19 The cash flow analysis and there are two other tabs.

20 There is a "plan" tab.

21 MR. AMER: Can we click on that?

22 Q And then a "ground lease" tab.

23 MR. AMER: Let's click on that.

24 Q And that shows the ground lease amounts and the Kandell

25 lease is 540,000. Do you see that?

R. Flores - Plaintiff - direct (Amer) Page 2081

1 A Yes, that's what the document says.

2 Q Does looking at these tabs refresh your recollection,

3 Mr. Flores, that this 20-year cash flow analysis is your work

4 product?

5 A It could have been, but I don't recall this specific

6 document at this moment.

7 Q Do you know what the basis was for assuming that the --

8 or deciding to use the prior rent amount for the Kandell lease

9 while the reset appraisal proceeding was pending?

10 A No, I don't recall.

11 Q Do you know the outcome of the appraisal proceeding to

12 reset the rent on the Kandell lease?

13 A I don't remember.

14 MR. AMER: Why don't we look at Exhibit 3213.

15 Q I think you mentioned that you worked with the

16 appraiser who was hired by the Trump Organization to work on the

17 rent reset proceeding; is that right?

18 A Yes.

19 Q If you look at the last page, 12 of 12, was that

20 appraiser David Fields of Fieldstone Advisers?

21 A Yes.

22 Q And does this last page appear to be the agreement that

23 was reached on March 13, 2021 as to what the rent reset would be

24 for Niketown?

25 MR. KISE: Objection. Foundation.

R. Flores - Plaintiff - direct (Amer) Page 2082

1 MR. AMER: He said he worked with Mr. Fields on

2 this very proceeding.

3 MR. KISE: Right, but he's not -- he didn't testify

4 to anything about this document. You're just showing him a

5 document at random and I don't think he can attest to what's

6 written on the document. He can read what's written on the

7 document, but it's hearsay. The document itself is hearsay,

8 so the witness hasn't demonstrated that he has any

9 foundation to answer the question.

10 MR. AMER: He does have foundation. He said he

11 worked on this proceeding. How is that not foundation to be

12 able to recognize if this is the agreement that resolved the

13 proceeding?

14 MR. KISE: But he never -- he might not have ever

15 seen the resolution. He might not have participated in the

16 resolution.

17 MR. AMER: Then that's his answer.

18 THE COURT: Overruled on the ground last stated, if

19 that's his answer, that's his answer.

20 Do you need a read back or ask it again or --

21 Q Do you -- given your involvement in the proceeding to

22 reset the rent do you recognize this last page as the agreement

23 that was signed between the two appraisers arriving at the rent

24 reset amount?

25 A No, I don't recall reviewing this specific page.

R. Flores - Plaintiff - direct (Amer) Page 2083

1 Q I didn't ask you that. I just asked if you -- you're
 2 in a position given the involvement you had in the proceeding to
 3 recognize this as the final agreement reached between the two
 4 appraisers?
 5 MR. KISE: Same objection.
 6 Q Yes or no?
 7 A That's what the document says.
 8 THE COURT: Overruled. It's --
 9 Q That wasn't my question.
 10 THE COURT: It's a subtle question. Ask it again
 11 and we'll get a read back.
 12 Q Given your involvement in the proceeding, Mr. Flores,
 13 are you able to tell us that this is the final agreement between
 14 the two appraisers resetting the rent for Niketown?
 15 A That's what the document appears to be.
 16 MR. AMER: Your Honor, I move this into evidence.
 17 MR. KISE: Your Honor, it's complete hearsay. The
 18 witness has just answered that's what the document appears
 19 to be, but he's not on the document, it's not addressed to
 20 him. There is no foundation. He hasn't acknowledged that
 21 he ever reviewed the document. I don't see how it comes
 22 into evidence. It's simply hearsay.
 23 MR. AMER: Your Honor --
 24 MR. KISE: If they want to call Mr. Nakleh, if they
 25 want to call these witnesses that are participating in this,

R. Flores - Plaintiff - direct (Amer) Page 2084

1 this witness has said -- all he said at most "this is what
 2 it appears to be." Any of us can say that. That's not a
 3 foundation for admission into evidence.
 4 THE COURT: Yes, but he worked on the project.
 5 MR. KISE: But he says he doesn't recognize this as
 6 the final resolution.
 7 MR. AMER: Can I be heard, Your Honor? CPLR 4549
 8 is a recognized exception to the hearsay rule. It says:
 9 "A statement offered against an opposing party
 10 shall not be excluded from evidence as hearsay if made by a
 11 person whom the opposing party authorized to make a
 12 statement on the subject or by opposing party's agent or
 13 employee on a matter within the scope of that relationship
 14 and during the existence of that relationship."
 15 Mr. Fields was retained as the Trump Organization's
 16 agent to act as their appraiser in this proceeding. This is
 17 not hearsay and it comes in for all purposes under 4549.
 18 MR. KISE: Again, I don't -- without getting into a
 19 long debate, I don't agree at all with that. Mr. Fields can
 20 come and testify and bring it in that way. That would be a
 21 statement, but this is an out-of-court statement offered to
 22 prove the truth of the matter asserted.
 23 If Mr. Fields were here himself and he testified to
 24 what's in this document that would be the subject of what's
 25 covered under the rule, but some document that is just out

R. Flores - Plaintiff - direct (Amer) Page 2085

1 there that they're alleging is a statement by our agent, no.
 2 THE COURT: Well, the witness -- I want to make
 3 sure we're on the same page or at least I'm on the right
 4 page.
 5 The witness said he worked on this project. He
 6 says yes, this looks like the resolution of the project on
 7 which he worked. Overruled. It's in evidence.
 8 Q And the agreement resets the rent to \$892,500; correct?
 9 A That's what the document says.
 10 Q And that's almost twice what the rent had been prior to
 11 the reset. Isn't that right?
 12 A I believe so.
 13 MR. AMER: And let's put up the native of
 14 Plaintiff's Exhibit 2222.
 15 Q This is the 20-year discounted cash flow for Niketown
 16 for 2021. Do you recognize this as another 20-year -- well, do
 17 you recognize this as a 20-year discount cash flow that you
 18 prepared for Niketown?
 19 A It could have been, but I don't -- I can't recall in
 20 this moment.
 21 Q Let's look under the "ground lease" tab.
 22 Do you see that the ground lease amounts for Kandell in
 23 this cash flow analysis is the amount that was agreed to between
 24 the appraisers; right?
 25 A Yes.

R. Flores - Plaintiff - direct (Amer) Page 2086

1 Q Looking at the prior cash flow analysis, looking at
 2 this cash flow analysis and bearing in mind your involvement in
 3 the rent reset proceedings, are you able to confirm that this is
 4 your work product?
 5 A It could have been, but I don't know in this moment. I
 6 can't recall.
 7 Q Do you have any understanding as to why a cash flow
 8 analysis would be using the new rent reset amount as opposed to
 9 the prior amount?
 10 A Because that was the actual rent at that point of time.
 11 That's what I think it meant, but --
 12 Q So once the rent reset proceedings had been resolved
 13 and the new rent had been established at an amount that was
 14 almost twice the old rent, your understanding is that it would
 15 make sense to use the new rent amount; correct?
 16 MR. KISE: Objection. I think this question and,
 17 frankly, the last one is calling for speculation because the
 18 witness just testified that he's not sure this is his work
 19 product. Is he asking him to speculate? Because that's
 20 what his answer was to the last question. It would seem so.
 21 MR. AMER: Your Honor, I don't think it's asking a
 22 witness who is involved in the reset proceeding what his
 23 understanding was as to what use the new rent would be put
 24 to.
 25 THE COURT: I think it was -- it's a question in

R. Flores - Plaintiff - direct (Amer) Page 2087

1 the abstract anyway, but it's logic.
 2 MR. KISE: But that's speculation. He said right
 3 there the answer to the last question it could have been,
 4 but I don't know. So it's calling for speculation. He
 5 clearly doesn't know.
 6 THE COURT: Well, Mr. Flores, don't speculate, but
 7 answer the question.
 8 MR. AMER: Your Honor, can I have a read back,
 9 please?
 10 THE COURT: Sure.
 11 (Whereupon, the requested portion of the
 12 proceedings was read back by the court reporter.)
 13 A Yes.
 14 Q And if we look at the "value" tab again, you see that
 15 the value, the NPV value in Row 14 is 225.8 roughly million
 16 dollars; correct?
 17 A That's what the document says.
 18 MR. AMER: And if we can pull up the 2021 Jeff
 19 Supporting Data spreadsheet. It's 1352 in evidence.
 20 Q And look, compare that to Row 91, Row 91.
 21 And by the way, just to go back a little bit again.
 22 You'll see in Row 89 it says, "Value per 20-year discounted cash
 23 flow from Ray Flores." Do you see that?
 24 A That's what the document says.
 25 Q And then it gives the values in 2021 and 2020.

R. Flores - Plaintiff - direct (Amer) Page 2088

1 MR. AMER: If we go over.
 2 Q The 2021 value matches exactly the value for NPV in
 3 Row 14 of the 20-year cash flow analysis; correct?
 4 A That's correct.
 5 MR. AMER: Your Honor, I move to admit
 6 Exhibit 2222.
 7 THE COURT: Granted. It's in evidence.
 8 (Whereupon, the item previously referred to is
 9 received and marked Plaintiff's Exhibit Number 2222 in
 10 evidence.)
 11 Q And you'll see in Row K it's tracking the difference
 12 and the value has dropped by 27 million from 2020 to 2021;
 13 correct?
 14 A Yes.
 15 Q And based on your understanding of how the rent fits
 16 into the formula, if the rent nearly doubles that would decrease
 17 the value of the property; right?
 18 A Yes.
 19 Q You mentioned and we've established you were involved
 20 in the rent reset proceeding. Did anyone from the Trump
 21 Organization to your knowledge attempt to get a preliminary
 22 indication from an appraiser on what the likely rent reset would
 23 be before the 2020 Statement of Financial Condition was issued?
 24 A I don't recall.
 25 Q Do you know when the Trump Organization engaged an

R. Flores - Plaintiff - direct (Amer) Page 2089

1 appraiser for the appraisal proceeding to obtain the rent reset
 2 amount?
 3 A I can't recall.
 4 Q Let me show you Exhibit 3215. This is a retainer for
 5 Fieldstone Advisers. You'll see under the "Scope of Engagement"
 6 it says, "David E. Fields will serve as client's party-appointed
 7 appraiser for purposes of the appraisal proceeding."
 8 Do you see that?
 9 A That's what the document says.
 10 Q And above there is a reference to the Kandell lease.
 11 Do you see that?
 12 A Yes.
 13 Q And if you turn to page two this document is signed.
 14 One of the signatories is Eric Trump; correct?
 15 A It's what the document appears to show.
 16 Q And did Eric Trump assign you to oversee the rent reset
 17 proceeding?
 18 A Not to oversee it, but I was involved in this
 19 proceeding.
 20 Q Well, did you become involved at his direction?
 21 A Yes.
 22 MR. AMER: Your Honor, I move Exhibit 3215 into
 23 evidence.
 24 MR. KISE: Your Honor, again, I don't think the
 25 proper foundation has been laid. If they want to have

R. Flores - Plaintiff - direct (Amer) Page 2090

1 Mr. Trump lay the foundation or Mr. Fields lay the
 2 foundation, I mean, the fact that this witness had some
 3 involvement in the process, if we're going to use that as
 4 the standard for admission of what is clearly hearsay that
 5 would be a giant black hole. It could be anything. Any
 6 document associated with the process would then come in
 7 under that standard. They could just ask him "were you
 8 involved?"
 9 "Yes, I was involved."
 10 "And is this a document that looks like it has
 11 something to do with the process?"
 12 "Yes."
 13 So there is just no foundation at all laid for the
 14 introduction of hearsay. They have not. At this moment
 15 it's hearsay. If they want to call a witness that can
 16 actually get the document into evidence, that's fine, but
 17 this is not that witness.
 18 MR. AMER: I want this for purposes of notice as to
 19 when the appraiser was hired. So maybe we can shortcut
 20 this. This is a Trump Organization document and it's signed
 21 by Eric Trump and I'm only offering it for purposes of the
 22 date of the letter, which January 18, 2021.
 23 THE COURT: Well, the date of the letter is -- I
 24 understand that impacts directly on notice, if that's what
 25 you want it in for. I can't see it.

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1 Objection sustained only to the extent it's only
2 going in to show a notice by the Trump Organization by Eric
3 Trump, right.
4 MR. KISE: By whom? It's a Trump Organization
5 document by Eric Trump even though he hasn't testified to
6 it? I'm not suggesting he wouldn't, but I just want to be
7 clear what we're putting it in for.
8 THE COURT: This witness says he signed it. It
9 says name his Eric Trump.
10 Do you recognize the signature, Mr. Flores?
11 THE WITNESS: Yes.
12 Transcript continues on the following page....
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R. FLORES - DIRECT(MR. AMER)

1 A The letter is dated January 18, 2021.
2 THE COURT: And do you have any reason to think
3 that that date is somehow bogus?
4 THE WITNESS: I have no reason to believe that date
5 is bogus.
6 MR. AMER: I'm just going to ask that we put up the
7 demonstrative PDX-2 and it is just a shorthand for telling
8 us when each statement was issued and I'll note for the
9 record that the 2020 statement was issued on January 11,
10 2021 which is one week before the appraiser was retained.
11 Q Mr. Flores, given that the rent nearly doubled when it
12 was reset, do you recall if there was at least a sense among you
13 and the others preparing the 2020 Statement of Financial
14 Condition that the Nike rent reset would result in a higher
15 rent?
16 MR. KISE: Objection. At least a sense? I'm not
17 sure --
18 THE COURT: Sorry. Say it again.
19 MR. KISE: At least a sense?
20 MR. AMER: What's wrong with that?
21 THE COURT: I'll allow it. It is a little vague,
22 but I'll allow it.
23 A Can you repeat the question, please?
24 MR. AMER: Can I have a readback, please.
25 THE COURT: Please, read back.

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R. FLORES - DIRECT(MR. AMER)

1 Q By the way, we've already established through your
2 testimony that David fields was, in fact, hired as the Trump
3 Organization's appraiser for purposes of this proceeding, right?
4 A I believe so.
5 MR. KISE: Objection. Leading.
6 MR. AMER: I'm summarizing the testimony he's
7 already given, Your Honor. Just because I want to point out
8 that the fact that Mr. Fields was retained is already in
9 evidence. I don't need this letter to establish that. I
10 only want this letter for the date.
11 Q So my question is just to confirm that you've already
12 testified that Mr. Fields was the appraiser who the Trump
13 Organization hired to handle this appraisal proceeding, right?
14 A Yes.
15 Q And he was hired based on this letter that is now in
16 evidence on January 18, 2021, correct?
17 MR. KISE: Objection; leading and foundation. If
18 he's asking if that's what the letter says, he can say that.
19 He doesn't need this witness to confirm or deny it because
20 this witness doesn't know. He knows what's written there
21 and we just introduced it for purpose of notice.
22 THE COURT: Can you rephrase it just to ask him
23 whether it says that which we've been doing most of this
24 trial?
25 Q What is the date of the letter, Mr. Flores?

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R. FLORES - DIRECT(MR. AMER)

1 (Whereupon, the requested portion of the record was
2 read back.)
3 A No, I don't recall.
4 Q So is it your recollection that when the agreement
5 between the appraisers came up with a rent that was almost
6 double the prior rent, that that was -- came as a surprise to
7 the people who were working with you on the 2020 Statement of
8 Financial Condition?
9 A I don't recall.
10 Q Can you think of any reason why the Trump Organization
11 could not have retained an appraiser earlier while the valuation
12 for Niketown was still being prepared for the 2020 statement to
13 obtain a preliminary value for the building to determine the
14 likely change in the rent through the reset?
15 MR. KISE: Objection; calls for speculation.
16 THE COURT: I don't think it does. Overruled.
17 A I don't know.
18 Q Well, my question was whether you can think of any
19 reason. So is your answer, no, I cannot think of any reason?
20 A No, I can't think of any reason.
21 Q Thank you.
22 Let's turn to the property in Vegas which is a joint
23 venture with Mr. Ruffin. Are you familiar with that property?
24 A Yes.
25 MR. AMER: Let's put up the 2014 Jeff supporting

R. FLORES - DIRECT(MR. AMER) Page 2095

1 data. It is Exhibit 719. Let's go to row 751.
 2 Q You'll see in row 751 for 2013 and 2014, it says,
 3 "Based on the cash flow from unit sales prepared by Ray Flores
 4 October 2013."
 5 Did you do a cash flow analysis for Vegas in October of
 6 2013?
 7 A Yeah, I recall putting together -- maintaining a cash
 8 flow.
 9 Q So this one, you remember?
 10 A Yes.
 11 MR. AMER: Can we put up Exhibit 1139.
 12 Q The top e-mail is from you to Eric Trump in July of
 13 2013 and it references the subject Vegas and includes an
 14 attachment "Trump Ruffin five-year pro forma budget V17." Do
 15 you see that?
 16 A Yes.
 17 Q And it has a slip sheet for the attachment as the
 18 second page?
 19 MR. AMER: Your Honor, I move to admit both the
 20 e-mail and the attachment.
 21 MR. KISE: Objection. Statute of limitations.
 22 THE COURT: Overruled. It is in.
 23 (Whereupon, the Documents were marked in evidence
 24 as Plaintiff's Exhibit 1139.)
 25 Q So your e-mail to Eric Trump says, "Please see the

R. FLORES - DIRECT(MR. AMER) Page 2096

1 attached"-- "Please see attached the updated model which
 2 incorporates Allen's waterfall figures into the executive
 3 summary tab."
 4 Just to be clear, is Allen a reference to Allen
 5 Weisselberg?
 6 A Yes.
 7 Q And is what's referenced here when it says, "the
 8 updated model" your cash flow analysis?
 9 A I believe so.
 10 Q And was this something you prepared at Eric Trump's
 11 direction?
 12 A Yes.
 13 Q And in the bottom e-mail, which is from Eric Trump to
 14 you, he refers to it as the Vegas model. Is that your cash flow
 15 analysis as well?
 16 A Yes.
 17 Q And the attachment which says, "V17," does that refer
 18 to version 17?
 19 A Yes.
 20 Q For how long had you been preparing this model that is
 21 being updated in 2013?
 22 A I don't recall when I started preparing it, the model.
 23 Q It would have been before July of 2013, though; is that
 24 right?
 25 A Yes.

R. FLORES - DIRECT(MR. AMER) Page 2097

1 Q Did you continue to work on this Vegas model providing
 2 a cash flow analysis through the entire course of your
 3 employment at the Trump Organization until March of 2022?
 4 A I can't recall at what point I stopped maintaining the
 5 cash flow model, but from what I recall, I don't recall updating
 6 it regularly towards the end of my tenure at the company.
 7 Q What, to your recollection, was the last updated model
 8 that you worked on?
 9 A I don't know.
 10 MR. AMER: Let's go ahead and mark Plaintiff's
 11 Exhibit 3210.
 12 Q You will see, Mr. Flores, the bottom e-mail is from
 13 Allen Weisselberg to you asking you to forward to him the
 14 analysis that you prepared for Eric and then you go ahead in the
 15 top e-mail and forward it on the Las Vegas model, right?
 16 A That's what the e-mail says.
 17 MR. AMER: I move to admit this exhibit, Your
 18 Honor.
 19 MR. KISE: Objection. Statute of limitations.
 20 THE COURT: Overruled. It is in evidence.
 21 (Whereupon, the Document was marked in evidence as
 22 Plaintiff's Exhibit 3210.)
 23 Q And the attachment says version, "V18." So is that a
 24 later version of what we were just discussing?
 25 A It's a different version. I'm not sure if it is a

R. FLORES - DIRECT(MR. AMER) Page 2098

1 later version.
 2 Q You're not sure if version 18 is a later version from
 3 version 17?
 4 A What are the date stamps to the title?
 5 MR. AMER: I'll just take that it is a different
 6 version. I think that's fine.
 7 THE COURT: Okay.
 8 MR. AMER: And let's look at the 2016 Jeff
 9 supporting data which is Exhibit 742 in evidence, row 816.
 10 Q Now, we looked at the supporting data spreadsheet that
 11 had the 2013 and 2014 values for Vegas, both attributed to your
 12 cash flow analysis. And now we're looking at the spreadsheet
 13 that has 2015 and 2016 and it is the same attribution, correct?
 14 It is based on your cash flow from unit sales that you prepared,
 15 right?
 16 A That's what this document says.
 17 THE COURT: Mr. Amer, how much longer because we
 18 have various scheduling issues to address?
 19 MR. AMER: I think I will probably be another
 20 45 minutes.
 21 THE COURT: We will have to bring him back Monday,
 22 I guess. Ten o'clock Monday. Counselors, right?
 23 MR. KISE: That's fine.
 24 THE COURT: Right. Well, five-minute warning.
 25 Take it back.

1 Witness, you're excused for the day. I direct you
2 not to discuss this case or your testimony in it or anything
3 about this case until after your testimony is through which
4 will be probably, we hope, Monday and we will see you at ten
5 o'clock on Monday. You're excused for now.
6 (Witness excused.)
7 MS. GREENFIELD: Counselor, why don't you -- all
8 the schedulers, come on up.
9 Off the record.
10 (Whereupon the trial was adjourned to October 23,
11 2023.)
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DAVID MCARDLE, RAY FLORES October 20, 2023

Table with 5 columns containing legal terms and their corresponding page numbers. The terms include: \$, \$16,672,472 (1), \$892,500 (1), [sic] (1), A, abide (1), abided (1), able (4), above (1), absence (1), absolutely (2), abstract (1), accept (1), access (5), According (1), account (2), accounting (1), accurate (1), accurately (1), acknowledged (1), acquisitions (5), across (2), act (1), action (1), actual (3), actually (3), Adam (1), add (1), addendum (1), addition (2), address (4), addressed (1), addressing (1), adjourned (1), admission (2), admit (5), able (4), admitted (3), advice (3), advise (1), advised (1), advisement (1), Advisers (2), Affiliated (1), affirm (2), affirmed (1), again (18), against (1), against- (1), agent (3), ago (1), agree (11), Americas (1), 2046:6, 2034:6,14;2035:15; 2067:14;2084:19, 2046:11, 2089:1,7;2092:13, among (2), amount (9), amounts (3), analysis (32), analyst (5), and/or (1), Andrea (1), ANDREW (2), Annie (1), answered (1), Apartment (1), apologize (3), Apparently (3), appeal (3), appeals (1), appear (3), Appearances (1), appeared (1), appears (11), appraisal (12), 2046:24;2093:12, 2078:1;2081:8; 2082:24;2085:23; 2086:8,9,13,15;2089:2, 2054:2;2080:24; 2085:22, 2034:15;2035:17,21; 2039:3,5,8,23;2067:25; 2075:13,17,19,24; 2076:23;2077:4,21; 2078:3,9,21;2080:9,19; 2081:3;2085:23; 2086:1,2,8;2088:3; 2095:5;2096:8,15; 2097:2,14;2098:12, 2038:17,18,22,23; 2039:1, 2022:12, 2036:9, 2019:22.5;2037:21, 2036:10, 2083:18, 2037:13, 2025:7;2030:19; 2034:5, 2023:22,25;2070:13, 2064:7;2065:12,19, 2065:4, 2027:14;2059:25; 2081:22, 2019:25, 2031:5, 2024:6,14,20; 2052:10;2053:6; 2059:10;2064:4; 2083:15,18;2084:2; 2089:15, 2027:22, 2032:23;2033:11; 2034:22;2077:7,10,17; 2078:4;2081:9,11;, 2046:24;2093:12, 2078:1;2081:8; 2082:24;2085:23; 2086:8,9,13,15;2089:2, 2054:2;2080:24; 2085:22, 2034:15;2035:17,21; 2039:3,5,8,23;2067:25; 2075:13,17,19,24; 2076:23;2077:4,21; 2078:3,9,21;2080:9,19; 2081:3;2085:23; 2086:1,2,8;2088:3; 2095:5;2096:8,15; 2097:2,14;2098:12, 2038:17,18,22,23; 2039:1, 2022:12, 2036:9, 2019:22.5;2037:21, 2036:10, 2083:18, 2037:13, 2025:7;2030:19; 2034:5, 2023:22,25;2070:13, 2064:7;2065:12,19, 2065:4, 2027:14;2059:25; 2081:22, 2019:25, 2031:5, 2024:6,14,20; 2052:10;2053:6; 2059:10;2064:4; 2083:15,18;2084:2; 2089:15, 2027:22, 2032:23;2033:11; 2034:22;2077:7,10,17; 2078:4;2081:9,11;, 2089:1,7;2092:13, appraisals (1), appraiser (12), approach (2), approaches (1), appropriate (3), approval (2), approximate (1), Approximately (2), area (2), argument (3), argued (1), assessment (4), assessments (2), assessor (1), asset (1), assets (11), assign (1), assignment (3), assist (1), 2035:6, 2077:18;2081:16,20; 2084:16;2088:22; 2089:1,7;2090:19; 2092:3,12;2093:10; 2094:11, 2082:23;2083:4,14; 2085:24;2094:5, 2029:17, 2067:21,22, 2037:3, 2029:11,14,16, 2046:21,25, 2040:5, 2021:14;2039:14, 2028:23;2038:18, 2026:24;2027:3; 2072:8, 2079:5, 2020:14.5, 2033:5, 2082:23, 2019:16;2021:2, 2084:22, 2065:3,19,19; 2067:21, 2067:5;2072:21, 2066:4, 2039:24, 2042:7;2045:11,13, 23;2046:10;2061:4,14, 18;2063:14,16; 2067:22, 2089:16, 2029:9,10;2033:3, 2029:14

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In The Matter Of:
NYS Attorney General v.
Donald Trump, et al.

William Kelly, Michael Cohen
October 24, 2023

Janelle C. London, RMR, CRR & Nicole Robinson, SCR

Original File NYS Attorney General vs Donald Trump-102423.txt

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1 SUPREME COURT OF THE STATE OF NEW YORK
 2 COUNTY OF NEW YORK : CIVIL TERM : PART 37
 3 ----- X
 4 PEOPLE OF THE STATE OF NEW YORK, BY
 5 LETITIA JAMES, ATTORNEY GENERAL OF
 6 THE STATE OF NEW YORK,
 7
 8 Plaintiff,
 9
 10 Index No.
 11 -against- 452564/2023
 12 DONALD J. TRUMP; DONALD TRUMP, JR.; ERIC TRUMP;
 13 IVANKA TRUMP; ALLEN WEISSELBERG; JEFFREY MCCONNEY;
 14 THE DONALD J. TRUMP REVOCABLE TRUST; THE TRUMP
 15 ORGANIZATION, INC.; TRUMP ORGANIZATION, LLC;
 16 DJT HOLDINGS, LLC; DJT HOLDINGS MANAGING MEMBER;
 17 TRUMP ENDEAVOR 12, LLC; 401 NORTH WABASH VENTURE,
 18 LLC; TRUMP OLD POST OFFICE, LLC; 40 WALL STREET,
 19 LLC.; AND SEVEN SPRINGS, LLC,
 20
 21 Defendants.
 22 ----- X
 23 60 Centre Street
 24 New York, New York 10013
 25 October 24, 2023

B E F O R E:
 HONORABLE ARTHUR F. ENGORON,
 Justice, Supreme Court

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 ERIC HAREN, ESQ.
 LOUIS M. SOLOMON, ESQ.
 MARK LADOV, ESQ.
 ALEX FINKELSTEIN, ESQ.
 (Appearances continued on the next page.)

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1 THE COURT OFFICER: All rise. Part 37 is now in
 2 session. The Honorable Judge Arthur Engoron presiding.
 3 Make sure all cell phones are on silent. Laptops and cell
 4 phones will be permitted, but only to members of the press.
 5 There is absolutely no recording or photography of any kind
 6 allowed in the courtroom. Now be seated and come to order.
 7 THE COURT: I think we are going to have some
 8 photographers come in first.
 9 (Whereupon, there is a pause in the proceedings.)
 10 THE COURT: Plaintiff, would you like to call your
 11 first witness for today?
 12 MR. KISE: Your Honor, I'd like to just, as I
 13 mentioned over the weekend, place something on the record
 14 briefly before the witnesses enter the room.
 15 THE COURT: Go ahead.
 16 MR. KISE: So I just want to place our objection on
 17 the record to proceeding today under the circumstances.
 18 As we had exchanged, the Attorney General knew
 19 about this COVID risk of -- at least as of last Wednesday.
 20 There was no mention of it, there was no notice of it. We
 21 had a shared podium, a shared microphone. There are court
 22 reporters here, court officers here, the Court, Counsel. We
 23 had multiple close sidebar discussions with now-COVID
 24 positive lawyers.
 25 There was a deposition Thursday of the witness and

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1
 2
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 BY: ARMEN MORIAN, ESQ.

Also Present: Peter Sorrento, Court Clerk

NICOLE C. ROBINSON, CSR
 JANELLE C. LONDON, RMR, CRR
 Senior Court Reporters

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1 Counsel, the reporter were all exposed. There was no
 2 opportunity for any precautions of any kind. You'll notice
 3 I'm sitting over on this side of the courtroom.
 4 Saturday evening was the first notice of this and a
 5 total of four team members from the Attorney General's team
 6 tested positive. None of the communications expressed any
 7 concern about safety or health, none of them asked for any
 8 protocol measures, none of them asked for anything to be
 9 done. The only reason for the notification was scheduling
 10 and the Attorney General simply wanted to proceed with the
 11 trial as if nothing had happened. And, respectfully, in our
 12 view, that's just beyond irresponsible.
 13 There are many people in this courtroom, including
 14 myself, that have specific and special health concerns and
 15 considerations. Some have caretaking responsibilities. We
 16 don't know about all of the many dedicated court officers
 17 and court staff and court reporters in addition to the
 18 literally hundreds of media individuals present, and these
 19 individuals, including myself, are entitled to notice at a
 20 minimum so they can take necessary precautions.
 21 Now, the Attorney General has made numerous public
 22 statements, numerous public statements about COVID.
 23 Quote, "The health and safety of all New Yorkers
 24 has always been our top priority and in order to protect our
 25 communities we must continue to act responsibly and

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1 carefully." That's a quote from December of 2021.
 2 So this is the same Attorney General also that sued
 3 Amazon, among others, over their COVID practices. Yet her
 4 own staff ignore basic notice requirement. It seems as with
 5 everything else with this case that nothing else matters
 6 except for suing President Trump. We're just going to
 7 dispense with all the rules, we're going to dispense with
 8 all the protocols and we're going to forge ahead with the
 9 trial. Everyone is just looking the other way and, frankly,
 10 it's irresponsible to proceed.
 11 Having at least another day -- there was another
 12 team member from the Attorney General that tested positive
 13 this morning. We're not exactly sure we're through with
 14 this. I hope for all our sake, but there is no prejudice to
 15 wait another day. There is no jury. Forging ahead with a
 16 key witness who now I understand also has potential
 17 considerations, I'm not sure what those are, but I certainly
 18 won't get into them on the record, having a break to ensure
 19 that all Counsel, all staff, everyone involved is cleared.
 20 I do appreciate that the Attorney General, as we did, tested
 21 themselves this morning, their counsel team and our counsel
 22 team and your counsel team, at least we understand from them
 23 tested negative, but it's really hypocritical to say the
 24 health and safety of all New Yorkers is a top priority and
 25 the AG wants to forge ahead with this. And I'm sure that

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1 there will be reactions to this, but it's a fact.
 2 We have the leading candidate for president of the
 3 United States in this courtroom today and exposing that risk
 4 -- if this were different, if this were us doing this, I
 5 know where I'd be. I'd be in shackles. If I had not
 6 notified the Court of some risk, the Attorney General would
 7 be up in arms, their team would be up in arms and I think
 8 that's an unfair double standard I think that's applied to a
 9 lot of things procedurally in this case. I'm not talking
 10 about Your Honor's rulings.
 11 THE COURT REPORTER: Counsel, please slow down.
 12 MR. KISE: Sorry.
 13 The Commercial Division and the assignments, but
 14 none of the rules seem to apply when we're chasing President
 15 Trump and I think it's unfair and I don't think we really
 16 should be here today exposing everyone to as yet some --
 17 whether it be limited or not we don't know -- known risk and
 18 another day or two days would not have made a significant
 19 difference.
 20 I certainly hope we're not going to hear from the
 21 government's key witness that there are health
 22 considerations that would preclude that witness from
 23 testifying truthfully, honestly and recalling so that a
 24 month from now or two months from now as is his normal
 25 fashion, he says well, I know I said that in court when I

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1 was at trial in New York, but I was taking medications and I
 2 was on pain pills and I was doing this and doing that. So I
 3 think that that's yet another reason to postpone for the
 4 day. Thank you, Judge.
 5 THE COURT: Well, I can take a vote of all the
 6 people out there whether they want to proceed today. I
 7 realize that's not the issue. I understand what you're
 8 saying. I understand your concerns. I won't address, but I
 9 will allow the Attorney General's Office to address, if you
 10 would like.
 11 Also, masks are available, N-95 masks. Peter, is
 12 that --
 13 MR. SORRENTO: They're on counsel table.
 14 MR. KISE: I just want to say one other thing, but
 15 the individual that's going to respond, I object to him even
 16 being here in the courtroom as I put this weekend. I don't
 17 think he should be here.
 18 MS. HABBA: I agree.
 19 THE COURT: The individual is going to respond.
 20 Do you want to respond?
 21 MR. SOLOMON: I do, Your Honor.
 22 THE COURT: Make sure you're are close to the
 23 microphone.
 24 MR. SOLOMON: First off, we take exception to any
 25 claim that we were irresponsible in any way, shape or form.

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1 Second, I'm not going to relitigate with Mr. Kise
 2 the issues on procedural things that may have happened in
 3 the past. We're here today, we are following the CDC
 4 guidelines. The individual, me, who is in the courtroom
 5 today, isolated for five days, as required, has tested
 6 negative for the last three days, and is wearing a mask.
 7 Those are the guidelines. That's what is appropriate.
 8 We advised the Court from what I understand the
 9 Court conferred with various administration personnel.
 10 THE COURT: True.
 11 MR. SOLOMON: And directed that we appear today,
 12 period, full stop. That's all that's relevant.
 13 THE COURT: Well, the administration basically left
 14 it up to me, but they made certain recommendations, which
 15 was go ahead, if possible, and we're going ahead.
 16 MR. ROBERT: Your Honor, if I may. That's not the
 17 issue. The issue is that the Attorney General's Office knew
 18 on Wednesday and didn't tell any of us, so we were here with
 19 our personal health issues, our family health issues, the
 20 Court's issues. We were in chambers. We had members of our
 21 team who were in a small deposition room last week on
 22 Thursday while other members of the team were here trying
 23 the case and having conferences with the Court and with the
 24 Attorney General having knowledge that one of the key
 25 lawyers tested positive. They didn't tell us. Then

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1 unfortunately, that one mushroomed into four as of Saturday
 2 night. Again, as Mr. Kise said, the only reason the Court
 3 was notified was a scheduling issue, not for a safety issue.
 4 We then took it upon ourselves to notify those people that
 5 were in the deposition on Thursday of what happened. They
 6 were very grateful that we had let them know so they could
 7 take the appropriate precautions. Then a member of our team
 8 gets it yesterday and then we find out this morning another
 9 member of the Attorney General's has it.

10 So as we stand here today, we are truly in an
 11 outbreak. So to proceed under these circumstances is not in
 12 the health and safety of everyone in this room, including
 13 the Court, the staff, the litigants, the attorneys and there
 14 is absolutely no reason whatsoever to proceed. It's a bench
 15 trial. There is no prejudice and even the fact that we're
 16 in such close proximity is something that is incredibly
 17 problematic to us and we see no reason that we need to
 18 proceed.

19 THE COURT: Any last few words from the AG's side?
 20 MR. SOLOMON: I think Your Honor understands the
 21 current state of affairs.

22 THE COURT: Masks are available. I'm going to
 23 proceed.
 24 Plaintiff, would you like to call your first
 25 witness?

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1 MR. FINKELSTEIN: The People call Bill Kelly.
 2 THE COURT: I hope we can move through Mr. Kelly
 3 because we are other things on the agenda today.
 4 MR. FINKELSTEIN: Understood.
 5 MS. HABBA: Your Honor, I'm sorry. There is one
 6 thing that I would just like to ask.
 7 Do we have two microphones for those that are using
 8 the podium to examine witnesses? Because I would not like
 9 to use one that the AG has used. That does not have any
 10 kind of protective covering. So with all due respect, I'm
 11 not using something that's been closely contaminated too.
 12 Thank you.

13 THE COURT: Can you just use the microphones that
 14 you have available there?
 15 MS. HABBA: If I'd like me to stand here and cross
 16 examine him, that's fine, but the exhibits are there. I
 17 mean, the witness is there. Do we have another microphone?
 18 I think that would be the easiest.

19 MR. SOLOMON: The microphone is something that the
 20 AG's office provided. If they want to bring their own
 21 microphone and use their own microphone and their own tech
 22 setup, we have no objection to that.
 23 THE COURT: Whatever you want do is fine with me.
 24 MS. HABBA: Thank you. We'll figure it out.
 25 MR. KISE: Will we have time to do that, to replace

W. Kelly - Plaintiff - direct (Finkelstein) Page 2110

1 the technology and support that?
 2 THE COURT: Correct me if I'm wrong, you can take
 3 one of your microphones and plug it in there?
 4 MR. KISE: If we can do that. Again, you know I'm
 5 not the tech person.
 6 And for the record, remember, I wanted the table
 7 this way with a distance that's even further, but
 8 nonetheless, if we can do that, that's fine. Then on a
 9 break we can move a microphone over there.

10 THE COURT: All right. Peter, ask Rob, whoever.
 11 MR. SORRENTO: I'm on the phone with the IT now.
 12 THE COURT: We're on it.
 13 And Chris, doesn't it look much better this way,
 14 two tables?
 15 THE COURT OFFICER: Ready for the witness?
 16 THE COURT: Ready for the witness.
 17 THE COURT OFFICER: Witness entering.
 18 THE COURT: This is a little bit like waiting for
 19 the pitcher to come in from the bull pen.
 20 (Whereupon, the witness enters the courtroom and
 21 approaches the witness stand.)
 22 THE COURT OFFICER: Please raise your right hand.
 23 Do you solemnly swear or affirm that any testimony
 24 you give will be the truth, the whole truth and nothing but
 25 the truth?

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1 THE WITNESS: I do.
 2 THE COURT OFFICER: Please have a seat.
 3 THE WITNESS: Thank you.
 4 THE COURT OFFICER: Please state your name and
 5 either home or business address on the record.
 6 THE WITNESS: My name is William Kelly. My
 7 business address is Mazars USA LLP. 135 West 50th Street,
 8 New York, New York.
 9 THE COURT: Counsel, please proceed.

10 DIRECT EXAMINATION
 11 BY MR. FINKELSTEIN:
 12 Q Good morning, Your Honor. Alex Finkelstein on behalf
 13 of the People.
 14 Good morning, Mr. Kelly.
 15 A Good morning.
 16 Q You are here today to testify under subpoena; correct?
 17 A Correct.
 18 Q Can you please tell us where you are currently
 19 employed?
 20 A I am the general counsel of Mazars USA LLP, an
 21 accounting firm headquartered in New York.
 22 Q Can you please describe for us your educational
 23 background after you graduated from high school?
 24 A I went to Binghamton University and graduated in 1997.
 25 After that I went to St. John's University School of Law,

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1 graduating in 2000.

2 Q After you graduated from law school, could you take us

3 through your professional experience at a high level?

4 A Sure. Well, first in law school I worked at the

5 Grievance Committee for the Ninth Judicial District, which is a

6 body that investigates and prosecutes attorney misconduct. I

7 also was a summer associate at the law firm Wilson Elser and I

8 interned for the Honorable Judge Joanna Seybert with the Eastern

9 District of New York.

10 After law school I became an associate attorney at the

11 law firm Wilson Elser where I was a summer associate. Prior I

12 worked there for a couple of years then became an associate at

13 another law firm called Shaub Ahmuty and after that I was

14 brought back to Wilson Elser in an of counsel position, then

15 made partner there until I became the general counsel at Mazars

16 USA beginning in late 2017 but effective January 1, 2018.

17 Q So you became general counsel of Mazars USA effective

18 in January 2018?

19 A I was hired in late 2017 and I overlapped with my

20 predecessor who was retiring for a month or so and then as of

21 January 1st I was the general counsel for Mazars USA.

22 Q After you became general counsel at Mazars did you have

23 any involvement in the Mazars engagements for Donald J. Trump?

24 A I wasn't part of the engagement team, but I was part of

25 the communication team with the client and I handled the legal

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1 aspects of the various Trump-related legal matters that were

2 happening throughout the engagements and with the firm.

3 Q Can you elaborate on what you mean by the last --

4 A Sure. There were several investigations that were

5 either ongoing when I got there or commenced when I got there.

6 For example, the U.S. House of Representatives Oversight

7 Committee had issued several subpoenas to Mazars that were then

8 being contested by the Trump Organization and made its way

9 through the courts.

10 In addition, the New York District Attorney's Office,

11 that's for the county of New York District Attorney also issued

12 subpoenas in connection with an investigation they were

13 conducting, as well as the New York Attorney General and other

14 entities as well.

15 Q So what was your involvement in the context of those

16 things that you just described?

17 A When any subpoena would come in to the firm or be

18 served upon the firm or attorneys, I would lead the legal

19 response to that and I would communicate with the Trump

20 Organization, my counterpart there being their general counsel

21 about what was happening and what subpoenas we received and how

22 we were responding.

23 And I was making sure we were A, making sure we

24 followed the legal requirements of the subpoena and our

25 obligations as a good corporate citizen; two, making sure we

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1 honored all of our duties to our client due to confidentiality

2 and make sure we followed the rules there; and three, I had to

3 make sure that Mazars USA was in the best position legally that

4 it could be given all the situation of what's going on.

5 Q And when you say "the general counsel of the Trump

6 Organization," who was that that you were talking to?

7 A Alan Garten.

8 Q So you mentioned some involvement in legal aspects.

9 Did that take any particular form?

10 A Yes. I would coordinate with our outside counsel who

11 would gather documents, both internally through my office and

12 going directly to the custodians, and then they would secure

13 those documents, produce them to the -- whatever agency,

14 whatever investigatory body I was looking and I would coordinate

15 with the Trump Organization to let them know and give them

16 copies of whatever it was that they requested.

17 Q Did there come a time when you participated in an

18 assessment of Mazars' relationship with the Trump Organization?

19 A Every year an accounting firm does a client continuance

20 assessment for their clients. It could be more often than every

21 year if there is a triggering event that would cause an

22 accounting firm to reevaluate the conditions of the engagement.

23 I was involved in that process. I was involved in the --

24 assessing the legal situation and the risk management situation

25 and I coordinated that with others in management of the Trump

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1 Organization. Then we would report to the -- I'm sorry.

2 I coordinated with others in management of Mazars and

3 then we would report that to the executive board, whether or not

4 and under what conditions we could continue as the accountants

5 for the Trump Organization.

6 Q And you were involved in that process since you became

7 general counsel in 2018?

8 A Yes, I was -- I was probably the -- I probably would

9 call myself the leader of that process, but I reported to the

10 CEO and the executive board.

11 Q So you mentioned Mazars having received subpoenas.

12 Were you comfortable continuing with the engagement at that time

13 despite receiving subpoenas?

14 A Yes. We considered every subpoena that we received

15 from any new investigatory body as a triggered event to cause us

16 to do a client continuance analysis and simply receiving a

17 subpoena doesn't necessarily require us or compel us or cause us

18 to want to discontinue an engagement.

19 So when we received the congressional subpoena, the

20 first one that I think that was in 2019, we did that process of

21 client continuance analysis and we concluded we can continue and

22 we reached similar conclusions as we received subpoenas from our

23 agencies and additional subpoenas from the same agencies.

24 Q At some point did you participate in a determination to

25 terminate the relationship with the Trump Organization?

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1 A Yes, I did.
 2 Q When was that?
 3 A It was in May 2001 -- I'm sorry. 2021. We received
 4 information and circumstances had changed such that we made the
 5 decision to discontinue the services and we notified the Trump
 6 Organization of that.
 7 Q What information are you referring to?
 8 A We had been subpoenaed by the District Attorney's
 9 Office of the County of New York for -- in connection with an
 10 investigation to Allen Weisselberg's activity.
 11 Allen Weisselberg was the former CFO of the Trump Organization.
 12 The DA was investigating his personal compensation and others
 13 around him.
 14 We had received subpoenas and had been interviewed by
 15 the District Attorney's Office and based on that information and
 16 what we had come to learn about Allen Weisselberg we determined
 17 we could no longer provide services to the Trump Organization.
 18 Q Why did you reach that determination?
 19 A Allen Weisselberg was the CFO of the Trump
 20 Organization. He was our main contact at the Trump Organization
 21 for the providing -- for them providing us financial
 22 information. If his representations to us about the accuracy
 23 and truthfulness of the financial records that he's providing to
 24 us as the outside accountants is compromised, if we can no
 25 longer rely on him as CFO, then we can no longer perform our

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1 THE COURT: Granted. It's in.
 2 And I'll direct the witness if you're asked a
 3 yes-or-no question, please just answer yes or no without any
 4 commentary. If you can't answer yes or no, then we can
 5 discuss it.
 6 THE WITNESS: Thank you.
 7 (Whereupon, the item previously referred to is
 8 received and marked Plaintiff's Exhibit Number 2992 in
 9 evidence.)
 10 Q I'd like to direct your attention to page two. The
 11 letter reads: "Dear Allen, as general counsel for Mazars USA, I
 12 write to advise the Trump Organization and related entities,
 13 including Donald J. Trump, that Mazars USA is resigning from all
 14 engagements with the Trump Organization and related entities."
 15 Didn't Mazars, in fact, resign from all engagements
 16 with the Trump Organization?
 17 A Yes.
 18 Q Did any engagements continue at this time, the time of
 19 the letter?
 20 A No.
 21 Q Why?
 22 A Why did they -- I'm sorry. I don't understand the
 23 "why" part.
 24 Q Sorry. This letter is dated May 18, 2021. Do you see
 25 that?

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1 engagements.
 2 The engagements we were preparing at the time were
 3 preparing tax returns for the corporate entities and Donald
 4 Trump individually, as well as doing the statements of financial
 5 condition. Both of those engagements require that we rely upon
 6 the representations of management, in this case, Allen
 7 Weisselberg, the CFO. If we are no longer allowed or no longer
 8 reasonably allowed to rely on his management we can no longer do
 9 those engagements.
 10 Q I'd like to show the witness for identification a
 11 document marked as PX 2992. Do you recognize this document?
 12 A I do.
 13 Q What do you recognize it to be?
 14 A I recognize the cover of this document to be an e-mail
 15 that I sent to Alan Garten and I recognize page two of the
 16 document to be a letter I wrote that was an attachment to that
 17 e-mail. The last two pages I do not recognize, but they seem to
 18 be printouts of whatever was -- they're blank, so.
 19 Q But those pages have Mazars Bates numbers on the
 20 bottom?
 21 A They do, and I don't know if the e-mail was like the
 22 e-mail went onto the separate page, so it printed a blank sheet
 23 so.
 24 MR. FINKELSTEIN: Your Honor, I move to admit PX
 25 2992 into evidence.

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1 A Yes.
 2 Q So my question was did Mazars, in fact, resign from all
 3 engagements with the Trump Organization in May of 2021?
 4 A Yes.
 5 Q Did Mazars cooperate with the transition to new
 6 accountants?
 7 A Yes.
 8 Q You can set that document aside.
 9 MR. FINKELSTEIN: I would like to show the witness
 10 for identification a document marked as PX 2994.
 11 Q Do you recognize this document?
 12 A I do.
 13 Q What do you recognize it to be?
 14 A I recognize it to be an e-mail I sent to Alan Garten at
 15 the Trump Organization and the accompanying letter.
 16 MR. FINKELSTEIN: Your Honor, plaintiffs move to
 17 admit PX 2994 into evidence.
 18 THE COURT: Granted. It's in.
 19 (Whereupon, the item previously referred to is
 20 received and marked Plaintiff's Exhibit Number 2994 in
 21 evidence.)
 22 Q The letter reads:
 23 "Dear Alan, we write to advise that the statements of
 24 financial condition for Donald J. Trump for the years ending
 25 June 30, 2011 to June 30, 2020 should no longer be relied upon

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1 and you should inform any recipient thereof who are currently
 2 relying upon one or more of those documents that those documents
 3 should not be relied upon. We have come to this conclusion
 4 based in part upon the filings made by the New York Attorney
 5 General on January 18, 2022, our own investigation and
 6 information received from internal and external sources.
 7 While we have not concluded that the various financial
 8 statements as a whole contain material discrepancies, based upon
 9 the totality of the circumstances we believe our advice to you
 10 to no longer rely upon those financial statements is
 11 appropriate."
 12 How did you reach the determination that the Statements
 13 of Financial Conditions for 2011 to 2020 should no longer be
 14 relied upon?
 15 A As I explained in the second paragraph of this letter,
 16 we were aware of and reviewed the January 18, 2022 filings by
 17 the Attorney General's Office and litigation involving the Trump
 18 Organization and in that filing they detailed extensive
 19 allegations and issues concerning various assets that were
 20 listed in the statements of financial condition.
 21 They identified areas that they alleged to have been
 22 overstated or improperly reported or some other issue that
 23 causes to examine our information that we had in our files and
 24 with and through counsel we conducted an internal investigation
 25 regarding that -- those -- those services, those statements of

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1 financial condition. We reviewed other external documents that
 2 we were able to get from public sources and as a result of all
 3 that and knowing that many of these representations were
 4 provided to us through Allen Weisselberg, we thought it
 5 appropriate to advise the client that they should no longer rely
 6 upon these financial statements.
 7 Transcript continues on the following page....
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1 Q If we could go to page three. Make it at page four.
 2 A I'm at page four.
 3 Q Do you see the signatures on this page?
 4 A I do.
 5 Q Whose signatures are those?
 6 A I understand them to be Allen Weisselberg on the left
 7 and Donald J. Trump Jr. on the right.
 8 MR. KISE: Objection, Your Honor. Is he testifying
 9 he knows or is he testifying that that's what they appear to
 10 be?
 11 THE COURT: That's a good question. Let's ask him.
 12 Do you recognize the signatures absent the
 13 identifications?
 14 THE WITNESS: No, I don't.
 15 THE COURT: Okay.
 16 MR. FINKELSTEIN: If we could go back to PX 2994.
 17 THE COURT: I just have one other question. Would
 18 you recognize them if they were real?
 19 THE WITNESS: No.
 20 THE COURT: So you just don't know what the
 21 signatures look like?
 22 THE WITNESS: No.
 23 THE COURT: Thank you. Okay.
 24 Q So you wrote in the letter, "We have not concluded that
 25 the various financial statements as a whole contain material

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1 discrepancies."
 2 Does that reflect an affirmative determination that
 3 there were no material discrepancies?
 4 A That reflects --
 5 MR. KISE: Objection. It says what it says. I
 6 mean, I don't know how the witness can testify
 7 adverse -- exactly what the words are on the page. Are you
 8 calling for an explanation of what it says there in plain
 9 English?
 10 THE COURT: Did you write this letter?
 11 THE WITNESS: I did.
 12 THE COURT: Then I'll let you interpret it.
 13 Overruled.
 14 A Can you read the question back, please?
 15 MR. FINKELSTEIN: Can I have a readback?
 16 THE COURT: Read back, please.
 17 (Whereupon, the requested portion of the record was
 18 read back.)
 19 THE COURT: Yes, no?
 20 A That reflects that we have not concluded one way or the
 21 other. We have reached no conclusion.
 22 Q Did you undertake any audit or review procedures to
 23 determine whether there were material discrepancies?
 24 A No.
 25 And this has an explanation if I may, Your Honor.

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1 THE COURT: Sure.

2 THE WITNESS: Thank you.

3 No. In order for an accounting firm to issue an

4 opinion about the veracity of financial information, they

5 must conduct a test services, certain level of services that

6 require testing, confirmation other high-level things. Most

7 common would be an audit or a review. We did no services

8 that would allow us to render an opinion about the

9 truthfulness or untruthfulness of any of the financial

10 information. So we were advising the Trump Organization

11 through this that we have not reached any conclusion.

12 Q So did Mazars make any determination one way or the

13 other that there were, in fact, material discrepancies?

14 A No.

15 Q So going to the next paragraph, you wrote, "As we have

16 stated in the Statements of Financial Condition, Mazars

17 performed its work in accordance with professional standards. A

18 subsequent review of those work papers confirms this."

19 How did you reach that conclusion?

20 A Well, the first sentence, I'm reflecting what the

21 actual compilation report state when they were written in 2011,

22 '12, all the way through '21. The second sentence, the "a

23 subsequent review of those work papers confirms this," we went

24 back and looked at our work papers again to make sure that we

25 didn't make a mistake prior and we didn't. So that's what we

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1 did to confirm the statements in those two sentences.

2 Q And in reviewing the work papers, did you consider any

3 professional standards in your analysis?

4 A In conducting --

5 MR. KISE: Objection, Your Honor. I don't know if

6 it has been established, foundation. Did this witness

7 testify that he, in fact, reviewed the work papers and

8 undertook the review of the work papers? He's not an

9 accountant and as I understand from his deposition, he is

10 not here as a corporate representative. He is here in his

11 individual capacity or general counsel. I don't know if the

12 requisite foundation has been made. I'm not saying they

13 can't. I'm just saying it hasn't been laid yet.

14 THE COURT: Well, I thought your -- originally, I

15 thought your objection was we don't know whether he did it

16 or someone else at Mazars did it.

17 MR. KISE: Well, right. So if he performed it,

18 then he could testify about what he actually did; but if

19 not, then he has no foundation. But either way, it is not

20 clear in the record.

21 THE COURT: All right. Let's make the record

22 clear.

23 Can you rephrase the question?

24 MR. FINKELSTEIN: Okay.

25 Q Earlier you mentioned a review of the work papers. Did

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1 you undertake that review?

2 THE COURT: You personally, you mean?

3 Q You personally.

4 A I was part of the legal team with external lawyers that

5 did that review.

6 Q And what did that review determine?

7 MR. KISE: Again, Your Honor, same objection. Is

8 he asking for what he was told because the witness has just

9 testified he was part a legal team? He is not an

10 accountant, so he wouldn't have any understanding of any

11 professional standards. So if he's being asked to convey

12 what he was told in his role, then that may come in

13 depending on what the answer is, but there's still no

14 foundation and I would think that what he was told is

15 hearsay. They would need the witness on to come in and

16 testify to it.

17 THE COURT: If the witness is just saying what he

18 was told, I would agree it's hearsay.

19 MR. SOLOMON: Your Honor, that wasn't the question.

20 The question was what did he say. He wasn't asked what he

21 was told.

22 THE COURT: Maybe we have to dig deeper into how he

23 learned what he learned. So I'll ask, the question, just be

24 very clear as to whether we're talking about him or the

25 organization as a whole.

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1 Q So what was your understanding of results -- of the

2 results of the review referenced in this letter?

3 A My understanding was that a review of those work papers

4 confirms that the Statements of Financial Condition and the work

5 performed by Mazars, the work performed by Mazars performed in

6 accordance with professional standards as I wrote in this

7 letter.

8 MR. KISE: Same objection, Your Honor. If that

9 understanding is based on hearsay, then it is inadmissible.

10 THE COURT: I'm not sure -- I feel like we're

11 going around in circles unfortunately. Was this -- was

12 this a team conclusion? Is that basically what you're

13 saying?

14 THE WITNESS: It was a joint conclusion when I and

15 the legal team -- the external legal team reviewed the work

16 papers and we reached a conclusion based on our joint

17 review. I did physically look at work papers. I can't say

18 that I physically did every single one for every single

19 year, but I was part of that team. They worked at my

20 direction and reported to me.

21 THE COURT: Do you feel that you needed to be an

22 accountant to make these statements?

23 THE WITNESS: I believe someone needs to be trained

24 in this area and I've been representing accountants for 25,

25 24 years and I've been -- I'm very familiar with the

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1 standards and how to determine whether or not an engagement
2 comports with professional standards. So yes, I feel
3 comfortable that I don't need to be an accountant to
4 understand that. I don't think that's a general person's
5 ability.
6 THE COURT: Okay. I'll let it all in. Objection
7 overruled and, of course, you can cross-examine him on this
8 issue. Let's move ahead.
9 Q Is it consistent that the statements should no longer
10 be relied upon and that Mazars performed its work in accordance
11 with professional standards?
12 A Yes.
13 Q Can you elaborate on that?
14 A When performing a service like this, a compilation or
15 Statements of Financial Condition, we rely on the
16 representations of management. And in doing so, we take the
17 information and do our work.
18 MR. KISE: Objection, Your Honor. Again, this
19 witness has no foundation here. He's not an accountant. He
20 didn't engage in the actual performance of the work and he
21 is not here as a corporate representative, which I think is
22 a significant distinction. He's the general counsel of the
23 company. He came along after the fact and now he's offering
24 into evidence explanations about matters that he had no
25 personal involvement in whatsoever.

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1 THE COURT: I don't think he's testified he hasn't
2 had any personal involvement in it so --
3 MR. KISE: Your Honor, his personal involvement was
4 limited to after the fact looking over things, but he didn't
5 engage in the -- he's providing the Court now with a
6 narrative of what actually took place as opposed to what he
7 learned from his review.
8 THE COURT: What's wrong with a narrative of what
9 took place?
10 MR. KISE: Because he wasn't there, because he
11 wasn't there. It's -- there's no foundation for it. He's
12 not an accountant.
13 THE COURT: Well, that's two different things. I'm
14 going -- he said he was involved.
15 Were you strongly involved, weakly involved? Were
16 you a part of the team that issued this statement and you
17 would understand what it was meant?
18 THE WITNESS: I was part of the -- I was the one
19 who wrote this letter and I directed the team that did this
20 subsequent review, but I was not part of the original
21 services that were rendered.
22 A I'm not part of the engagement team. This is an
23 after-the-fact examination.
24 THE COURT: We understand that. Objection
25 overruled. Go ahead. At least I understand that.

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1 Q Mr. Kelly, were you in the middle of an answer before
2 this objection?
3 A Yes.
4 MR. FINKELSTEIN: Can I have the question read
5 back, Your Honor?
6 THE COURT: Just the question or do you want the
7 partial answer also?
8 MR. FINKELSTEIN: The partial answer as well.
9 THE COURT: Okay.
10 Read back, please, the last question and the
11 partial answer.
12 (Whereupon, the requested portion of the record was
13 read back.)
14 THE COURT: Was that a completed answer or do you
15 need to add anything to that?
16 THE WITNESS: That is not a completed answer. I
17 wanted to continue and explain.
18 THE COURT: Please do.
19 THE WITNESS: Thank you.
20 So after we rely on the information provided by the
21 client, if it subsequently comes out years later that the
22 representation was misstated, the work we did at the time is
23 still performed in accordance with professional services.
24 That just means that we know now of subsequent information
25 that would cause us to advise the clients that maybe they

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1 should not rely on the financial statements. It doesn't
2 mean that we did the work seven years ago wrong.
3 Q So going to the next paragraph, it reads, "Due in part
4 to our decision regarding the statements as well as the totality
5 of the circumstances, we have also reached the point such that
6 there is a non-waivable conflict of interest with the Trump
7 Organization. As a result, we are not able to provide any new
8 work product to the Trump Organization."
9 What was the non-waivable conflict of interest referred
10 to here?
11 A We came to the conclusion that we would -- members of
12 our firm, members of Mazars would be called upon to testify in
13 an adverse position to our client the Trump Organization. And
14 as a result, we couldn't continue with providing services that
15 were based on us being able to rely upon those representations
16 and/or any representations and advocate for those when filing,
17 in this particular case, tax returns.
18 Q After this letter was sent, did you have any further
19 discussion of the letter with the Trump Organization?
20 A Yes.
21 Q Who did you discuss the letter with?
22 A At first, I had a conversation with Alan Garten and
23 after that, I believe I had one, maybe two conversations with
24 Alan and Eric Trump.
25 Q What do you recall about those discussions?

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1 A I recall at the first conversation with Alan was him
2 calling me up and trying to understand the letter and what it
3 meant and get some -- get some more color to what I had
4 written. And then at the end of that call, he said, you know
5 we're going to have to talk to Eric or somebody else about this.
6 And he set up another call with him and Eric Trump and I'm not
7 sure if it was one or two calls, but it was within a day of each
8 sorry, so that's why I'm not sure, and Eric Trump and Alan
9 expressed their opinions of the letter and asked for
10 explanations and I responded.
11 Q Have you ever met with or directly communicated with
12 Donald J. Trump?
13 A No.
14 MR. FINKELSTEIN: No further questions at this
15 time.
16 THE COURT: Okay. Thank you.
17 Will there be any cross-examination at this time?
18 MR. KISE: Can we drag one of these mics? I don't
19 know how this works.
20 THE COURT: We have a portable one.
21 MR. SOLOMON: Your Honor, I may have misstated
22 something earlier. The microphone is actually the court's
23 and not the AG's.
24 THE COURT: Thank you. We lose a lot of things
25 that way.

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1 MR. ROBERT: Since it is a court mic, is there
2 another one we can get?
3 IT SPECIALIST: Those are the only two we have.
4 MR. ROBERT: Is there a way to pair it up with
5 something later, so we don't have to use the same remote?
6 IT SPECIALIST: We would have to get another
7 receiver.
8 MR. ROBERT: Maybe during the lunch break?
9 IT SPECIALIST: Not during the lunch break.
10 MR. KISE: Do we have like maybe wipes or something
11 to use on the microphone, like something basic --
12 MS. HABBA: Do you have another -- mics usually
13 come with extra head covers. Do you have a new one?
14 IT SPECIALIST: I'll see what we have available.
15 MS. HABBA: That would be great. Thank you.
16 THE COURT: Chris, typical of you to suggest a
17 low-tech solution, right.
18 CROSS-EXAMINATION
19 BY MR. SUAREZ:
20 Q Mr. Kelly, it is nice to see you again.
21 A Nice to see you.
22 Q I hope you are feeling well since our last meeting last
23 week at your deposition.
24 A I am.
25 Q Mr. Kelly, you're the general counsel of Mazars USA,

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1 correct?
2 A Correct.
3 Q Prior to joining Mazars, you represented accountants in
4 accounting firms in private practice, correct?
5 A Correct.
6 Q For over 20 years, correct?
7 A Correct. Not since prior to joining Mazars because I
8 joined in 2018 and graduated in 2020. So for 18 years, I
9 represented accountants give or take.
10 Q For 18 years, you represented accountants?
11 A Yes.
12 THE COURT: Please no talking over each other.
13 Q You represented accountants in connection with their
14 professional lives, correct?
15 A Correct.
16 Q And partnership disputes, correct?
17 A Correct.
18 Q You advised the accountants on how to comply with
19 professional rules and ethics, correct?
20 A Correct.
21 Q And in fact, you advised accountants how to handle what
22 you described at your deposition last week as particularly
23 tricky situations, correct?
24 A Correct.
25 Q And you lecture on risk management for accountants,

W. KELLY - PLAINTIFF - CROSS/MR. SUAREZ Page 2135

1 correct?
2 A I used to in private practice, correct.
3 Q Mazars was a client of yours for a long time before you
4 became its general counsel, correct?
5 A Correct.
6 Q And the law firm of Wilson Elser continues to represent
7 Mazars to this day, correct?
8 A Correct.
9 Q In fact, Wilson Elser was the firm that you used to
10 conduct an internal investigation into Mazars' work on the
11 president's Statement of Financial Condition, correct?
12 A One of two firms.
13 Q One of two firms. The other one was the Blank Rome
14 firm, correct?
15 A Correct.
16 Q Those were Mazars' outside counsel in connection with
17 the internal investigation that you conducted?
18 A Correct.
19 Q You're not a CPA, however, correct?
20 A I am not.
21 Q You do not prepare compilation reports, correct?
22 A Correct.
23 Q You do not prepare asset valuations, correct?
24 A Correct.
25 Q And you're here today in your individual capacity,

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1 correct?
 2 A Correct.
 3 Q Because Mazars made the determination that you were the
 4 person most knowledgeable --
 5 MR. SUAREZ: Judge, the feedback on this is pretty
 6 bad.
 7 THE COURT: Where is Rob when you need him? Try to
 8 get Rob, please.
 9 Why don't we continue, maybe just tone it down a
 10 little bit.
 11 Q Because Mazars made the determination that you were the
 12 person most knowledgeable about certain topics that the New York
 13 Attorney General wanted to discuss today, correct?
 14 A Correct.
 15 Q And that topic included compilation procedures,
 16 correct?
 17 A Well, I don't know what the Attorney General wanted to
 18 talk about, but when I was asked who was the most knowledgeable
 19 about certain topics, it was me.
 20 Q Not Donald Bender?
 21 A Not on the topics that we were asked about.
 22 Q You were asked by the NYAG to testify at trial in this
 23 case at the end of last summer, right?
 24 A I'm not sure when it was. It was several months ago.
 25 Q Several months ago, you were asked to testify at trial

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1 today?
 2 A I was advised that I may be called to testify,
 3 that -- at this trial.
 4 Q And when were you subpoenaed?
 5 A I don't -- I don't know.
 6 Q Have you ever seen a subpoena?
 7 A I believe I have.
 8 Q When did you see that subpoena?
 9 A Months, a month ago, two months ago. I have no
 10 specific recollection.
 11 Q Two months ago, you were subpoenaed to testify at
 12 trial?
 13 A It could be. I have no specific recollection.
 14 Q And in the months since, you met with the Attorney
 15 General's office at least twice to prepare for your testimony?
 16 A Correct.
 17 Q And in fact, you practiced your direct examination with
 18 the government, correct?
 19 A I wouldn't say it was a practice. They asked me some
 20 questions and I gave them the answers.
 21 Q In preparation to testify at trial today?
 22 A In anticipation of the testimony, yeah.
 23 Q And you were deposed at Trump Tower last week, correct?
 24 A Correct.
 25 Q And we sat in a small conference room with members of

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1 the Attorney General's team, correct?
 2 A Correct.
 3 Q Have you or your lawyers further discussed your
 4 testimony today with the NYAG?
 5 A Yes.
 6 Q Since the deposition?
 7 A Yes.
 8 Q What did you discuss?
 9 A I was informed over the weekend that the attorney who
 10 was questioning me had come down with COVID and a new attorney
 11 was going to meet me and get familiar with my talking style.
 12 And when we met on Monday by Zoom, we did the same thing we did
 13 previously with that attorney, about asking questions and me
 14 giving answers.
 15 Q You practiced for your direct examination, correct?
 16 MR. SOLOMON: Objection. The witness already
 17 testified he wasn't practicing, Your Honor.
 18 THE COURT: He did. So you'll have to use a
 19 different word.
 20 Q What would you call reviewing your questions for trial
 21 today other than practicing?
 22 A Well, for me, it wasn't a practice. He wanted to get
 23 to know my rhythm, my answering style, how I answered questions,
 24 so maybe it was practice for him; but for me, it was just
 25 answering questions.

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1 Q They wanted to rehearse your direct examination for
 2 today?
 3 A Whatever their intentions were, I don't know.
 4 Q Because the lawyer that sat with us in a conference
 5 room for five hours on Thursday had come down with COVID
 6 correct?
 7 A Correct.
 8 Q That's what they told you?
 9 A Yes.
 10 Q Anything else that you discussed at that meeting on
 11 Monday?
 12 A No.
 13 Q You reviewed Donald Bender's work on the Statements of
 14 Financial Condition, correct?
 15 A Correct.
 16 Q And in fact, you reviewed Mazars' work papers on the
 17 Statement of Financial Condition, correct?
 18 A Correct.
 19 Q You determined that Mazars' work was conducted in
 20 accordance with professional standards, correct?
 21 A Correct.
 22 Q In fact, you described Mr. Bender's role in working for
 23 the Trump Organization as unique and irreplaceable correct?
 24 A I have described him that way, yes.
 25 Q And in fact, Mr. Bender was the engagement partner on

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1 the Trump engagements for a period of time that you reviewed,
 2 correct?
 3 A Correct.
 4 Q And you said that he had 30-plus years of knowledge of
 5 the Trump Organization and their financial reporting, correct?
 6 A Correct.
 7 Q You told me when we met at your deposition that he was
 8 familiar with everything that was provided to him, correct?
 9 A I don't remember those exact words, but I will agree to
 10 those words today.
 11 Q Okay. Mr. Bender became familiar with everything that
 12 was provided to him, correct?
 13 A Correct, in a general sense.
 14 Q Those were your words at your deposition, correct?
 15 A I don't remember those words in particular, but...
 16 Q You also told me that Bender knew the ins and outs of
 17 all the transactions, correct?
 18 A Correct.
 19 Q The historic information, correct?
 20 A Correct.
 21 Q What entities were no longer in operation, correct?
 22 A Correct.
 23 Q That there were a lot of similarly-named entities and
 24 he knew all of them with great recall? Those were your words,
 25 correct?

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1 A Correct.
 2 Q In fact, you told me just last week that Mr. Bender
 3 would give a four-hour answer if I asked him what knowledge he
 4 had of the Trump Organization, correct?
 5 A Correct.
 6 Q And you also told me that you had no concern with the
 7 work that Donald Bender did for the Trump Organization, correct?
 8 A Correct.
 9 Q And that Mazars had no concern with the work that
 10 Donald Bender did for the Trump Organization, correct?
 11 A Correct.
 12 Q Are you concerned that Mr. Bender received appraisals
 13 that he claimed he did not read and understand?
 14 A I'm familiar with what you're talking about and I'm not
 15 concerned about that.
 16 Q Because you were sitting at his deposition, correct?
 17 A Correct.
 18 Q And that didn't concern you?
 19 A No.
 20 Q Are you concerned that Mr. Bender did not read
 21 everything that was sent to him by the Trump Organization?
 22 A No.
 23 Q Are you concerned that Mr. Bender was provided with
 24 loan documents that he claims he did not read?
 25 A No.

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1 Q Are you concerned that Mr. Bender claimed not to have
 2 expertise in interpreting ASC 274?
 3 A No.
 4 Q Are you aware that ASC 274 governs the preparation of
 5 an individual's Statement of Financial Condition?
 6 A In a general sense, yes.
 7 Q Are you concerned that Mr. Bender did not read or
 8 comprehend the supporting data for the Statements of Financial
 9 Condition in their entirety each year that they were provided to
 10 him?
 11 A I don't accept the premise to that question.
 12 Q Why not?
 13 A I'm not sure it's a fact that he did not do what you
 14 said he didn't do.
 15 MR. SUAREZ: All right. Let's pull up Mr. Bender's
 16 trial testimony at page 331 at lines 12 through 19:
 17 "You can't answer whether you read the whole
 18 document. Yes. Okay. The Statement of Financial Condition
 19 of the President of the United States and you can't answer
 20 if you read the whole document, is that right. I can't
 21 answer today that I read every line."
 22 Do you see that?
 23 A I do.
 24 MR. SOLOMON: Your Honor, I'm going to object to
 25 this. The original question was the supporting data. This

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1 answer speaks to the Statement of Financial Condition.
 2 Which is it?
 3 MR. SUAREZ: And then --
 4 MR. SOLOMON: To show this witness testimony from
 5 another witness on a different document is unfair and
 6 misleading.
 7 MR. KISE: You mean like they do just about with
 8 every witness and I object and it is overruled?
 9 MR. SOLOMON: Mr. Kise, that is totally unnecessary
 10 and you know it.
 11 MR. KISE: It is not unnecessary.
 12 MR. SOLOMON: There is an objection to the bench
 13 which does not concern you.
 14 MR. KISE: Everything that goes on here concerns me
 15 and my client, absolutely, sir, including your health.
 16 MR. SOLOMON: Well, thank you for your concern.
 17 THE COURT: I think there was a misrepresentation
 18 of what was testified to in the question, but rather than
 19 unpack all this, why don't we just move ahead.
 20 This is not your testimony, right?
 21 THE WITNESS: The testimony on -- the testimony on
 22 the screen is not my testimony.
 23 THE COURT: Right. Right. Let's have the next
 24 question and I'll deem everything else withdrawn.
 25 Q Would it concern you that Mr. Bender testified in court

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1 that he could not answer --
 2 THE COURT: Wait. Wait. That wasn't in court,
 3 right?
 4 MR. SUAREZ: This was in court.
 5 THE COURT: Oh, I'm sorry this was actually -- I
 6 haven't caught up in modern technology. Yes, this was in
 7 court. Apologize.
 8 Q Would it concern you that Mr. Bender testified in court
 9 that the Statement of Financial Condition of the President of
 10 the United States and he couldn't answer if he read the whole
 11 document?
 12 A Well, he said he couldn't answer that day whether he
 13 read every line and I understand that to mean that he couldn't
 14 recall reading every line of every document as he was sitting on
 15 the witness stand. So that doesn't concern me that.
 16 Q It does not concern you. And you can't answer whether
 17 he read the whole document. He says yes, he could not answer if
 18 he had read the whole document.
 19 THE COURT: What's the question?
 20 Q Does that concern you?
 21 A Knowing how the next question played out, I understand
 22 what he's trying to say.
 23 MR. SUAREZ: If you read up to the prior line, can
 24 we scroll in on that.
 25 Q Did you read this document? He responds, "Did I read

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1 the whole document. I presumably -- I can't answer if I read
 2 the whole document."
 3 THE COURT: What's the question?
 4 Q Are you concerned that Mr. Bender didn't read
 5 Statements of Financial Condition in their entirety?
 6 A That's not what he said. He says, "I presumably -- I
 7 can't answer if I read the whole document."
 8 Q Okay.
 9 A And he goes on to explain that he can't answer today
 10 that he read every line of every document and whatever the
 11 document that is. I still don't know what document it is.
 12 MR. SUAREZ: Let turn to page 375 of the trial
 13 testimony at lines 24. We are looking at PX 731. Can we
 14 pull up 731 and put it next to this document just to make
 15 sure that we are clear.
 16 (Continued on the next page.)
 17
 18
 19
 20
 21
 22
 23
 24
 25

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1 Q Can we scroll to the top of PX 731? Do you recognize
 2 this document?
 3 A I recognize this type of document. This one in
 4 particular I have no memory of.
 5 Q Okay. Do you see what "PBC" means?
 6 A Yes.
 7 Q PBC means prepared by client?
 8 A Correct.
 9 Q And that's a document that Mazars stamps on documents
 10 that it receives?
 11 A That's a stamp Mazars puts on documents that it
 12 receives.
 13 Q And see where it says there "Donald J. Trump Statement
 14 of Financial Condition as of June 30, 2015?"
 15 A I do.
 16 Q Do you understand this to be the supporting data for
 17 the Statement of Financial Condition for 2015?
 18 A I believe that's part of it, yes.
 19 Q In connection with the internal investigation that you
 20 led, I presume you reviewed the supporting data for the
 21 statements of financial condition?
 22 A I did.
 23 Q Okay. And do you see where I ask Mr. Bender here at
 24 trial: "Mr. Bender, in connection with the Statement of
 25 Financial Condition is this something that you saw?" We pulled

W. Kelly - Plaintiff - cross (Suarez) Page 2147

1 up PX 731, we see that on the line before.
 2 "The schedule."
 3 He says, "I see?"
 4 "Did you see it?"
 5 "ANSWER: Yes, I did."
 6 "QUESTION: Did you review it?"
 7 "ANSWER: I did not review it."
 8 "QUESTION: Did not review it?"
 9 "Review is the job was a compilation."
 10 "ANSWER: Okay."
 11 Did you read it?
 12 A May not have read every line, but I did look at it.
 13 Q Are you concerned that Mr. Bender did not read every
 14 line of the supporting data of the Statement of Financial
 15 Condition?
 16 A No, I'm not.
 17 Q Okay. That does not concern you at all?
 18 A No.
 19 Q Okay. Mr. Bender was the engagement partner that
 20 signed the compilation reports; correct?
 21 A Correct.
 22 Q And his work was subject to quality review by another
 23 member of the team; correct?
 24 A Correct.
 25 Q Are you concerned that Mr. Bender testified that just

W. Kelly - Plaintiff - cross (Suarez) Page 2148

1 because something was sent to him it didn't mean that he
2 reviewed it?
3 A No.
4 Q Okay. And that includes the years where Mr. Bender was
5 compiling the Statement of Financial Condition for the president
6 of the United States?
7 A I don't know what it refers to.
8 Q You understand that Donald J. Trump was the president
9 of the United States; correct?
10 A Correct.
11 Q That's not lost on you; correct?
12 A Correct.
13 Q Okay. You testified earlier today that Mazars performs
14 compilation engagements in connection or rather in compliance of
15 professional standards; correct?
16 A Correct.
17 Q And this includes professional standards promulgated by
18 the American Institute of Certified Public Accountants; correct?
19 A Correct.
20 Q And you're familiar with AR 80?
21 A In a general sense.
22 Q And ARC 80?
23 A I believe so again in a general sense.
24 Q Okay. And those are accounting standards that govern
25 the preparation of compilations?

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1 A In a general sense.
2 Q Okay. Mazars doesn't have its own manual for
3 compilation engagements; correct?
4 A Correct.
5 Q It follows the policies and procedures concerning
6 compilation work that are promulgated by the AIBCA; correct?
7 A Correct.
8 Q And, in fact, each compilation report is subject to
9 quality control review before its issue; correct?
10 A Correct.
11 Q And at your deposition we talked about the fact that
12 compilations have limited uses; right?
13 A Correct.
14 Q And you describe compilations as something that you
15 personally have an issue with?
16 A On a personal level, yes.
17 Q That's not the official Mazars policy; correct?
18 A No.
19 Q Compilations are the lowest level of financial
20 statement preparation; correct?
21 A Correct.
22 Q And I think you said you had a philosophical issue with
23 the purpose of compilation in a general sense; correct?
24 A Correct.
25 Q But you took no exception with how the Trump

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1 Organization used the compilation reports prepared by Mazars;
2 correct?
3 A Correct.
4 Q You would agree with me that Mazars had an obligation
5 to read and understand the supporting data provided in
6 connection with preparing the compilation of a Statement of
7 Financial Condition?
8 A Correct.
9 Q And you would agree with me that Mazars has an
10 obligation to understand the basis of valuation for each asset
11 listed in the Statement of Financial Condition; right?
12 A Correct.
13 Q And confirm that the valuation method is consistent
14 with the definition of estimated current value; correct?
15 A Correct.
16 Q You would agree that Mazars has an obligation to
17 confirm that the notes to a Statement of Financial Condition are
18 consistent to the supporting data when preparing an accountant's
19 compilation report; correct?
20 A Correct.
21 MR. SUAREZ: Let's take a look at Plaintiff's
22 Exhibit 719 at line 654.
23 Q And Mr. Kelly, this is the supporting data for the 2014
24 Statement of Financial Condition that was produced into evidence
25 by the Attorney General. Do you see here that it provides a

W. Kelly - Plaintiff - cross (Suarez) Page 2151

1 valuation of the Seven Springs property under development?
2 A I see that.
3 Q And do you see here that the basis of valuation is an
4 anticipated selling price to reach an anticipated profit times
5 the number of homes to yield an anticipated value. Do you see
6 that?
7 A I see what it says.
8 Q Okay. Do you see that the method of valuation reflects
9 to the -- I'm sorry -- reflects the anticipated profit after
10 cost?
11 A I do.
12 Q And do you see that the method used here does not
13 account for the time value of money in reaching a value for the
14 project under development?
15 A I don't see any indication of that, correct.
16 Q Correct there is no indication here that the time value
17 of money was taken into account; correct?
18 A Correct.
19 Q And this is something that you would have expected
20 Mazars to read and understand in connection with the preparation
21 of the compilation report; correct?
22 A Correct.
23 Q Okay. Let's take a look at Plaintiff's Exhibit 730.
24 This is a 2014 Statement of Financial Condition and the
25 accompanying accountant's compilation report prepared by Mazars.

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1 Those were previously introduced into evidence by the Attorney
 2 General. Can you please take a look at page 6 of the document.
 3 It's page 6 of the PDF, page four of the -- on the footer.
 4 Do you see where it says "Pursuant to GAAP, this
 5 financial statement does not reflect the value of
 6 Donald J. Trump's worldwide reputation; however, the brand value
 7 has afforded Mr. Trump the opportunity to participate in
 8 licensing deals around the globe as reflected on the balance
 9 sheet herein." Do you see that?
 10 A I do.
 11 Q And it goes on to say, "Mr. Trump's name conveys a high
 12 degree of quality and profitability;" correct?
 13 A Correct.
 14 Q The prestige significantly enhances the value of the
 15 properties reflected in this financial statement, as well as
 16 that of his future projects; correct?
 17 A That's what it says.
 18 Q Okay. "The brand along with the level of quality of
 19 Mr. Trump's residential developments has allowed the selling
 20 price per square foot in Trump properties to be amongst the
 21 highest among prominent real estate developers."
 22 Do you see that?
 23 A I see that.
 24 Q And do you see where it concludes, "the goodwill
 25 attached to the Trump name has significant financial value that

W. Kelly - Plaintiff - cross (Suarez) Page 2153

1 has not been reflected in the preparation of this financial
 2 statement." Do you see that?
 3 A I see that.
 4 Q And would you have expected Mazars to read and
 5 understand this note to the financial statement before issuing
 6 its compilation report; correct?
 7 A Correct.
 8 Q All right. Now, let's turn to the Supporting Data for
 9 this year, PX 719. This is Plaintiff's Exhibit 719 and if we
 10 can start at the top, 679. This, again, is the 2014 Supporting
 11 Data. Do you see that?
 12 A I see that.
 13 Q The brand premium -- if we look at Colts Neck, the
 14 Colts Neck property, line 306 of this property, would you agree
 15 with me that the valuation method disclosed there includes the
 16 value of the fixed assets; correct?
 17 A I see that.
 18 Q And the "premium for fully operational branded facility
 19 at 30 percent." Do you see that?
 20 A I see that.
 21 Q Would you have expected Mazars to read and understand
 22 the basis for valuing the Trump National Golf Club at Colts
 23 Neck?
 24 A Yes.
 25 Q And you see there next to the value of 61,257,000,

W. Kelly - Plaintiff - cross (Suarez) Page 2154

1 which is the sum of the value of the fixed assets plus the fully
 2 operational branded facility premium of \$61 million that has the
 3 Mazars check numbers on it.
 4 A I see that.
 5 Q Correct.
 6 And if we go to line 325, this is the Washington, D.C.
 7 course, you again see the value of fixed assets at 46,270,000
 8 plus a premium for a fully operational branded facility at
 9 30 percent; correct?
 10 A I see that.
 11 Q And you again see the Mazars check numbers?
 12 A I see those.
 13 Q And you would have expected Mazars to read and
 14 understand the basis for valuing the Washington, D.C. club?
 15 A I would.
 16 Q And if we go on to line 347, we again see the Trump
 17 National Golf Course in Philadelphia and as Justice Engoron has
 18 taught me to do, if I were to ask you the same questions about
 19 the golf club in Philadelphia as I did with the golf club in
 20 Washington, D.C. and the golf club in Colts Neck, you would
 21 answer the same way?
 22 A Yes.
 23 Q And if we can continue scrolling through the following
 24 properties. You would see the same is true of Hudson Valley;
 25 correct?

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1 A Yes.
 2 Q And you would see the same is true as the golf club in
 3 L.A.?
 4 A Correct.
 5 Q And you would see the same is true for the golf club in
 6 Charlotte; correct?
 7 A Correct.
 8 Q And the golf club in Jupiter?
 9 A Correct.
 10 Q And in all of these instances would you have expected
 11 Mazars to read and understand the basis for valuing these golf
 12 clubs; correct?
 13 A Correct.
 14 Q Now, let's look at Plaintiff's Exhibit 755. This is
 15 the Statement of Financial Condition for 2017 for President
 16 Trump with the Mazars compilation report included; correct?
 17 A Correct.
 18 Q If we take a look at the assets page. Do you see where
 19 it says "other assets" of \$318 million?
 20 A I do.
 21 Q Now, let's turn to page 21. And the "other assets"
 22 says "the estimated current values of other assets are based on
 23 an evaluation by the trustees in conjunction with their
 24 associates and outside professionals using various valuation
 25 methods." Do you see that?

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1 A I do.
 2 Q Do you see with where it says "Trump Tower?"
 3 A I do.
 4 Q Do you see where it says "Mr. Trump owns a triplex
 5 apartment on the top three floors of Trump Tower?"
 6 A I see that.
 7 Q Now, take a look at the corresponding supporting data
 8 for this note, which we'll pull up as Plaintiff's Exhibit 758.
 9 This is the supporting data for the 2017 Statement of Financial
 10 Condition, and if we scroll down to line 969.
 11 MR. SUAREZ: Scroll up a little bit. Up. Up.
 12 Q You would see here that the 2016 data reflected the
 13 townhouse triplex based on comps at 30,000 square feet for the
 14 prior year; correct?
 15 A I see what it says.
 16 Q And you see where it says that the triplex based on
 17 comps at 10,000 square feet for the current year is 116,800,000?
 18 A I see that.
 19 Q Do you see that? And you see the Mazars check number
 20 right there on it; right?
 21 A I see that.
 22 Q And you would have expected Mazars to read and
 23 understand this change; correct?
 24 A I would, yes.
 25 Q And you can agree with me that the square footage here

W. Kelly - Plaintiff - cross (Suarez) Page 2157

1 changes from 10,000 -- excuse me -- from 30,000 square feet to a
 2 bit over almost 11,000 square feet. Do you see that?
 3 A I see that.
 4 Q Okay. And you would agree with me that this was a
 5 correction that was made by the Trump Organization on the
 6 Supporting Data?
 7 A I don't know who made the correction.
 8 Q It wasn't Mazars; correct?
 9 A Correct.
 10 Q And you would expect the notes to be conformed as
 11 appropriate; correct?
 12 A That's -- I don't understand that question.
 13 Q You would expect the notes to accurately reflect the
 14 basis for valuation; correct?
 15 A Not necessarily. The notes don't need to describe the
 16 basis of valuation.
 17 Q But you would expect the accountant, Mazars, in
 18 preparing the compilation to make sure that the notes were
 19 consistent with the supporting data; correct?
 20 A Correct. If the notes were consistent with the
 21 supporting data, yes.
 22 Q And sufficiently descriptive as appropriate?
 23 A As appropriate.
 24 Q Correct.
 25 And it would have been to disclose to Mazars that there

W. Kelly - Plaintiff - cross (Suarez) Page 2158

1 was a change in the triplex; correct?
 2 A What would have been to what?
 3 Q Disclosed here in the supporting data that there was a
 4 change in the size of the triplex; correct?
 5 A Correct. The supporting data reflects the change in
 6 the size.
 7 Q And Mazars never called back any of the prior years'
 8 Statements of Financial Statement compilation reports; correct?
 9 A Correct.
 10 THE COURT: Hold on. This is when we usually
 11 break. How much longer do you think that this cross
 12 examination will take?
 13 MR. SUAREZ: I've got a little bit to go.
 14 THE COURT: What's a little bit?
 15 MR. SUAREZ: Maybe an hour.
 16 THE COURT: Maybe an hour, all right. Let's keep
 17 going for now.
 18 Q And if we looked at the fixed asset valuation method,
 19 let's take a look at lines 267, would you agree with me here
 20 that the valuation method disclosed to Mazars for assets
 21 included the value of the fixed assets for the Trump
 22 International Golf Club Florida?
 23 A I see that.
 24 Q And would you agree with me here that the Trump Golf
 25 Club Briarcliff Manor included the value of the fixed assets?

W. Kelly - Plaintiff - cross (Suarez) Page 2159

1 A I see that.
 2 Q And if we can scroll down you can see that the fixed
 3 asset valuation method here for the Trump National Golf Club
 4 Bedminister also used the fixed asset value approach?
 5 A I do.
 6 Q You see all of that?
 7 And if I were to ask you the same question about all of
 8 the other golf course properties you would agree with me that
 9 they all again disclose the fixed asset value method as the
 10 basis for valuation of each of these assets?
 11 A That's what it says.
 12 Q That's what it says.
 13 And you would have expected Mazars to read and
 14 understand the Supporting Data; correct?
 15 A Correct.
 16 Q Okay. Now, let's go back to Plaintiff's Exhibit 755 at
 17 page 5 of the PDF. And here it says "assets are stated at their
 18 estimated current values and liabilities at their estimate
 19 current amounts using various valuation methods. Such valuation
 20 methods include, but are not limited to, the use of appraisals,
 21 capitalization of anticipated earnings, recent sales and offers,
 22 and estimates of current values as determined by the new
 23 trustees of the Donald J. Trump Revocable Trust." Do you see
 24 that?
 25 A I see that.

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1 Q The fixed assets approach to valuation isn't
2 specifically identified here; correct?
3 A Correct.
4 Q And you would have expected Mazars to read and
5 understand this paragraph; correct?
6 A Correct.
7 Q Okay. Turning to Plaintiff's Exhibit 2992. This was
8 the letter that you sent to the Trump Organization; correct?
9 A Correct.
10 Q And earlier you testified that you sent this letter
11 after Mazars learned of certain things that the District
12 Attorney's Office was asking questions about; correct?
13 A Correct.
14 Q Prior to sending this letter you never contacted the
15 Trump Organization; correct?
16 A I may have called Alan Garten to let him know I was
17 coming.
18 Q But you didn't ask the Trump Organization to provide
19 information or any backup; correct?
20 A Correct.
21 Q You never asked the Trump Organization to give you
22 information concerning the questions that the District
23 Attorney's Office was asking; correct?
24 A Correct.
25 Q You took the District Attorney's Office at their word;

W. Kelly - Plaintiff - cross (Suarez) Page 2162

1 A Correct.
2 Q And prior to sending this letter Mazars conducted its
3 own investigation; right?
4 A Correct.
5 Q You looked at public sources; right?
6 A Correct.
7 Q Those included newspapers?
8 A Correct.
9 Q And other publicly available documents; right?
10 A Correct.
11 Q You didn't perform professional services before you
12 issued this letter; right? You --
13 A Did not perform professional accounting services prior
14 to issuing this letter.
15 Q Mazars did not perform professional accounting services
16 prior to issuing this letter?
17 A Correct.
18 Q You didn't perform an audit of the Statement of
19 Financial Condition?
20 A Correct.
21 Q You didn't perform a review of the statements of
22 financial condition?
23 A Correct.
24 Q Prior to sending this letter you also considered
25 information that you received from internal and external

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1 correct?
2 A Not quite.
3 Q But you never gave the Trump Organization an
4 opportunity to comment on their allegations; correct?
5 A Correct.
6 Q Your decision to terminate the engagement was because
7 Mazars deemed Mr. Weisselberg not to be credible; correct?
8 A Correct.
9 Q And as a result you could no longer rely on his
10 representations; right?
11 A Correct.
12 Q Does Mazars take the position that when deciding to
13 disengage the Trump Organization as a client it executed that
14 decision in accordance with professional standards?
15 A Correct.
16 Q Let's take a look at Plaintiff's Exhibit 2994. You
17 wrote this letter; correct?
18 A Correct.
19 Q And it says that Mazars has not concluded that the
20 various financial statements as a whole contain material
21 discrepancies; correct?
22 A Correct.
23 Q When you refer to the various financial statements you
24 meant the statements of financial condition for President Trump
25 for the period 2011 to 2020; correct?

W. Kelly - Plaintiff - cross (Suarez) Page 2163

1 alternatively sources; correct?
2 A Correct.
3 Q And you reviewed Mazars work papers; correct?
4 A Correct.
5 Q Including all of the previous work papers that we
6 previously reviewed; correct?
7 A Correct.
8 Q And all of the statements of financial condition that
9 we previously looked at?
10 A Correct.
11 Q And you concluded that Mazars' work was done in
12 accordance with professional standards?
13 A Correct.
14 Q And you reviewed the allegations in certain filings
15 that were made by the New York Attorney General; right?
16 A Correct.
17 Q And you understood as a lawyer at the time that those
18 were just allegations; right?
19 A Correct.
20 Q And again, you never asked the Trump Organization for
21 an opportunity to provide input on the NYAG's allegations?
22 A Correct.
23 Q You never interviewed anyone from the Trump
24 Organization; right?
25 A Correct.

W. Kelly - Plaintiff - cross (Suarez) Page 2164

1 Q You never asked the Trump Organization to walk you
2 through the valuation methods that had been used in the
3 statements of financial condition; correct?
4 A Correct.
5 Q But you did look at the supporting data; right?
6 A Yes.
7 Q And you saw how it was reported in the notes; correct?
8 A Correct.
9 Q And you concluded that the work had been done in
10 accordance with professional standards; right?
11 A Correct.
12 THE COURT: That's been asked about five times
13 already.
14 Q And after conducting all of this diligence, which
15 included two outside law firms; right?
16 A Correct.
17 Q It included communications with the New York Attorney
18 General's Office; correct?
19 A Correct.
20 Q You spoke with these people; right?
21 A I'm --
22 Q Or some of the ones that might be out by COVID; right?
23 A Yes.
24 Q And Mazars never determined that there were any
25 material discrepancies with respect to the Statement of

W. Kelly - Plaintiff - cross (Suarez) Page 2165

1 Financial Condition that it prepared for President Trump from
2 2011 to 2018?
3 A That is correct.
4 Q And Mazars takes the position that its decision to
5 advise its client not to rely on the statements of financial
6 condition from 2011 to 2020 was executed in accordance with
7 professional standards; correct?
8 A Correct.
9 Q Mr. Kelly, you would agree with me that Mazars and its
10 predecessors prepared compilations of the Statement of Financial
11 Condition for decades?
12 A I could only say until, like, 2005 and 4. I don't know
13 before that.
14 Q A really long time?
15 A A really long time.
16 Q And Mazars never refused to prepare a Statement of
17 Financial Condition prior to 2021; correct?
18 A For this client, correct.
19 Q Correct, fair.
20 And each year Mazars got paid to prepare the
21 compilation report for the Statement of Financial Condition;
22 correct?
23 A Correct.
24 Q And each year Mazars also got paid to prepare the
25 president's federal income tax returns; correct?

W. Kelly - Plaintiff - cross (Suarez) Page 2166

1 A Correct.
2 Q And Mazars also prepared tax returns for dozens, if not
3 hundreds, of other Trump Organization entities; correct?
4 A Correct.
5 Q And reviewed or audited financial statements for dozens
6 of entities; correct?
7 A I'm not sure about dozens, but yes, excess of ten.
8 Q In excess of ten.
9 Since 2011, there were at least 116 engagements for at
10 least 14 entities in the audit review and attestation
11 categories. Does that sound about right?
12 A I'll assume that that does not disprove anything in my
13 mind.
14 Q You don't have a basis to dispute that?
15 A Right.
16 Q And this work took place over a decade; right?
17 A Correct.
18 Q And Mazars was a Trump Organization primary outside
19 accounting firm?
20 A Correct.
21 Q And Mazars was paid millions of dollars in fees; right?
22 A Correct.
23 Q And the Trump Organization was Mr. Bender's biggest
24 client?
25 A Correct.

W. Kelly - Plaintiff - cross (Suarez) Page 2167

1 Q By a lot?
2 A Correct.
3 Q And before the New York Attorney General started
4 investigating in 2019, Mazars never had any issue with any of
5 the work it did for the Trump Organization; correct?
6 A Not correct.
7 Q Mazars didn't have any major issues that it did with
8 it?
9 A That's correct.
10 Q That's correct.
11 There might have been things that were in dispute that
12 you talked about; right?
13 A There were other legal matters that we dealt with
14 throughout the years.
15 Q And you worked them out to Mazars' satisfaction?
16 A Correct.
17 Q Because Mazars kept doing work for the Trump
18 Organization?
19 A Correct.
20 Q And kept collecting fees from the Trump Organization?
21 A Correct.
22 THE COURT: Asked and answered many times. Yes,
23 they were paid.
24 Q And over the years Mazars prepared audits of 40 Wall
25 Street LLC; correct?

W. Kelly - Plaintiff - cross (Suarez) Page 2168

1 A Correct.
 2 Q Audits of the Trump Old Post Office LLC?
 3 A Correct.
 4 Q Audits and compilations for 401 North Wabash Venture
 5 LLC?
 6 A I believe so, yes.
 7 Q And in doing so Mazars would have known that these
 8 attestation services were performed for the benefit of lenders
 9 like Deutsche Bank; right?
 10 A I don't know in any particular situation.
 11 Q Okay. Was it part of your review to determine what the
 12 audits and compilations prepared for those entities were used
 13 for?
 14 A No.
 15 Q Were there any loan documents related to Deutsche Bank
 16 or Ladder Capital in Mazars' files?
 17 A You know, I don't remember seeing any.
 18 Q Would you have understood the basis for preparing
 19 audits and compilations?
 20 A Yes.
 21 Q Would you have understood that those were going to be
 22 submitted to lenders?
 23 A It depends on a particular situation.
 24 Q That they could have been submitted to lenders?
 25 A I'm aware of various uses for those type of documents;

W. Kelly - Plaintiff - cross (Suarez) Page 2169

1 in this situation, I don't know.
 2 Q And Mazars would have done a good job in doing audits
 3 and compilations -- excuse me.
 4 And Mazars would have done a good job in doing audits
 5 and reviews for those entities; correct?
 6 A Correct.
 7 Q And in doing so Mazars would have performed financial
 8 analysis on the books and records of those entities; right?
 9 A Of the entities we're doing the audits of?
 10 Q Correct.
 11 A Yes.
 12 Q Which include 40 Wall, Old Post Office and 401 North
 13 Wabash?
 14 A Yes.
 15 Q And those audits took place as recently as December 31,
 16 2020; correct?
 17 A Correct.
 18 Q And to this day Mazars still stands behind all of the
 19 financial statements that audited or reviewed for the Trump
 20 Organization; correct?
 21 A Correct.
 22 Q Okay. And then in February you send a letter saying
 23 there is a non-waivable conflict; right?
 24 A Correct.
 25 Q And this conflict included the potential that you might

W. Kelly - Plaintiff - cross (Suarez) Page 2170

1 be called to testify in a manner that's adverse to your former
 2 client; correct?
 3 A Right.
 4 Q And, of course, you were concerned that the government,
 5 the NYAG, these people, could bring a claim against Mazars;
 6 correct?
 7 A As general counsel of Mazars, I'm concerned anybody
 8 could bring a claim against it and in this particular situation
 9 I was concerned of anybody involved could bring a lawsuit
 10 against the Trump Organization.
 11 Q It was --
 12 A I'm sorry.
 13 Q It was a factor; right?
 14 A Yes.
 15 Q You were concerned?
 16 A Correct.
 17 Q And you wanted to get ahead of it; right?
 18 A Well, I knew that if we were able to demonstrate what
 19 services we provided that we'd be okay because we complied with
 20 professional standards.
 21 Q You wanted to convince the government not to bring a
 22 claim against Mazars?
 23 A I wanted to explain to whoever would ask what we did
 24 and why we did it.
 25 Q You certainly didn't want to -- I'm sorry -- not to

W. Kelly - Plaintiff - cross (Suarez) Page 2171

1 bring a claim against Mazars?
 2 A I'll agree with that.
 3 Q And you exchanged a lot of information; right? Years
 4 worth of information?
 5 A With who?
 6 Q With the New York Attorney General's Office?
 7 A Yes.
 8 Q You spent years of exchanging information with them;
 9 right?
 10 A We spent years replying to their subpoenas and things
 11 like that, yes.
 12 Q Okay. Because you wanted to curry favor with these
 13 people so you could get Mazars out of a tricky situation; right?
 14 A There was no currying favor involved. It was being a
 15 good corporate citizen, responding to subpoenas and explaining
 16 the work we did.
 17 Q Okay. So after all of these years, 30 years with
 18 Mazars and its prior entities, millions and millions of dollars
 19 paid for by the Trump Organization, when the New York Attorney
 20 General files a claim, files a paper in court, you take them at
 21 their word and never once consult with your former client;
 22 right?
 23 A No, we didn't take them at their word. We did
 24 additional investigation as outlined in the letter.
 25 Q Which did not include talking to your client who paid

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1 you all that money for all those years; right?
 2 A Correct.
 3 Q Okay. So that was it? You just kicked them to the
 4 curb; right?
 5 A We did not kick them to the curb.
 6 Q Okay.
 7 Transcript continues on the following page....
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1 THE COURT: When?
 2 MR. SUAREZ: 15 minutes.
 3 THE COURT: Deal.
 4 THE COURT OFFICER: Witness entering.
 5 (Witness resumes the stand.)
 6 THE COURT: Okay. 15 minutes from 12:02.
 7 Q Mr. Kelly, I want to bring Plaintiff's Exhibit 2994
 8 back up to the screen. I want to draw your attention very
 9 specifically to the part that says, "While we have not concluded
 10 that the various financial statements as a whole contain
 11 material discrepancies. "
 12 After all these years, Mr. Kelly, and all the
 13 investigations by the New York Attorney General's Office and the
 14 District Attorney of New York and congressional democrats,
 15 Mazars wrote, "While we have not concluded that the various
 16 financial statements contain material discrepancy," correct?
 17 A Correct.
 18 Q All of this time later, you still have not identified
 19 material discrepancies, correct?
 20 A When I wrote this letter, correct.
 21 Q Okay. And that was --
 22 THE COURT: Wait. Wait. That's not what the
 23 question was. The question was --
 24 MR. SUAREZ: I'll rephrase the question.
 25 THE COURT: There was no problem with the question.

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1 MR. KISE: Your Honor, I hate to interrupt my
 2 colleague, but are we taking our morning break?
 3 THE COURT: Is there any chance of finishing this
 4 before 12:30?
 5 MR. SUAREZ: I could meet with my colleagues and
 6 streamline the rest of the presentation.
 7 THE COURT: How about we take a break now and if
 8 the team can suggest ways to make this faster, we would
 9 appreciate that.
 10 MR. KISE: We will as always. I will note yet
 11 again, though, that no one ever hurries up the Attorney
 12 General. We are the only ones that always get the hurry up.
 13 THE COURT: All right. I don't have to respond to
 14 that. I don't necessarily accept it. In fact, I don't
 15 accept it. Ten-minute break for the next 15 minutes.
 16 (Witness exits the stand.)
 17 (Whereupon, a recess was taken.)
 18 THE COURT OFFICER: All rise. Part 37 is back in
 19 session. Be seated and come to order.
 20 THE COURT: Ten-minute break should not take more
 21 than 15 minutes. It shouldn't take 20, but if there is an
 22 emergency or something, tell me; but let's try to keep this
 23 moving fast.
 24 It's twelve o'clock. How much longer?
 25 MR. SUAREZ: We'll, wrap it up.

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1 The problem was the answer didn't answer the question.
 2 Q When you wrote this letter, Mazars had not identified
 3 any material discrepancies with the financial statements,
 4 correct?
 5 A Correct.
 6 Q And that was after years of investigations by the New
 7 York Attorney General's Office, correct?
 8 A Correct.
 9 Q And that was after years of investigations by the
 10 District Attorney of New York, correct?
 11 A Correct.
 12 Q And that was after years of investigations by
 13 congressional democrats, correct?
 14 A Correct.
 15 Q And that was after years of lawsuits and litigation
 16 related to the work that Mazars did for the Trump Organization,
 17 correct?
 18 A I don't agree that the lawsuits related to the work we
 19 did, but the work we did was touched upon in the lawsuits.
 20 Q That was after years of litigation that Mazars found
 21 itself in as a result?
 22 MS. FAHERTY: Can we move this along? I think
 23 we've established it is after a number of years. Can we
 24 move this along?
 25 MR. SUAREZ: I don't blame you. This is the kind

W. KELLY - PLAINTIFF - CROSS(MR. SUAREZ) Page 2176

1 of harassment that we have had to put up with and you had to
 2 put up with it. So I will move it along, but you know it is
 3 important that we get out --
 4 MS. FAHERTY: Objection to that commentary.
 5 MR. SUAREZ: Well, I don't interrupt you in the
 6 middle of your questions. I appreciate the fact to finish
 7 here.
 8 THE COURT: I don't think you're on the microphone,
 9 are you?
 10 MS. FAHERTY: Oh, I could speak loudly, Your Honor.
 11 I apologize.
 12 THE COURT: Okay. Let hear from the AG and then
 13 Mr. Suarez and then let you move on. The clock is ticking.
 14 MS. FAHERTY: I objected and asked that if we could
 15 move it along, it had been asked and answered and then I
 16 objected to the mischaracterization.
 17 MR. KISE: We are seriously on the clock? You are
 18 kidding about that, right?
 19 THE COURT: I'm not kidding because he is asking
 20 the same question over and over and he is misrepresenting.
 21 MR. KISE: I don't think so at all, but this never
 22 happens during that their examinations never, never,
 23 N-E-V-E-R, sir. I'm sorry, but this never happens that
 24 they're on a clock.
 25 THE COURT: Maybe there is a reason.

W. KELLY - PLAINTIFF - CROSS(MR. SUAREZ) Page 2177

1 MS. HABBA: Yeah, we know.
 2 THE COURT: We disagree on what the reason is, but
 3 let's not try to figure this out in front of the current
 4 situation. Please continue.
 5 Q Since we were interrupted, years of investigations by
 6 the New York Attorney General, correct.
 7 A Correct.
 8 Q Years of investigations by the District Attorney of New
 9 York, correct?
 10 A Correct.
 11 Q Years of investigation by --
 12 THE COURT: Okay. Okay. You keep saying that.
 13 MR. SUAREZ: They keep interrupting me. I'm trying
 14 to get through a line of questioning and cross-examination,
 15 Your Honor.
 16 THE COURT: Did you forget what he said before
 17 about years of investigation, years of this, years of that?
 18 Did you forget that?
 19 THE WITNESS: I'm sorry, Your Honor. I do need to
 20 hear the question again.
 21 THE COURT: Okay. Let's get the question again.
 22 Q Years of investigations by congressional democrats,
 23 correct?
 24 A I'm really sorry, but can you do the preamble to it
 25 because that's when I got lost in all of this?

W. KELLY - PLAINTIFF - CROSS(MR. SUAREZ) Page 2178

1 Q Sure. There were years upon years of investigations of
 2 the work that Mazars did for the Trump Organization, correct?
 3 A That's when I said I disagreed it was an investigation
 4 of the work that Mazars did. It was an investigation of the
 5 Trump Organization and it involved and touched upon work that we
 6 did.
 7 Q And Mazars was put right in the middle of it, right?
 8 A No, I don't think so.
 9 Q Mazars had to respond to petitions in the Supreme
 10 Court?
 11 A No, I don't think we had to respond.
 12 Q Mazars was involved in years of responding to subpoenas
 13 by the New York Attorney General's Office, right?
 14 A Correct.
 15 Q And Mazars was involved in years of responding to
 16 subpoenas by the District Attorney of New York, right?
 17 A Correct.
 18 Q And Mazars had to deal with books being written by
 19 former prosecutors in the District Attorney of New York Office
 20 about that investigation, right?
 21 A I wouldn't say we had to deal with it, but we are aware
 22 of it.
 23 Q You are aware of it? It's there?
 24 A Yeah.
 25 Q And Mazars had to respond to congressional subpoenas,

W. KELLY - PLAINTIFF - CROSS(MR. SUAREZ) Page 2179

1 right?
 2 A Right.
 3 Q And after all of that harassment, you still put in this
 4 letter that Mazars had not concluded that the statements
 5 contained material discrepancies, correct?
 6 A I don't mean to quibble, but harassment, but after
 7 years of all of that, I still put this in this letter, yes.
 8 Q It was harassment, Mr. Kelly, and Mr. Bender knew it.
 9 He lost his biggest client. He went to the White House and
 10 cried in front of the President because he was so upset --
 11 THE COURT: Is this a speech or a question?
 12 MR. SUAREZ: It is a question.
 13 THE COURT: It is a question.
 14 Q His entire practice was being decimated by all that
 15 harassment and your accounting firm, sir, was being put through
 16 years and years and years of torture, harassment and
 17 tormentation [sic] by these people, correct?
 18 I will withdraw that question.
 19 And notwithstanding all of the pressure brought to bear
 20 by the New York Attorney General's Office, by the District
 21 Attorney of New York, by everyone who examined the work that
 22 Mazars did, you still had the fortitude to be honest in this
 23 letter and for that I congratulate you.
 24 THE COURT: Is that a question?
 25 MR. SUAREZ: I don't want it withdrawn.

W. KELLY - PLAINTIFF - REDIRECT(MR. FINKELSTEIN) Page 2180

1 Q I congratulate you that after fearing litigation --

2 THE COURT: No. It has to be a question. That's

3 what you are here for, to ask questions. He is here to

4 answer them and I make sure -- I'm here to make sure that

5 that happens.

6 MR. SUAREZ: Your Honor, I have no further

7 questions other than I congratulate the witness to have the

8 fortitude to put that in the letter.

9 THE COURT: Will there be any re-direct?

10 MR. SOLOMON: One minute of re-direct, Your Honor.

11 THE COURT: One minute, you got it.

12 THE COURT: Please proceed with your one-minute

13 redirect.

14 MR. KISE: Are they on the clock?

15 THE COURT: Yes. It is 12:09. I will stop them

16 him by 12:11.

17 REDIRECT EXAMINATION

18 BY MR. FINKELSTEIN:

19 Q Do you recall on cross-examination you were asked about

20 your investigation about prior to resigning the engagement?

21 THE COURT: Sorry. I can't hear that question. I

22 didn't hear that question.

23 Q Do you recall on cross-examination you were asked about

24 your investigation prior to resigning the engagement?

25 A In general, yes.

W. KELLY - PLAINTIFF - REDIRECT(MR. FINKELSTEIN) Page 2181

1 Q During the investigation, did you learn that the Trump

2 Organization had failed to provide certain information to

3 Mazars?

4 A The investigation was done through and with counsel, so

5 I'm -- I think it's a privileged issue that I'm not going to

6 talk about.

7 THE COURT: Will you accept that?

8 MR. SOLOMON: Your Honor, finding out whether there

9 was or wasn't information withheld, without getting into the

10 details of what that information was, is not privileged. If

11 the witness -- but if the witness is taking that position.

12 MR. KISE: This is consistent with the position the

13 witness took in the deposition that all of these matters are

14 completely off limits, they're all privileged, and both

15 sides -- the Attorney General didn't question that. We

16 didn't question that. So to ask him that now and put him in

17 a position where he's got to make that determination is

18 inadmissible.

19 THE COURT: This is off the clock, though. I'm

20 sorry. It is only one minute.

21 MR. SOLOMON: Your Honor, the witness has asserted

22 privilege. And if Your Honor upholds that assertion, we

23 have nothing further.

24 THE COURT: I am upholding it. That's it.

25 MR. FINKELSTEIN: Nothing further.

M. COHEN - PLAINTIFF - DIRECT(MS. FAHERTY) Page 2182

1 THE COURT: Any recross-examination? Let's get the

2 next witness. The witness is excused.

3 THE WITNESS: Thank you.

4 (Witness excused.)

5 MS. FAHERTY: Your Honor, on behalf of the People,

6 Colleen Faherty, we call Michael Cohen as our next witness.

7 THE COURT: Okay. I had a feeling you would.

8 THE COURT OFFICER: Witness entering.

9 THE COURT OFFICER: Please raise your right hand.

10 Do you solemnly swear or affirm that any testimony you give

11 will be the truth, the whole truth and nothing, but the

12 truth?

13 THE WITNESS: I do.

14 THE COURT OFFICER: Please have a seat. State your

15 name and either business or home address for the record.

16 THE WITNESS: Michael Cohen, 502 Park Avenue, New

17 York, New York 10022.

18 MICHAEL COHEN, a witness called by the Plaintiff,

19 after having been first duly sworn by the Clerk of the Court,

20 took the witness stand and testified as follows:

21 THE COURT: Please commence the direct examination

22 of Mr. Cohen.

23 MS. FAHERTY: Thank you, Your Honor.

24 DIRECT EXAMINATION

25 BY MS. FAHERTY:

M. COHEN - PLAINTIFF - DIRECT(MS. FAHERTY) Page 2183

1 Q Good afternoon.

2 A Good afternoon.

3 Q Before we begin, I just want to ask you a question.

4 Are you currently taking any medications that would impact your

5 ability to testify today truthfully and accurately?

6 A No.

7 Q Okay, thank you.

8 Can you, please, describe your educational background

9 after high school for me?

10 A College, four years, American University. Then three

11 years law school, Western Michigan Thomas M. Cooley School of

12 Law.

13 Q Did you say Cooley School of Law?

14 A Correct.

15 Q What year did you graduate from the Cooley School of

16 Law?

17 A 1991.

18 Q Do you hold any professional certifications or

19 licenses?

20 A Not any longer.

21 Q Did you previously hold any professional certifications

22 or licenses?

23 A I did.

24 Q What professional certification or license did you

25 previously possess?

M. COHEN - PLAINTIFF - DIRECT(MS. FAHERTY) Page 2184

1 A JD, New York State Bar Association.
 2 Q You were a licensed attorney?
 3 A Yes.
 4 Q You don't hold any accounting degrees, right?
 5 A Correct.
 6 Q What state were you licensed as an attorney?
 7 A New York State.
 8 Q Do you recall at what point in time your license was
 9 revoked to serve as an attorney of law?
 10 A 2018.
 11 Q And what was the basis for your license to practice law
 12 was revoked?
 13 A The charges that emanated from the Southern District of
 14 New York.
 15 Q Fair to say that you have been convicted of a crime,
 16 sir?
 17 A Correct.
 18 Q And just to refresh your recollection, if I stated that
 19 there was a committee decision filed on February 28, 2019, do
 20 you have any basis to dispute that that was the date --
 21 A Oh, it would be 2019. Sorry. Yes.
 22 Q Thank you.
 23 What were the crimes that you were convicted of in
 24 reference to your testimony just now about the Southern District
 25 of New York?

M. COHEN - PLAINTIFF - DIRECT(MS. FAHERTY) Page 2185

1 A I pled guilty to five counts of tax evasion, one count
 2 of misrepresentation to a financial institution, two counts of
 3 campaign finance violation as well as one count of
 4 misrepresentation to Congress, 1001 violation.
 5 Q So let me see if I have these correct. You pled guilty
 6 to five counts of evasion of assessment of personal income tax
 7 pursuant to 26 U.S. Code Section 7201?
 8 A Correct.
 9 Q And would that be for the calendar years of 2012
 10 through 2016?
 11 A Yes.
 12 Q Was that related in connection with what business was
 13 that tax evasion crime related to?
 14 A It wasn't connected to any specific business. It was
 15 personal tax.
 16 Q Okay. Was it related to anything in connection with a
 17 taxi and limousine business you operated?
 18 A I owned New York City taxi medallions which were leased
 19 to an agent. I had income from that agent which it was stated
 20 was not reflected in my tax returns.
 21 Q And that -- the guilty plea in connection with those
 22 five counts of personal income tax evasion was accepted by a
 23 Federal Court in the Southern District of New York, correct?
 24 A Correct.
 25 Q And with regards to the sixth count in the Southern

M. COHEN - PLAINTIFF - DIRECT(MS. FAHERTY) Page 2186

1 District of New York, is it correct that that was the criminal
 2 charge of making a false statement to a financial institution in
 3 connection with the credit decision between the years 2015 to
 4 2016.
 5 A It was in connection with a HELOC, a home equity line
 6 of credit, application that they stated had a misrepresentation
 7 on it.
 8 Q And that's H-E-L-O-C?
 9 A Correct. Acronym.
 10 Q And that would be in violation of 18 U.S. Code Section
 11 1014, correct?
 12 A Correct.
 13 Q And the seventh count, is it correct that you pled
 14 guilty to willfully causing an unlawful corporate contribution
 15 from in or about June to October of 2016?
 16 A Yes.
 17 Q And that is in violation of 52 U.S. Codes Sections
 18 30118 (a), 30109 (d)(1)(a) and 18 USC Section 2(b)?
 19 A Yes.
 20 Q And then the eighth count of that criminal indictment
 21 in the Southern District of New York was a plea of guilty to
 22 making an excessive campaign contribution in or about October of
 23 2016, yes?
 24 A Yes.
 25 Q Then I think you also said that you pled guilty to a

M. COHEN - PLAINTIFF - DIRECT(MS. FAHERTY) Page 2187

1 ninth count; is that correct?
 2 A That's correct.
 3 Q Was that in a separate prosecution dated November 29th,
 4 to 18?
 5 A It was 2018. Yes, it was.
 6 Q Was that pursuant to a plea agreement with the Special
 7 Counsel's Office that you made false statements to the United
 8 States Congress in violation of 18 USC Section 1001(a)(2)?
 9 A Yes.
 10 Q And you were sentenced for those crimes?
 11 A I was.
 12 Q And did you attempt at any point to cooperate with the
 13 government in connection with your guilty pleas?
 14 A I did cooperate with the government, yes.
 15 Q However, you did not receive 5K1 or substantial
 16 assistance letter from the federal government, did you?
 17 A No, I refused.
 18 Q Did you receive any downward variance or departure in
 19 your sentencing guidelines as a result of any cooperation you
 20 may have provided to the government?
 21 A No.
 22 Q There was no downward variance associated with the
 23 sentencing guidelines?
 24 A The downward variance was a result of the plea, not
 25 because of any benefit that I would receive.

M. COHEN - PLAINTIFF - DIRECT(MS. FAHERTY) Page 2188

1 Q And the downward variance, about how long -- do you
2 recall the length of the sentence you were sentenced to?
3 A 36 months incarceration, 36 months between home
4 confinement and supervised release.
5 Q Was there also a concurrent two-month sentence imposed
6 as a result of the additional Special Counsel's Office
7 information?
8 A Yes.
9 Q And you did, in fact, serve that time in a federal
10 correctional facility?
11 A I did.
12 Q Have you ever made any public statements concerning the
13 legitimacy of those convictions?
14 A More than one.
15 Q And why did you do that?
16 A Because there was no tax evasion. At best, it could be
17 characterized as a tax omission. I have never in my life not
18 paid taxes. I have never requested an extension until 2017.
19 Every year I had paid, no extensions on time, what my CPA
20 accountant directed me to pay.
21 Q Were there, in fact, crimes that you pled guilty to
22 that you did feel you were guilty of committing those crimes?
23 A Yes.
24 Q So why, then, are you making statements about the
25 legitimacy of the Southern District convictions if there are

M. COHEN - PLAINTIFF - DIRECT(MS. FAHERTY) Page 2189

1 some that you feel, for example, were not crimes like a tax
2 omission?
3 A One has nothing to do with the other. The tax
4 violations as I've stated many times should not have been
5 brought in and of itself. The same with the HELOC violation. I
6 had had a HELOC on my property for more than a decade and I
7 wanted to correct the record because when all of this started,
8 it was overwhelming, the amount of misinformation,
9 disinformation, mal information about me was overwhelming and
10 enormous.
11 On top of that, there was also the second campaign
12 finance violation which dealt with Karen McDougal. I
13 acknowledged my complicity in the Stormy Daniels matter, but the
14 Karen McDougal, I never paid Karen McDougal. I was tasked to
15 review documents to ensure that Mr. Trump was protected and that
16 was done through AMI, National inquirer and David Pecker, but I
17 am also lastly complicit with the lie to Congress and as I have
18 stated many times, it is important to finish the sentence and
19 talk about what that lie was. That lie was the number of times
20 that I stated to the Senate Permanent Select Committee on
21 Intelligence how many times I spoke to Mr. Trump about the
22 failed Moscow -- Trump Tower Moscow project.
23 I had stated three. The true answer was ten and I did
24 that at the direction of, in concert with and for the benefit of
25 Mr. Trump. There was a whole group of people from Alan Garten

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1 to J. Sekulow, Ivanka, Jared, Abby Gold (ph), Ty Cobb, many
2 people were involved in the formation of that statement. My
3 complicity resulted in -- from me reading it into the record
4 and asking that the document be made part of the record.
5 MR. KISE: Your Honor, I just move to strike that
6 entire answer. I don't know if that was a book that he was
7 writing, but it wasn't responsive at all to the question. I
8 mean, it was just a long narrative about, you know,
9 invective about Trump and who knows how many other people.
10 I'm sure I'm going to be included here soon, but I
11 don't -- I don't think that that was at all responsive to
12 the question.
13 THE COURT: Overruled. I believe it was
14 responsive. Could have been shorter, but it was responsive.
15 Q Fair to say you still stood up in court and said to the
16 Southern District of New York, "I'm guilty of certain crimes."
17 "I accept responsibility for the crimes." And you served
18 federal incarceration in connection with those crimes, correct?
19 A Correct.
20 Q And fair to say a prosecutor stood up in front of the
21 Southern District of New York and stated, "The" factual
22 allegations in support of the crimes for which you had been
23 indicted and pled guilty," correct?
24 A Correct.
25 Q And a federal judge accepted those factual allegations,

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1 that they would be proved in connection with your guilty plea,
2 correct?
3 A Correct.
4 Q And I believe you stated it, but in connection with the
5 crimes alleged concerning an unlawful corporate contribution,
6 was that alleged conduct performed during the course of your
7 employment at that time?
8 A Employment at the Trump Organization?
9 Q Yes, sir.
10 A Yes.
11 Q And for the crimes alleged concerning an excessive
12 campaign contribution, was the alleged conduct there performed
13 during the course of your employment at that time?
14 A Yes.
15 Q And who was your employer at that time?
16 A Donald J. Trump.
17 Q And for the crimes alleged concerning making a false
18 statement to Congress, was the alleged conduct performed during
19 the course of your employment at that time?
20 A Yes.
21 Q And who was your employer at that time?
22 A Donald J. Trump.
23 Q Am I correct that you were Mr. Donald J. Trump's
24 personal counsel, sir?
25 A I was.

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1 Q So let's take a step back and I want to talk further
2 about your professional background before the criminal
3 convictions, okay?
4 A Sure.
5 Q What was the nature of your legal practice when you
6 first began working as an attorney, just generally?
7 A Negligence, tort, medical malpractice.
8 Q Where did you work after you graduated law school?
9 A It is called Estrin & Associates, 225 Broadway.
10 Q Med-mal negligence firm?
11 A Yes.
12 Q How long were you there?
13 A Five years.
14 Q Any titles associated with that position?
15 A Associate.
16 Q Any other titles?
17 A No, ma'am.
18 Q Did there come a point in time when you left Estrin?
19 A Yes.
20 Q Where did you work after Estrin?
21 A I left Estrin & Associates because I bought into a
22 company called Manhattan Maintenance. It was a New York City
23 yellow cab medallion company. I started my own law firm at the
24 time, but I also operated the yellow cabs out of the same
25 facility.

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1 Q And for how long were you there?
2 A From 1995 to 2002.
3 Q And was it just the title of being the owner at
4 Manhattan Maintenance or was there another title associated with
5 that work?
6 A I also had a law practice.
7 Q Was there a name of a law practice?
8 A Michael D. Cohen & Associates.
9 Q In 2002, did there come a point in time when you left
10 the Manhattan Maintenance Company?
11 A Yes.
12 Q Tell me about that departure.
13 A I sold my half of the company to my ex-partner and
14 decided to take a little time for myself and ultimately then
15 created -- continued with the law practice elsewhere.
16 Q The Michael D. Cohen & Associates law practice?
17 A Yes.
18 Q And what was the nature of the Michael D. Cohen law
19 practice?
20 A It was predominantly negligence, tort, similar to what
21 I started with, but then I started doing some real estate and
22 some business law.
23 Q Was that transactional work or can you describe for me
24 the nature of the real estate work you engaged in at that time?
25 A It was acquisitions of real estate on behalf of clients

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1 as well as representing various different business owners, some
2 of whom were in the auto business.
3 Q And did there come a point in time when you joined a
4 firm named Phillips Nizer?
5 A Yes.
6 Q When was that?
7 A 2015, 2016. I'm sorry. 2006, 2007, somewhere in that
8 area. I'm sorry. 2005, 2006, in that area.
9 Q 2005 or 2006?
10 A Yeah.
11 Q And what happened to the Michael D. Cohen & Associates
12 firm?
13 A Merged it into Phillips Nizer.
14 Q At Phillips Nizer, did you have a title when you merged
15 together?
16 A I did.
17 Q What was your title?
18 A I was a partner.
19 Q And how about once you joined Phillips Nizer; what was
20 the nature of your practice then?
21 A Business development as well as continuing with my
22 client base.
23 Q The client base that you had developed when you were in
24 private practice at Michael D. Cohen & Associates?
25 A Correct.

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1 Q Fair to say that your practice included commercial real
2 estate work?
3 A Yes.
4 Q Residential work as well?
5 A Mostly for myself.
6 Q Was it -- would you characterize the practice as a
7 litigation practice?
8 A We had some litigation, but I would not say it
9 was -- it was primarily litigation at that time.
10 Q And did there ever come a point in time when you
11 stopped working for Phillip Nizer?
12 A Yes.
13 Q When was that?
14 A That was in 2007.
15 Q And what occurred such that you stopped working for the
16 Phillip Nizer firm?
17 A I had had a meeting with Mr. Trump at the Trump
18 Organization and he had asked me to join his company as
19 executive vice-president of the Trump Organization and special
20 counsel to him.
21 Q So in or about 2007, you joined the Trump Organization
22 to work --
23 A March of 2007.
24 Q And that was to work for Donald J. Trump?
25 A Correct.

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1 Q Can you broadly describe that process about how -- of
2 how you came to work for the Trump Organization, just broadly,
3 please?
4 A I was introduced to Mr. Trump through his son Don, Jr.
5 and it emanated from a dispute that took place at one of the
6 properties. I had owned a unit there, family members owned
7 units there, friends owned units there, and the goal was to
8 remove the board and to replace the board with a more favorable
9 board.
10 We did it successfully. As a result, I was asked to
11 handle a few other matters for Mr. Trump which also resulted
12 successfully and ultimately while sitting in his office, he
13 asked me if I would like to leave that sleepy, old firm, meaning
14 Phillip Nizer, and join him.
15 (Continued on the next page.)
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1 Q Fair to say you accepted that invitation to join the
2 Trump Organization in 2007?
3 A I did.
4 Q And when I joined the Trump Organization in March of
5 2007, did you have a title?
6 A I did.
7 Q What was your title?
8 A It remained the same from beginning to end, executive
9 vice president of the Trump Organization and special counsel to
10 Donald J. Trump.
11 Q Let's take to those in turn.
12 Executive vice president of what? Was there a
13 particular department division that you were an EVP over?
14 A No, it was of the Trump Organization. It was just a
15 standing. There were -- after Mr. Trump there were about a
16 dozen plus executive vice presidents, including the three
17 children and then others were vice presidents and so on. So it
18 was basically a title of standing.
19 Q Did EVP reflect a level within the hierarchy?
20 A Yes.
21 Q And where within the executive level hierarchy would an
22 EVP have standing?
23 A Directly under Mr. Trump.
24 Q Thank you.
25 And you also stated you had a second title, "special

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1 counsel?"
2 A Correct.
3 Q What was your understanding of what special counsel
4 meant?
5 A I reported and only handled work for Mr. Trump and so I
6 was his special counsel. Whatever issues he had, whatever
7 created ire for him, he would bring it to me in order to
8 resolve.
9 Q So you were specifically serving as a personal counsel
10 to Donald J. Trump?
11 A Correct.
12 Q Who did you report to at the Trump Organization?
13 A Donald Trump.
14 Q Anyone else?
15 A No.
16 Q Was that true for the entire time that you worked at
17 the Trump Organization?
18 A Yes.
19 Q So the only person who asked you to perform work was
20 Donald J. Trump?
21 A Correct.
22 Q And the only person who would provide approval for the
23 work you performed was Donald J. Trump?
24 A Correct.
25 Q Okay. And just so that I have the same understanding

M. Cohen - Plaintiff - direct (Faherty) Page 2199

1 as you. I've used the phrase, "The Trump Organization."
2 What is your understanding of what the phrase "The
3 Trump Organization" means?
4 A The Trump Organization is a company that is
5 predominantly in real estate as well as branding. During the
6 times that I was there as well it also had television and media
7 operations as well.
8 Q And are there a series of common enterprise of
9 corporate entities that operate under this umbrella term, "The
10 Trump Organization?"
11 A Yes.
12 Q Do you know who owns or is the beneficial owner of that
13 enterprise of corporate entities under the umbrella "Trump
14 Organization?"
15 A Yes.
16 Q Who is that?
17 A Mr. Trump.
18 Q Okay. Focusing on the organization, were there
19 different departments at the Trump Organization, for example, an
20 accounting department, a legal department?
21 A Yes.
22 Q You didn't fit within the legal department, did you?
23 A No.
24 Q Your position was held outside of the legal department,
25 yes?

M. Cohen - Plaintiff - direct (Faherty) Page 2200

1 A Correct.
 2 Q But there was an accounting department there?
 3 A Yes.
 4 Q Who do you understand worked in the accounting
 5 department at the Trump Organization?
 6 A Well, several people worked at the accounting, but the
 7 CFO for the Trump Organization was Allen Weisselberg.
 8 Q Anyone else you know who worked in the accounting
 9 department other than the CFO, Mr. Weisselberg?
 10 A There were many people, Deborah Tarasoff, Jeff
 11 McConney. When I first started there there was a gentleman by
 12 the name of Eric Sacher who then got replaced with -- I
 13 apologize. I am blanking on his name, but there was quite a few
 14 people in the accounting department.
 15 Q And in the legal department, did you ever have occasion
 16 to work with members who were employed within the legal
 17 department at the Trump Organization?
 18 A Yes.
 19 Q Does the name Jason Greenblatt sound familiar to you?
 20 A When I started Jason Greenblatt was general counsel
 21 along with George Ross.
 22 Q And was he still at the Trump Organization by the time
 23 you departed in 2017?
 24 A Yes.
 25 Q How about Allan Garten? Is that a name you're familiar

M. Cohen - Plaintiff - direct (Faherty) Page 2201

1 within the legal department?
 2 A Yes.
 3 Q Who is Alan Garten?
 4 A He was an attorney at the Trump Organization, also an
 5 executive, but he'd ultimately became general counsel after
 6 Jason Greenblatt's departure to go pursue negotiations with
 7 Middle East after Mr. Trump became president elect.
 8 Q And fair to say you did not report to either of those
 9 individuals, yes?
 10 A Correct.
 11 Q I'd like to talk about some of the other Trump
 12 Organization executives.
 13 Are you familiar with the name Donald Trump, Jr.?
 14 A Yes.
 15 Q How are you familiar with that name?
 16 A That's how I was first introduced to Mr. Trump was
 17 through his son and he is the namesake of his father.
 18 Q And Mr. Trump, Jr., did he have a title during the time
 19 when you worked at the Trump Organization?
 20 A Yes.
 21 Q What was his title?
 22 A Executive vice president and there was a second part to
 23 it, which had to do with development.
 24 Q Do you recall the specific title?
 25 A I don't.

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1 Q So it may have been something along the lines of
 2 executive vice president of development and acquisitions?
 3 A Development and acquisitions, yes.
 4 Q Did that refresh your recollection about the title?
 5 A Yes.
 6 Q Okay. Thank you.
 7 And what is your understanding of Mr. Donald Trump,
 8 Jr.'s role during the time that you were employed at the Trump
 9 Organization?
 10 A Development in acquisitions of real estate
 11 opportunities that would be presented to the Trump Corporation.
 12 Q And when we were talking about that hierarchy before,
 13 fair to say that Mr. Donald Trump, Jr., he was at the top of the
 14 hierarchy with the title executive vice president similar to
 15 you?
 16 A Yes.
 17 Q Okay. Are you familiar with the name Eric Trump?
 18 A I am.
 19 Q How are you familiar with that name?
 20 A Worked at the company as well as I was on his Eric
 21 Trump Foundation board, which benefits St. Jude Children's
 22 Hospital working with family.
 23 Q Another one of the Trump family members; correct?
 24 A Correct.
 25 Q And did Mr. Eric Trump hold the title during the time

M. Cohen - Plaintiff - direct (Faherty) Page 2203

1 while you were working at the Trump Organization?
 2 A Yes.
 3 Q What was Mr. Eric Trump's title?
 4 A Same as Don, Jr.'s executive vice president and
 5 development and acquisitions.
 6 Q And what is your understanding of the work Mr. Eric
 7 Trump performed at the Trump Organization during the time you
 8 worked there?
 9 A Same development and acquisitions of real estate
 10 opportunities.
 11 Q Any particular areas that you're familiar with that he
 12 had a specialty in?
 13 A He concentrated on golf as well as again different
 14 opportunities that would come in to the company. Don, Eric and
 15 Ivanka would split various opportunities where each one was
 16 attached to a specific opportunity.
 17 Q And you beat me to my next question.
 18 Are you familiar with the name Ivanka Trump?
 19 A I am.
 20 Q How are you familiar with the name Ivanka Trump?
 21 A Also one of Mr. Trump's three children, plus we also
 22 live in the same building.
 23 Q And did Ms. Ivanka Trump have any titles during the
 24 time when you were employed with the Trump Organization?
 25 A Yes.

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1 Q What was the title Ms. Ivanka Trump held?
 2 A Executive vice president of development and
 3 acquisitions as well.
 4 Q And I didn't ask this question about Mr. Eric Trump,
 5 but Ivanka, Donald, Jr. and Eric Trump, they all held the title
 6 executive vice president, yes?
 7 A Yes.
 8 Q And they were in that higher level of the hierarchy,
 9 yes?
 10 A Yes.
 11 Q Ivanka Trump, Eric Trump, Donald Trump, Jr., did they
 12 report to you at anytime during your employment with the Trump
 13 Organization?
 14 A No, ma'am.
 15 Q To whom did those three individuals report to while you
 16 were employed by the Trump Organization?
 17 A Their father.
 18 Q Okay. Anyone else?
 19 A No, ma'am.
 20 Q We've already stated the name Allen Weisselberg. He
 21 was the CFO of the Trump Organization, yes?
 22 A Yes.
 23 Q What understanding do you -- if any, do you have as to
 24 his role at the Trump Organization?
 25 A He was the chief financial officer. Every financial

M. Cohen - Plaintiff - direct (Faherty) Page 2205

1 transaction went through his office.
 2 Q Can you give me an example? What do you mean by that?
 3 A If there was an invoice that came to me, I would be
 4 required to approve that invoice, put a line on, write
 5 "approved," sign my name, put another line underneath it and
 6 that would then get presented to Allen. It would then, of
 7 course, go to Mr. Trump's office for initial signature before a
 8 check would be processed.
 9 Q So Allen Weisselberg managed the financials of the
 10 Trump Organization?
 11 A Yes.
 12 Q Are you familiar with the name Jeff McConney?
 13 A I am.
 14 Q How are you familiar with the name Jeff McConney?
 15 A Worked with him at the Trump Organization.
 16 Q And what is your understanding of Jeff McConney's
 17 titles that he -- title that he held while you were employed at
 18 the Trump Organization?
 19 A He was comptroller. He worked predominantly for Allen
 20 Weisselberg.
 21 Q So Mr. McConney worked in the accounting department,
 22 yes?
 23 A Yes.
 24 Q Was he a direct report to Mr. Weisselberg?
 25 A Yes.

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1 Q Do you know if he reported to anyone else at the Trump
 2 Organization?
 3 A Mr. Trump, if it would be necessary.
 4 Q Anyone else?
 5 A Not that I'm aware of.
 6 Q And your general understanding of Mr. McConney's role?
 7 A He handled all of the bookkeeping.
 8 Q Anything else you recall about Mr. McConney's role?
 9 A No, ma'am.
 10 Q Are you familiar with a document titled the Statement
 11 of Financial Condition for Donald J. Trump?
 12 A I am.
 13 Q And how are you familiar with that title?
 14 A I've seen them as well as I've worked on them.
 15 Q Describe that for me. What do you understand generally
 16 that document to be?
 17 A That was a complete listing of all of the assets of the
 18 Trump Corporation, the Trump Organization with each asset broken
 19 down into an asset class, the asset class described and the
 20 value was placed on the asset, as well as any existing
 21 liabilities. The goal was to basically create a statement of
 22 financial worth.
 23 Q For whom?
 24 A Donald J. Trump.
 25 Q And do you have any understanding about why the

M. Cohen - Plaintiff - direct (Faherty) Page 2207

1 document was created?
 2 A Initially.
 3 Q Yes.
 4 A No.
 5 Q During the time you were working at the Trump
 6 Organization did you form any understanding about why the
 7 document was created?
 8 A It was to be used for purposes of demonstrating net
 9 worth for acquisitions for insurance purpose.
 10 Q Any other reasons?
 11 A Not that I'm aware of.
 12 Q And when you say that this document was to be used to
 13 demonstrate net worth for acquisition for insurance purposes, is
 14 it your understanding that the document was to be shared with
 15 third parties or was that for internal purposes?
 16 A Shared with third parties.
 17 Q Do you have any understanding as to the ways in which
 18 the Statement of Financial Condition in particular was used?
 19 A Yes.
 20 Q Describe for me some of those ways.
 21 A So as it related to insurance the document would be
 22 presented to the various insurance brokers that were brought to
 23 the company from the main broker, AON. They were permitted to
 24 take notes off of the document but not permitted to keep the
 25 actual document itself and the benefit was showing that the

M. Cohen - Plaintiff - direct (Faherty) Page 2208

1 assets had extremely high values with low liabilities in order
 2 to obtain better insurance premiums.
 3 Q You also mentioned acquisitions. Were the statements
 4 of financial conditions presented to any third parties for
 5 purposes of an acquisition?
 6 A Yes.
 7 Q What third parties are you familiar with?
 8 A I was involved in the potential acquisition of the
 9 buffalo bills.
 10 Q Any other acquisitions you can think of?
 11 A The Miami Doral property.
 12 Q Anything else?
 13 A Not off the top of my head.
 14 MS. FAHERTY: And I just want to check on timing,
 15 Your Honor.
 16 THE COURT: I was going to give you the five-minute
 17 warning in one minute. So we'll break at 12:55.
 18 MS. FAHERTY: Thank you, Your Honor.
 19 Q Turning back to the creation of the document focusing
 20 on the time that you were employed at the Trump Organization.
 21 And I'll draw your attention to the period beginning in 2011.
 22 Do you have any understanding as to who created the document?
 23 A I do not.
 24 Q Do you have any understanding as to whether -- as to
 25 what, if any, individuals at the Trump Organization worked on

M. Cohen - Plaintiff - direct (Faherty) Page 2209

1 the specific numbers contained in that Statement of Financial
 2 Condition beginning in 2011?
 3 A In 2011, I don't recall, but 2012 and '13, '14, and
 4 '15, I do.
 5 Q I'm going to show you some documents that have already
 6 been admitted into evidence.
 7 MS. FAHERTY: So Tommy, if you don't mind handing
 8 to the witness Plaintiff's Exhibit PX 787.
 9 Q I'm going to hand you five of these documents and we'll
 10 briefly just look at them, okay, Mr. Cohen?
 11 A Yes.
 12 MS. FAHERTY: Tommy, the second document will be PX
 13 815, the third will be PX 707, the fourth will be PX 730,
 14 and the fifth will be PX 729. So we can start with PX 787.
 15 A Is it up on the screen?
 16 Q PX 787 is on the screen.
 17 A Okay.
 18 Q And just take a quick look at this document and tell
 19 me, generally, if you recognize the form of this document, sir.
 20 A I do.
 21 Q What do you recognize this to be?
 22 A This is the Statement of Financial Condition for Donald
 23 J. Trump.
 24 Q And is it dated as of June 30, 2011?
 25 A Yes, it states June 30th of 2011.

M. Cohen - Plaintiff - direct (Faherty) Page 2210

1 Q Does this appear to be a document you may have worked
 2 on during the time you were employed at the Trump Organization?
 3 A I don't recall.
 4 Q I'll draw your attention to the third page -- page four
 5 of this document, and it ends in the number 3134.
 6 A Yes.
 7 Q Do you see that page there?
 8 A I do.
 9 Q Do you recognize this page as a document page you may
 10 have worked on during your time period working for the Trump
 11 Organization?
 12 A I do.
 13 Q How do you recognize this page? What do you recognize
 14 it to be?
 15 A I recognize the entire document.
 16 Q Describe for me that recognition.
 17 A It's a document that I have seen before. It's a
 18 document that I had in my possession and a document that I just
 19 recognize.
 20 Q Were you ever asked to perform work on Mr.
 21 Donald J. Trump's Statement of Financial Condition?
 22 A Yes.
 23 Q And before you tell me more about the work you were
 24 asked to perform, was that work asked in your capacity as
 25 Mr. Donald J. Trump's personal attorney or was it for a business

M. Cohen - Plaintiff - direct (Faherty) Page 2211

1 reason?
 2 A For business reason.
 3 Q And what was the work you were asked to perform for
 4 Mr. Donald J. Trump with regards to the Statement of Financial
 5 Condition?
 6 A I was tasked by Mr. Trump to increase the total assets
 7 based upon a number that he arbitrarily elected and my
 8 responsibility along with Allen Weisselberg predominantly was to
 9 reverse engineer the various different asset classes, increase
 10 those assets in order to achieve the number that Mr. Trump had
 11 tasked us.
 12 Q And when you say "achieve the number," what number are
 13 you talking about?
 14 A Whatever number Mr. Trump told us to.
 15 Q Was it Mr. Trump's ultimate net worth as identified on
 16 the Statement of Financial Condition?
 17 A Yes.
 18 MS. FAHERTY: I think now would probably be a good
 19 time to take a break, Your Honor.
 20 THE COURT: Okay. You're giving up two minutes
 21 here.
 22 All right, we're going to break for lunch. See you
 23 all if you want to come back at 2:15 on time, please.
 24 (Whereupon, there is a luncheon recess in the
 25 proceedings.)

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1 AFTERNOON SESSION
 2 THE COURT OFFICER: All rise. Part 37 is back in
 3 session. The Honorable Judge Arthur Engoron presiding.
 4 Make sure all cell phones are on silent. Laptops and cell
 5 phones will be permitted, but only to members of the press.
 6 There is absolutely no recording or photography of any kind
 7 allowed in the courtroom. Now be seated and come to order.
 8 THE COURT: We just need a witness.
 9 THE COURT OFFICER: Witness entering.
 10 (Whereupon, the witness enters the courtroom and
 11 approaches the witness stand.)
 12 THE COURT: Okay. Let's continue with the direct
 13 examination of Mr. Cohen.
 14 MS. FAHERTY: Thank you, Your Honor.
 15 CONTINUED DIRECT EXAMINATION
 16 BY MS. FAHERTY:
 17 Q Mr. Cohen, you recall at the break you testified to
 18 reverse engineering numbers on the statements of financial
 19 condition each year while you were working at the Trump
 20 Organization, yes?
 21 A Yes.
 22 Q And I believe you were deposed in this case. Did you
 23 testify that between 2011 and 2015 you worked on those years'
 24 Statement of Financial Condition?
 25 A Again, I stated I don't recall if I worked on 2011, but

M. Cohen - Plaintiff - direct (Faherty) Page 2213

1 '12, '13, '14, '15, yes.
 2 Q And you -- who assigned you the role of working on the
 3 Statement of Financial Condition?
 4 A Mr. Trump.
 5 Q Anyone else?
 6 A Mr. Trump.
 7 Q And did you work with anyone in connection with your
 8 work on the Statement of Financial Condition?
 9 A Yes.
 10 Q Who?
 11 A Allen Weisselberg.
 12 Q Anyone else?
 13 A Directly with Allen Weisselberg.
 14 Q Describe that for me. What was the work that you did
 15 with Allen Weisselberg on the Statement of Financial Condition?
 16 A We would take a look at the various different asset
 17 classes that are broken down in the document and based upon the
 18 number that Mr. Trump wanted the document to ultimately state we
 19 would look at the assets and increase its values in order to
 20 achieve the number.
 21 Q And would you look at a particular document in order to
 22 perform that task?
 23 A No.
 24 Q Let's pull out the 2011 Statement of Financial
 25 Condition, Plaintiff's Exhibit PX 787. It's already in

M. Cohen - Plaintiff - direct (Faherty) Page 2214

1 evidence.
 2 And I believe you testified before you have seen this
 3 document before; correct?
 4 A Correct.
 5 MS. FAHERTY: And let's turn to the third page of
 6 this Document. One more.
 7 Q Was this particular page of assets relevant to the work
 8 you performed on the Statement of Financial Condition?
 9 A Yes.
 10 Q How is this particular page relevant to the work you
 11 performed on the Statement of Financial Condition?
 12 A We would take this specific list of assets and we would
 13 figure out which specific line to increase the number again to
 14 reverse engineer it into the total asset that Mr. Trump sought.
 15 MR. KISE: Your Honor, objection on foundational
 16 grounds. The witness has testified that he didn't look at
 17 any particular documents and then he testified before that
 18 -- that he doesn't recall having anything to do with 2011.
 19 So now we're looking at 2011 and I don't believe the witness
 20 has any foundation to look at 2011.
 21 THE COURT: Did he say he wasn't sure about 2011?
 22 MR. KISE: We can look back. I believe he said "I
 23 don't recall working on 2011," but does recall working on
 24 '12, '13, '14, '15.
 25 THE WITNESS: That's not what I said.

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1 MS. HABBA: When he first took on the stand he said
 2 he did not work on 2011.
 3 MS. FAHERTY: And, Your Honor, I always appreciate
 4 when learned counsel can give me a -- I'm happy to ask some
 5 additional questions to make the record clear, if that's
 6 okay.
 7 THE COURT: All right. Well, let's lay a
 8 foundation if one can be laid for this.
 9 Q So what would be the basis for doing, for example, the
 10 work you performed on 2012? Would you make numbers out of thin
 11 air or was there a document or information you looked at in
 12 order to calculate new numbers?
 13 A We would have taken the document that you have up right
 14 now, the June 30, 2011 document, and we would mark it up by hand
 15 in order to increase each of the asset lines, again, to get to
 16 the total asset number that Mr. Trump tasked us to achieve.
 17 Q And when you say, "we," who are you referring to?
 18 A Myself and Allen Weisselberg.
 19 Q Did this conversation or these conversations marking up
 20 the 2011 document, for example, occur in the presence of anyone
 21 else?
 22 A Yes.
 23 Q Who?
 24 A Mr. Trump.
 25 Q And what, if anything, do you recall Mr. Trump would

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1 say about marking up the document referring in this instance to
 2 the 2011 Statement of Financial Condition for the 2012 numbers?
 3 A I would receive a phone call, generally it would be
 4 from Rhona Graff, Mr. Trump's executive assistant, "Mr. Trump
 5 would like to see you" and I would come into the office. Allen
 6 Weisselberg would either already be there or come with me and
 7 the topic was the Statement of Financial Condition. He would
 8 look at the total assets and he would say, "I'm actually not
 9 worth four and a half billion dollars. I'm really worth more,
 10 like, six." Okay. He would then direct Allen and I to go back
 11 to Allen's office and return after we achieved the desired goal.
 12 Q And I'll direct your attention to the following page.
 13 And at the bottom of this page do you see a line entry at the
 14 top, it says, "liabilities and net worth." Do you see that
 15 there?
 16 A I do.
 17 Q And at the bottom there is a line entry. It says "net
 18 worth." Do you see that there?
 19 A I do.
 20 Q And was this particular number the number you were
 21 tasked with bringing up according to Mr. Trump's directive as
 22 you just testified?
 23 A Yes.
 24 Q Okay. Now, turning back to the first page.
 25 Was there a particular procedure for you and

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1 2012, you would look at the prior year's number; correct?
 2 A Correct.
 3 Q And you would go into Allen Weisselberg's office to
 4 review the numbers to see where you could add value. Is that
 5 fair?
 6 A Fair.
 7 Q And was anybody present for those conversations?
 8 A There were people who had come in to the office that
 9 were providing Allen with information, but these conversations
 10 were primarily between Mr. Trump, myself and Allen Weisselberg.
 11 Q And in the conversations between you and
 12 Mr. Weisselberg in his office, how would you find these
 13 comparable numbers? Was there a particular search you would do
 14 or research you performed?
 15 A Well, some of the assets that we used as comparables I
 16 just know because I am in the real estate industry, so I read an
 17 article about an apartment that, you know, that traded or I
 18 would look on Google.
 19 Q And did you keep the notes of your meetings with
 20 Mr. Weisselberg as to the values you were adding to the asset
 21 categories on Mr. Trump's Statement of Financial Condition?
 22 A No.
 23 Q Why not?
 24 A I would sit down with Allen and we would make the
 25 changes. That document would then be photocopied that had all

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1 Mr. Weisselberg to distribute the assets on this page that you
 2 would alter or backup the numbers into?
 3 A There was no specific program within which to change
 4 the numbers. It was, again, reverse engineering.
 5 So, for example, if they brought on a new asset we, of
 6 course, would add that to the list of assets, but then there
 7 were also other assets like Trump Park Avenue. We would take
 8 the number of units that Mr. Trump owned as the sponsor
 9 developer of the property and we would look at numbers that were
 10 being achieved elsewhere; what's the highest price per square
 11 foot achieved in the city, and we would use those numbers in
 12 order to inflate the value of these apartments.
 13 Q Are those called comparables?
 14 A Comparables -- you could call them comparables, but
 15 comparables imply that they are similar.
 16 Q And is it your understanding that the quote/unquote
 17 "comparables" were not similar?
 18 A No.
 19 Q What is your basis for saying that?
 20 A Some of the comps or comparables were predicated off of
 21 ground up developments with nine, ten foot ceilings,
 22 unobstructed views, not inhibited by rent stabilized or other
 23 programs, so no, they were not comparables. They are just
 24 different.
 25 Q So Mr. Trump would task you with reaching a number for

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1 of the changes at which point in time Allen and I would return
 2 to Mr. Trump demonstrate that we achieved or close to the number
 3 that he was seeking and I had no use for that document any
 4 longer.
 5 Transcript continues on the following page....
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1 Q And at some point, did you become aware that the
2 numbers -- the values you had added to the Statement of
3 Financial Condition, let's focus on 2012, that they were
4 accepted by Mr. Trump?
5 A Yes, he's the only one that could accept them.
6 Q How did you come to understand that Mr. Trump accepted
7 the values you added to the Statement of Financial Condition for
8 2012?
9 A Because he knew the Statement of Financial Condition
10 would be printed by Mazars who is the accounting firm for the
11 Trump Organization and we would receive the bounded copy.
12 Q Did you have any relationship with Mazars in the
13 process of drafting the Statement of Financial Condition?
14 A No.
15 Q Who, if anyone, do you understand to have been
16 interacting with Mazars in the creation of the Statement of
17 Financial Condition?
18 A Mr. Trump and Allen Weisselberg.
19 Q And with regards to the process between the time Mr.
20 Trump tasked you with reverse engineering that net worth number
21 to the time when you met with Allen Weisselberg in his office to
22 eventually returning back to Mr. Trump with the numbers for his
23 approval, about how long did that process take?
24 A For the most part, several days.
25 Q And what, if any, understanding do you have as to who

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1 Mr. Weisselberg relied on to assist him in adding value to the
2 numbers on these Statements of Financial Condition?
3 A Jeffrey McConney.
4 Q Anyone else?
5 A Potentially the children Don, Ivanka and Eric.
6 Q What, if anything, is your understanding Mr. McConney
7 provided to Mr. Weisselberg on the asset values?
8 A He had all the numbers. He was the one that controlled
9 the computer with the fobs in order to see, for example, cash
10 and marketable securities. He would also be the one to provide
11 Allen with the gross rent roll for 40 Wall Street or any of the
12 other assets that Mr. Trump owns that were being rented or
13 leased.
14 Q And you made mention of the three adult children. What
15 is your understanding as to the three adult children's role in
16 assisting Mr. Weisselberg in valuing the assets in the
17 Statements of Financial Condition?
18 A Well, first would be which projects that they
19 individually were spearheading and then to ask them what other,
20 you know, values exist for the purpose of this asset.
21 MR. KISE: Objection, Your Honor. I'm not sure
22 that's entirely responsive, if at all responsive. Is the
23 witness testifying that he spoke with these individuals or
24 this is his understanding that one else spoke with these
25 individuals? The question calls for -- the question

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1 appears to call for speculation based on the foundation that
2 has not yet been laid, but I don't -- I don't -- it is not
3 clear what he's testifying to at all.
4 MS. FAHERTY: Your Honor, that appears to be a
5 perfectly fair question by me with a responsive answer and
6 if Mr. Kise disagrees with the response, he's perfectly
7 entitled to cross-examine.
8 THE COURT: You want to just read it again for
9 everybody's benefit out loud, obviously.
10 Q You made mention of the three adult children. What is
11 your understanding as to the three adult children's role in
12 assisting Mr. Weisselberg in valuing the assets in the Statement
13 of Financial Condition?
14 MR. KISE: He has no foundation other than hearsay.
15 If that's what he's saying, unless he's testifying that he
16 spoke with the children directly, that's different.
17 THE COURT: Well, I don't think he had to speak to
18 them. I think it was more of an observation, but see if you
19 can ask it again with -- either ask a foundation or the
20 question with more of a foundation. I'm not sure exactly
21 also the phrase "what's your understanding." What did you
22 see, observe, hear?
23 Q Did you have -- you had a general understanding as to
24 Eric Trump's role at the Trump Organization while you were
25 employed there, yes?

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1 A Yes.
2 Q You similarly formed an understanding as to Donald
3 Trump, Jr.'s role at the Trump Organization while you worked
4 there?
5 A Yes.
6 Q Similarly, you formed an understanding of Ivanka
7 Trump's role while working at the Trump Organization?
8 A Yes.
9 Q Did you have occasion to observe Mr. Weisselberg
10 interacting with those three adult children as it concerned the
11 Statement of Financial Condition and his preparation of values?
12 A I did not observe them specifically engage in
13 conversation.
14 Q Did you at any point form an understanding that Mr.
15 Weisselberg was, in fact, consulting with the three adult
16 children with regards to his valuations on the Statements of
17 Financial Condition?
18 A Yes.
19 MR. KISE: Objection.
20 THE COURT: I think the next question is taken with
21 the first question is acceptable, so...
22 Q How did you form that understanding?
23 A Allen would state that, "I need to speak to Don,
24 Ivanka, Eric" regarding whatever the asset was.
25 THE COURT: Well, did he state that he did speak to

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1 them beyond "I have to speak to them"?

2 THE WITNESS: No, he did not actually make that

3 overt statement. However, at the end, there was a new

4 Statement of Financial Condition that was compiled that had

5 the changes.

6 THE COURT: How do you know that the children had

7 any input into those new numbers?

8 THE WITNESS: I do not.

9 Q Any other understanding as to others who worked with

10 Mr. Weisselberg on the valuations for the Statements of

11 Financial Condition?

12 A Jeff McConney.

13 Q Other than Mr. McConney?

14 A I don't know who else Allen spoke with.

15 Q And just to clarify, what were the methods of

16 communication you employed at the Trump Organization? Did you

17 communicate frequently via e-mail?

18 A No.

19 Q How about via text message?

20 A No.

21 Q How about handwritten notes concerning the Statements

22 of Financial Condition?

23 A Only to the extent that we changed the numbers and the

24 changed numbers would be in red pen.

25 Q And you didn't retain copies of those communications,

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1 right?

2 A I do not believe so.

3 Q So looking at this exhibit, which is still on the

4 screen, the 2011 Statement of Financial Condition, focusing on

5 the work you performed for the 2012 valuation, what, if any, of

6 these assets do you recall that you provided valuations for?

7 A Trump Park Avenue, Trump World Tower at United Nations,

8 100 Central Park South to the extent it was part of the

9 commercial portion; properties under development specifically

10 with Beverly Hills, Miss Universe Pageant and potentially other

11 assets.

12 Q And as to the other assets, was Allen Weisselberg

13 responsible for those assets?

14 A Yes.

15 MS. FAHERTY: Let's put that to the side. Can we

16 pull out 2012, please.

17 Your Honor, I'm handing up to the witness the

18 June 30, 2012 Statement of Financial Condition. It is

19 marked already as an Exhibit PX 815.

20 Q Do you recognize this document, Mr. Cohen?

21 A I do.

22 Q And do you recognize this as a document that you worked

23 on in connection with Mr. Trump's assignment that you reverse

24 engineer the values on Donald J. Trump's Statement of Financial

25 Condition?

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1 A Yes.

2 Q For what year were you using the 2012 Statement of

3 Financial Condition to perform work on Mr. Trump's Statement of

4 Financial Condition?

5 A That would then go for the 2013.

6 Q So let's turn to the third page of this document. We

7 have it on the screen here. Similar to the prior year Statement

8 of Financial Condition, right, listing of assets?

9 A Correct.

10 Q Then if we turn to the next page, "liabilities" and

11 "net worth," yes?

12 A Yes.

13 Q And there's a net worth entry at the bottom of the

14 page, correct?

15 A Correct.

16 Q Was that another net worth number that you were

17 directed to reverse engineer to a higher number?

18 A Yes.

19 MS. FAHERTY: Going back to the very first page.

20 Thank you, Ashley. The assets page.

21 Q Do you recall which assets for the 2013 values that you

22 worked on in connection with your assignment to reverse engineer

23 the values on the Statement of Financial Condition?

24 A Possibly Trump Tower, Trump Park Avenue, Trump World

25 Tower United Nations, possibly 100 Central Park South to the

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1 extent of the commercial, mansion at Seven Springs, Miss

2 Universe Pageant as well as possibly other assets.

3 Q And again, the ways in which you would increase the

4 values of these particular asset classes, what would you do?

5 A Again, we would take a look at either comparables or

6 new potential lease tenants, for example, in Trump Tower and

7 come up with a multiple if you were taking that to market to

8 securitize it.

9 Q Any other ways in which you would inflate the assets on

10 these asset classes for the 2013 Statement of Financial

11 Condition?

12 A Again, looking at comparables into the area Seven

13 Springs was a little different because there was a deal that was

14 struck to subdivide the property. So we would look at if it was

15 for the -- for this year, it could have been 2013 or -- with

16 the subdivision to provide some sort of number attached to each

17 individual parcel.

18 Q So is it fair to say you would Google a number for

19 assigning a value to the lots at the mansion at Seven Springs?

20 MR. KISE: Objection. Leading.

21 Q Describe for me the number.

22 THE COURT: Sustained.

23 Q Describe for me the number that you would use for Seven

24 Springs.

25 A You look at some of the other homes that are in the

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1 area and you use that as a basis for the subdivision parcel
2 lots.
3 Q When you're looking up the -- these numbers, are you
4 calculating time as a factor in those values?
5 A No.
6 Q Is the value an immediately-achieved number that you're
7 assigning?
8 A No.
9 Q Is the number a comparable or a reasonable comparable,
10 I think we spoke about comparables before, to the asset class?
11 A It would depend.
12 MR. KISE: Objection. Is this witness now
13 testifying as an expert witness on real estate or are we
14 going to add that to his series of credentials? I don't
15 know that he is -- that question calls for expert -- an
16 expert conclusion. Is it a reasonable comparable? That's
17 the province of an expert and unless Mr. Cohen -- the
18 prosecution wants to qualify Mr. Cohen as an expert in that,
19 I'm sure he'll answer it and say he is.
20 THE COURT: I found it a confusing question. I
21 will sustain the question.
22 MS. FAHERTY: That's okay. I want to ask the
23 question in a non-objectionable way, Your Honor, so give me
24 a moment, please.
25 THE COURT: Of course.

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1 Q So you made mention that the Seven Springs asset was a
2 little different. Your testimony just now, was that specific to
3 the particular year 2013 or is that a general recollection?
4 A General recollection. I don't know if it was 2012,
5 '13.
6 Q You generally have a recollection, though, that you
7 were looking at other comparable assets that could value the
8 subdivided property at Seven Springs; is that fair?
9 A Yes.
10 MR. KISE: Objection. Leading.
11 Q How would you describe --
12 THE COURT: Wait. Wait. Sustained.
13 Q How would you describe those comparable assets that you
14 were looking at for the purpose of that Seven Springs
15 subdivision?
16 A I'm sorry. I don't understand your question.
17 Q What were you looking at? How were you coming up with
18 the numbers?
19 A So I know the area where Seven Springs is located.
20 It's the top of the hill, the very top and we looked at -- I
21 looked at, for example, the value of a house that was beneath
22 Mr. Trump's property, Nelson Peltz, and we took that as a number
23 and then we added to it because it would be new construction, it
24 is higher up the hill and so on, and that's how we ended up
25 increasing.

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1 Q And do you know if any of the adult children also
2 performed work at the Seven Springs -- for Seven Springs, LLC,
3 a Trump Organization entity?
4 A I don't know which one, no.
5 Q Same question that I was asking before about 2013. Who
6 tasked you with adding values to the Statement of Financial
7 Condition for that year?
8 A That would be Mr. Trump.
9 Q And who did you perform that work with with inflating
10 the assets for 2013?
11 A Allen Weisselberg.
12 Q Similar to the work you performed in 2012?
13 A Yes, it was an annual recurring process.
14 Q Approximately how long in 2013 would that take to go
15 from being assigned adding the value to the time you brought it
16 to Mr. Trump for his approval?
17 A Again, several days.
18 Q Any understanding whether or not Mr. Trump did approve
19 of the asset values you added to the Statement of Financial
20 Condition for that year?
21 A In the same way as previously described.
22 Q And if I asked you the same questions for the following
23 year, for 2014 --
24 A Yes.
25 Q -- would your answers be any different?

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1 A No.
2 Q How about in 2015; would your answers be any different?
3 A No.
4 Q And let's just take a quick look at the 2013 Statement
5 of Financial Condition which is -- Tommy, I'm so sorry. 707.
6 Do you recognize that document there?
7 A I do.
8 Q Let's turn to the third page. Do you recognize that
9 asset page?
10 A I do.
11 Q And that was the asset page you worked on to increase
12 the values for the 2014 Statement of Financial Condition?
13 A Correct.
14 Q And turning to the next page, do you see that net worth
15 entry there?
16 A Yes.
17 Q Is that the net worth line that you were tasked with
18 reverse engineering higher by Mr. Trump?
19 A Yes.
20 MS. FAHERTY: Can we pull out 2015, which is we are
21 looking at 730. Sorry, Tommy. 729. Thank you. Can you
22 pull out 730, too.
23 Q So I put 2014 -- let's look at 2014 first which is 730
24 in front of you. Do you recognize that document?
25 A I do.

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1 Q That's the 2014 Statement of Financial Condition?
 2 A Yes.
 3 Q And turn to page three of this document. Again, this
 4 is the assets page that you and Mr. Weisselberg worked on
 5 together?
 6 A Correct.
 7 Q And then turning to the next page, that net worth line
 8 appears to have gone up from prior year, yes?
 9 A Correct.
 10 Q That was the net worth number that Mr. Trump assigned
 11 you to inflate back into?
 12 A Correct.
 13 Q And then turning to Exhibit 729, you recognize that
 14 document there?
 15 A I do.
 16 Q Same assets page that you were assigned?
 17 A Yes.
 18 Q Turning to the following page, net worth number there
 19 now six million. You see that there?
 20 A Yes.
 21 Q And that was a net worth number you were tasked with
 22 backing into to make higher pursuant to Mr. Trump's direction?
 23 A Correct.
 24 Q You can put those down. Thank you.
 25 Do you recall when you stopped working on the

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1 Statements of Financial Condition?
 2 A I believe around for the 2016.
 3 Q What is your understanding as to why you stopped
 4 working on the Statement of Financial Condition values?
 5 A I was busy doing other things.
 6 Q Were you ever in possession of one of Mr. Donald J.
 7 Trump's Statement of Financial Condition in final form?
 8 A Yes.
 9 Q That was yours to use for business purposes?
 10 A It was given to me to use for business purpose.
 11 Q And when would you use that Statement of Financial
 12 Condition? Can you provide me an example?
 13 A So in 2013, there was a journalist for a New York
 14 centric magazine called The Real Deal. The journalist's name
 15 was Katherine Clarke and Katherine Clarke was going to do a
 16 story, a feature story on Mr. Trump's net worth. And so when
 17 she came to see me at the office, I presented her with the
 18 document. She could not keep it. She could take notes in order
 19 to create the story about how much Mr. Trump was actually worth.
 20 Q So is that generally how you would come to use the
 21 Statement of Financial Condition?
 22 A That's one example.
 23 Q That's one example. Another example, do you have any?
 24 A When Mr. Trump was interested in putting in a bid for
 25 the Buffalo Bills, we used that statement in order to

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1 demonstrate his ability to purchase the team.
 2 Q And did you have the permission of Mr. Trump to be able
 3 to use the Statement of Financial Condition?
 4 A Yes.
 5 Q Were you directed by Mr. Trump to use the Statement of
 6 Financial Condition to flout his wealth?
 7 A Yes.
 8 Q I want to turn your attention to insurance. Did you
 9 work on the insurance program for the Trump Organization?
 10 A I did.
 11 Q Did you work with others on the -- at the Trump
 12 Organization on the insurance program?
 13 A Yes.
 14 Q Who did you work with at the Trump Organization?
 15 A Allen Weisselberg, CFO; Matthew Calamari, Sr., chief
 16 operating officer; and Ronald Lieberman.
 17 Q Did that group of four individuals have a specific
 18 title or association that they were known by?
 19 A The gang of four.
 20 Q Did you say, "the gang of four"?
 21 A Some called it the group of four or the gang of four.
 22 Q And how did you know Matthew Calamari, Ron Lieberman,
 23 Allen Weisselberg come to be known as the gang of four?
 24 A I believe Pam Newman from Aon came up with the name.
 25 Q And can you remind me who Aon is?

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1 A Aon is the broker that handled the insurance for the
 2 Trump Organization for all the insurance.
 3 Q So a broker, they go out and find insurance programs to
 4 present to the organization?
 5 A Correct.
 6 Q They didn't provide the actual insurance, right?
 7 A No, they're brokers.
 8 Q You said the name was Pam Newman?
 9 A Correct.
 10 Q Who assigned you and those three other individuals, Mr.
 11 Weisselberg, Mr. Calamari, Mr. Lieberman, to work on the
 12 insurance program?
 13 A All final decisions were done by Mr. Trump.
 14 Q Mr. Cohen, I'm handing you an exhibit. We marked for
 15 identification as PX-3119. I'll give you a minute to take a
 16 look at that document. I also put it on the screen. Do you see
 17 that document in front of you, sir?
 18 A I do. Can I have just one moment to look through it?
 19 Q Yes. Absolutely.
 20 A Thank you.
 21 (Witness reviewing document.)
 22 A Okay.
 23 Q So drawing your attention to the top of this e-mail, do
 24 you recognize the name Martha Blackman or
 25 martha.blackman@aon.com?

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1 A Yes.
 2 Q Who do you recognize that name to you?
 3 A She worked for Pamela Newman at Aon.
 4 Q Is that acknowledged in the following line on behalf of
 5 Pamela Newman right below?
 6 A Yes.
 7 Q This appears to be an e-mail sent on February 14, 2013
 8 addressed to Allen Weisselberg at the Trump Organization,
 9 Matthew Calamari, Ron Lieberman and you. That's your e-mail
 10 address, mcohen@trumporg.com?
 11 A It was.
 12 Q Thank you for the clarification. The cc line, do you
 13 recognize generally that those are e-mail addresses associated
 14 with employees at Aon, the insurance broker?
 15 A Yes.
 16 Q The subject is, "Forward, the Trump/Aon team-suggested
 17 work style going forward (draft memo number 4 with updated
 18 timeline)" and then there's an attachment. Do you see that?
 19 A I do.
 20 Q Drawing your attention to the body of the message, it
 21 says, "Gentlemen, Aon is committed to delivering to the Trump
 22 Organization the best service and the best results." Then it
 23 states, "Work style-A, team of four."
 24 Is that a reference to what you were just describing a
 25 moment ago, the gang of four who worked on the insurance

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1 program?
 2 A Yes.
 3 MS. FAHERTY: Your Honor, I move to admit this into
 4 evidence.
 5 MS. HABBA: Objection. Statute of limitations.
 6 THE COURT: Overruled. It is in evidence.
 7 (Whereupon, the Document was marked in evidence as
 8 Plaintiff's Exhibit 3119.)
 9 MS. FAHERTY: Thank you.
 10 Q So this paragraph under, "A team of four" states, "Aon
 11 is excited that the Trump Organization has created a team of
 12 four to review the Trump Organization's insurance program,
 13 insurance policy buying decisions, claims management and risk
 14 protection protocols."
 15 Is this an accurate description that it was the Trump
 16 Organization that created the "team of four" or "gang of four"
 17 as you referred to it just a moment ago?
 18 A Yes.
 19 Q And then it states that the "team of four and each
 20 member's role is outlined below." Do you see the box in the
 21 middle of the page there?
 22 A I do.
 23 Q First it identifies Allen Weisselberg, he was the
 24 executive vice-president and CFO of the Trump Organization, yes?
 25 A Correct.

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1 Q What does it mean that his role was coverage buying
 2 decisions?
 3 A Ultimately, he would be the one to take the premium
 4 after we negotiated and that would be again Matt Calamari, Ron
 5 Lieberman, myself and Allen to Mr. Trump in order to bind the
 6 policies.
 7 Q Was he in charge of financial information with regards
 8 to the insurance program as well?
 9 A Yes.
 10 Q Was he in charge of sharing financial information with
 11 regards to the insurance program?
 12 A To whom?
 13 Q Sharing financial information.
 14 A But share it with whom?
 15 Q We'll come back to that question.
 16 A Okay.
 17 Q And next is Matthew Calamari, the executive
 18 vice-president and chief operating officer of the Trump
 19 Organization, yes?
 20 A Yes, ma'am.
 21 Q What is your understanding of his role with property
 22 claims?
 23 A So Matthew Calamari, Sr. handled all of the claims as
 24 it related to anything that dealt with the insurance. If there
 25 was an auto accident, he would handle it. If there was a

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1 Workers' Compensation claim, he would handle it. If there was a
 2 loss, an insurance loss, he would handle it.
 3 Q He was responsible for those aspects of the insurance
 4 program, right?
 5 A Yes, ma'am.
 6 Q And then Mr. Lieberman, he's next in the line,
 7 executive vice-president management and development, what is
 8 your understanding of his role as described here in this box?
 9 A During the process, things that would be looked at, of
 10 course, as casualty risk, again claims and also coverage buying
 11 decisions in terms of what needed, what didn't -- his
 12 background is he came from the City Parks Department and so he
 13 had a good understanding of casualty risk.
 14 Q And then you're the fourth person in this box, yes?
 15 A Correct.
 16 Q And what does that mean, "coverage terms and
 17 conditions" associated with your role?
 18 A It sort of encompasses the other boxes whereby we
 19 needed to make sure that the coverage terms were advantageous to
 20 the Trump Organization and the conditions of the insurance
 21 properly insured the assets.
 22 (Continued on the next page.)
 23
 24
 25

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1 Q You can put that to the side. Thank you.
 2 Are you aware if the Statement of Financial Condition,
 3 we talked a little bit about it, whether the statements of
 4 financial condition were ever presented during any of the
 5 gang-of-four meetings with underwriters?
 6 A Yes.
 7 Q What is your understanding as to when the Statement of
 8 Financial Condition would be shared in these gang-of-four
 9 meetings with underwriters?
 10 A Pamela Newman would set up a meeting that would include
 11 various different insurance company executives and we would meet
 12 in one of the conference rooms across the table from one another
 13 and Allen would provide each and every one of them with a copy
 14 -- a bound copy of the Statement of Financial Condition.
 15 Once again, they were told that they can copy, they can
 16 take notes off of it, but they cannot keep the original
 17 document.
 18 Q So insurance underwriters were provided the statements
 19 of financial condition by Allen Weisselberg, yes?
 20 A Yes, that was the word I was looking for, underwriter.
 21 Q And those underwriters were permitted to review those
 22 statements, yes?
 23 A Encouraged to.
 24 Q And take notes?
 25 A Yes.

M. Cohen - Plaintiff - direct (Faherty) Page 2241

1 Q On the information contained in those statements; is
 2 that correct?
 3 A That's correct.
 4 Q I'd like to show you another document.
 5 MS. FAHERTY: Your Honor, I'm handing up to the
 6 witness a document we've marked as Plaintiff's Exhibit
 7 PX-588.
 8 Q And I'll represent to you, Mr. Cohen, this is the way
 9 this document was provided to us. It's four pages, but I think
 10 the first two pages are identical to the second two pages, so if
 11 you want to take a moment to review, I'll just focus your
 12 attention on those first two pages, please.
 13 Okay. Do you see this document in front of you? It's
 14 on a letterhead "AON," right? You see that in the upper right
 15 hand corner?
 16 A Correct.
 17 Q And there is a heading, "Agenda, "The Trump
 18 Organization LLC D&O Underwriting Meeting," dated Tuesday,
 19 January 10, 2017, 10:00 a.m. and 11:00 a.m..
 20 And is that the address of the Trump Organization, 725
 21 Fifth Avenue?
 22 A It is.
 23 Q And then there is a -- in the center of the page, a
 24 header "Attendees." Do you see that there?
 25 A Yes.

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1 Q And under the heading "Trump Organization," is that
 2 your name listed there?
 3 A It is.
 4 Q And the other names Allen Weisselberg, Matthew
 5 Calamari, Ron Leiberman. That's the gang of four, yes?
 6 A Correct, the group of four.
 7 Q Group of four.
 8 And then George Sorial, he's an employee of the Trump
 9 Organization?
 10 A He is.
 11 Q How about Adam Rosen?
 12 A Yes.
 13 Q And what about Patrick Birney?
 14 A Yes.
 15 Q And there is another subheading, "AON." Do you see
 16 that there?
 17 A I do.
 18 Q Pam Newman, that's who we've been speaking about?
 19 A Yes.
 20 Q She was the broker?
 21 A Yes.
 22 Q And Regina Degnan, do you recognize that name?
 23 A I do.
 24 Q Who is Regina Degnan?
 25 A She was Pamela's executive vice president. Ultimately

M. Cohen - Plaintiff - direct (Faherty) Page 2243

1 took her book of business when Pam retired.
 2 Q And fair to say Pam Newman was the relationship partner
 3 at AON?
 4 A Yes.
 5 Q And Regina then succeeded her as the relationship
 6 partner for the Trump Organization's relationship program?
 7 A Correct.
 8 Q Do you recognize the name John Vanasco?
 9 A I do.
 10 Q How do you recognize that name?
 11 A From the meetings.
 12 Q Okay. And what about Michael Fetchko. Do you
 13 recognize that name?
 14 A I don't.
 15 Q Any reason to doubt that Mr. Fetchko was an employee of
 16 AON?
 17 A No.
 18 Q Okay. And then under that subheading there is another
 19 subheading, "markets." Do you have an understanding of the
 20 markets?
 21 A They're talking about the various different insurance
 22 markets because the Trump Organization is comprised of many
 23 different assets and many different classes.
 24 Q So is this is an example of an agenda for Trump
 25 Organization D&O Underwriting Meeting that occurred at the Trump

M. Cohen - Plaintiff - direct (Faherty) Page 2244

1 Organization on Tuesday, January 10, 2017?
 2 A Yes.
 3 Q Okay.
 4 MS. FAHERTY: Your Honor, I move to admit this into
 5 evidence.
 6 THE COURT: Granted. It's in.
 7 (Whereupon, the item previously referred to is
 8 received and marked Plaintiff's Exhibit Number 588 in
 9 evidence.)
 10 Q Do you have a specific recollection of recalling this
 11 underwriting meeting, Mr. Cohen?
 12 A No, ma'am.
 13 Q Any reason to doubt that you didn't have an underwrite
 14 -- D&O underwriting meeting on Tuesday, January 10, 2017?
 15 A No.
 16 Q Involving Everett?
 17 A No.
 18 Q Or HCC?
 19 A No.
 20 Q Okay. And just drawing your attention to the second
 21 page of this agenda. Looking in the middle of this "questions,
 22 discussions, topics agenda," do you see in the middle of the
 23 page there is a subtopic "financial?"
 24 A I do.
 25 Q Is this a reference to the conversation we were having

M. Cohen - Plaintiff - direct (Faherty) Page 2245

1 a short while ago that underwriters would add as part of the
 2 agenda wanting to see financials in connection with quoting
 3 premiums for the Trump insurance program?
 4 A Yes.
 5 Q Okay.
 6 MS. FAHERTY: We can put that to the side.
 7 Thank you.
 8 Q And was Mr. Trump ever involved in these group of four
 9 insurance meetings?
 10 A Yes.
 11 Q Describe that for me.
 12 A In two different ways: First way, would be on rare
 13 occasion we would go to his office to discuss an insurance
 14 issue, but for the most part about three quarters of the way
 15 through the meeting Mr. Trump would then come in and there would
 16 be a conversation about his extensive net worth, he's actually
 17 richer than the insurance companies, "maybe we should go self
 18 insured. We got to get a good premium."
 19 Q And would Mr. Trump ever appear at these meetings
 20 talking about his net worth to the underwriters themselves?
 21 A Yes. That's what I was referring to three quarters
 22 through the meeting he would generally show up.
 23 Q And would you coordinate these gang-of-four meetings
 24 such that Mr. Trump could arrange to arrive like that?
 25 A It was coordinated that he would arrive like that.

M. Cohen - Plaintiff - direct (Faherty) Page 2246

1 MS. FAHERTY: Can we do 3166?
 2 I'm going to ask Tommy to pull Exhibit 3166.
 3 Tommy, my mistake. You don't have it.
 4 Your Honor, I've marked for identification
 5 plaintiff's PX 3166. I've handed it up to the witness.
 6 Q Mr. Cohen, I'll give you a moment to review that
 7 document and let me know when you're ready.
 8 MR. KISE: Your Honor, just briefly, what was the
 9 last exhibit number? Was that in evidence, the one right
 10 before this? What was the last exhibit? I'm sorry.
 11 MS. FAHERTY: 588.
 12 MR. KISE: 588, okay. Thank you.
 13 MS. FAHERTY: And that was already in.
 14 MR. KISE: It was already in, right.
 15 MS. FAHERTY: Your Honor, I move to admit
 16 Plaintiff's Exhibit 588.
 17 THE COURT: Was it already in or wasn't it?
 18 MS. FAHERTY: Apparently it wasn't already in. I
 19 misunderstood.
 20 THE COURT: It's now admitted into evidence.
 21 MS. FAHERTY: Thank you, Your Honor. I appreciate
 22 it.
 23 MR. KISE: Thank you.
 24 (Whereupon, the item previously referred to is
 25 received and marked Plaintiff's Exhibit Number 588 in

M. Cohen - Plaintiff - direct (Faherty) Page 2247

1 evidence.)
 2 THE COURT: The witness just going to take a little
 3 motion break I'll call it. Says it will be a minute.
 4 THE COURT OFFICER: Witness returning. Come to
 5 order.
 6 THE WITNESS: Thank you, Your Honor.
 7 THE COURT: You're welcome. Let's continue.
 8 MS. FAHERTY: Thank you.
 9 THE WITNESS: Apologies.
 10 Q It's okay.
 11 Did you have a moment to review the document in front
 12 of you, Mr. Cohen?
 13 A I did.
 14 Q And looking at the top of this e-mail, it is from
 15 SariRudman@AON.com.
 16 Do you have any understanding as to who Sari Rudman is?
 17 A Yes.
 18 Q Who is that?
 19 A She also worked for Pam Newman at AON.
 20 Q And this is an e-mail sent on March 19, 2013. Again,
 21 it's sent to the group of four, yes?
 22 A Correct.
 23 Q And there is a copy here to an individual named Rhona
 24 Graff. Do you recognize that name?
 25 A I do.

M. Cohen - Plaintiff - direct (Faherty) Page 2248

1 Q Who is Rhona Graff?
 2 A Mr. Trump's executive assistant.
 3 Q Okay. How about the e-mail address
 4 HLorenzo@Trumporg.com?
 5 A That would be Holly Lorenzo.
 6 Q Do you have any understanding as to who Ms. Lorenzo is?
 7 A Yes.
 8 Q Who is that?
 9 A That's one of Mr. Trump's assistants. She was the
 10 assistant for the executive assistant.
 11 Q She was an assistant for Ms. Graff?
 12 A Yes.
 13 Q Thank you for the clarification.
 14 And Ms. Newman? We spoke about her, yes?
 15 A Correct.
 16 Q Okay. And the subject of this e-mail is a forward
 17 "Property casualty marketing meetings re: 2013 renewal-Tuesday,
 18 April 9, 2013 at 3:00 p.m.-at The Trump Organization," yes?
 19 A That's what it says, yes.
 20 Q And in the body of this message, it says:
 21 "Dear, gentlemen. Please note in your calendar Rhona
 22 has kindly secured Mr. Trump's availability for Tuesday,
 23 April 9, 2013 at 3:00 p.m. at the Trump Organization, 25th
 24 floor. We will provide a list of all attendees in an agenda and
 25 meeting purpose. Best, Pamela." Do you see that there?

M. Cohen - Plaintiff - direct (Faherty) Page 2249

1 A I do.
 2 Q Is this the matter in which you will confirm
 3 Mr. Trump's attendance at these insurance group of four
 4 meetings?
 5 A No.
 6 Q Tell me what this.
 7 A This was obviously Pam Newman's acknowledgement
 8 Mr. Trump was going to appear, but we didn't need even this
 9 letter to have already discussed that he would make the
 10 appearance three quarters of the way through the meeting.
 11 Q But this is an example that Mr. Trump did in fact have
 12 it scheduled to appear for a Trump underwriting meeting, yes?
 13 A Yes.
 14 MR. KISE: Objection. Leading.
 15 THE COURT: Sustained.
 16 Q No reason to dispute that this is the -- this e-mail
 17 identifies Mr. Trump's attendance of the Trump Organization
 18 meeting?
 19 MS. HABBA: That was leading. Objection.
 20 THE COURT: Could you read that back?
 21 (Whereupon, the requested portion of the
 22 proceedings was read back by the court reporter.)
 23 THE COURT: Overruled.
 24 MS. FAHERTY: You can put that down.
 25 And Your Honor, I actually move to admit this into

M. Cohen - Plaintiff - direct (Faherty) Page 2250

1 evidence.
 2 THE COURT: Granted. It's in evidence.
 3 (Whereupon, the item previously referred to is
 4 received and marked Plaintiff's Exhibit Number 3166 in
 5 evidence.)
 6 MR. KISE: Statute of limitations, Your Honor.
 7 THE COURT: Overruled. Did we get an answer? I'll
 8 ask Ms. Faherty. Did he answer all your questions?
 9 MS. FAHERTY: He answered my question.
 10 THE COURT: No reason to dispute etc., etc.
 11 THE WITNESS: And my answer was no.
 12 THE COURT: No, okay.
 13 MS. FAHERTY: Thank you, Your Honor.
 14 THE COURT: Sure.
 15 Q Mr. Cohen, I want to turn your attention to the Buffalo
 16 Bills. You made mention of it earlier, okay?
 17 A Correct.
 18 Q All right. Do you recall who was involved in that
 19 process with you from the Trump Organization?
 20 A Mr. Trump, Allen Weisselberg and myself.
 21 Q Anyone else? How about Jason Greenblatt?
 22 A Yes, Jason Greenblatt.
 23 Q What about Ivanka Trump?
 24 A Not that I recall.
 25 Q Okay. Did you work with Deutsche Bank on the process?

M. Cohen - Plaintiff - direct (Faherty) Page 2251

1 MR. KISE: Objection. What process?
 2 Q We turned our attention to the Buffalo Bills.
 3 So what, if anything, do you recall about Deutsche
 4 Bank's involvement in the attempt to purchase the Buffalo Bills?
 5 A We had had a meeting in Mr. Trump's office with members
 6 of Deutsche Bank's team for the purpose of securing a loan that
 7 would be predicated off of his assets so that we could acquire
 8 the -- or at least put in a bid to acquire the Buffalo Bills.
 9 There is an interesting NFL scenario where you cannot
 10 have more than ten percent of an NFL team financed --
 11 MR. KISE: Objection. Move to strike the last
 12 portion of that answer, Your Honor, unless Mr. Cohen is now
 13 an expert on NFL acquisitions.
 14 I mean, I represented, George Steinbrenner in 1995
 15 in connection with the Tampa Bay Buccaneers purchase, but
 16 I'm not an expert on that. I'm not sure if Mr. Cohen is an
 17 expert on NFL acquisitions, but the last port portion of his
 18 nonresponsive.
 19 THE COURT: If it was nonresponsive that would be
 20 my objection.
 21 Sustained on the ground of nonresponsive, the last
 22 part of it, the ten percent rule.
 23 MS. FAHERTY: Understood.
 24 Q Let's look at some documents. Maybe that will help the
 25 conversation.

M. Cohen - Plaintiff - direct (Faherty) Page 2252

1 A Sure.
 2 MS. FAHERTY: Your Honor, I've marked as
 3 plaintiff's next exhibit PX 3159.
 4 Q Drawing your attention, Mr. Cohen, to the document on
 5 your screen. Do you see that this is a message from
 6 ITrump@Trumporg.com. Who do you understand that e-mail address
 7 to be?
 8 A That's Ivanka Trump's e-mail address.
 9 Q And this e-mail is dated July 27, 2013 at 3:30 p.m.,
 10 yes?
 11 A Correct.
 12 Q It's addressed to Jason Greenblatt?
 13 A It is.
 14 Q Allen Weisselberg?
 15 A Yes.
 16 Q And you?
 17 A Yes.
 18 Q This appears to be a forward with an attachment and the
 19 attachment is titled, "DB to Morgan Stanley letter, (clean
 20 version 2) 72514 [1].docx." Do you see that there?
 21 A I do.
 22 Q And the underlying message is a forward from Ivanka
 23 Trump to Rosemary Vrablic dated July 26, 2014. Do you see that
 24 there?
 25 A I do.

M. Cohen - Plaintiff - direct (Faherty) Page 2253

1 Q Do you have any understanding as to whom Rosemary
 2 Vrablic is?
 3 A She is an employee at Deutsche Bank.
 4 Q And what, if any, title did Ms. Vrablic have at
 5 Deutsche Bank as it concerned the Trump Organization?
 6 A She was -- well, she is an executive at Deutsche Bank,
 7 but she has a long history with Mr. Trump.
 8 Q Was she a relationship partner at Deutsche Bank to your
 9 understanding?
 10 A Yes.
 11 Q Okay. And in Ms. Trump's message that she forwarded to
 12 you and others, it states: "Hi, Rosemary. Thank you for
 13 providing this draft confidence letter."
 14 What is your understanding of a draft confidence
 15 letter?
 16 A It was needed in order to get the process started.
 17 Q And what process are you referring to?
 18 A The process of putting in a bid to obtain the Buffalo
 19 Bills.
 20 THE COURT: Five-minute warning.
 21 MS. FAHERTY: Yes, Your Honor.
 22 Q And the message continues: "I have inserted a couple
 23 of comments and suggestions. Please see what you can do. I
 24 will call you in the a.m. to discuss." Do you see that there?
 25 A I do.

M. Cohen - Plaintiff - direct (Faherty) Page 2254

1 Q And in drawing your attention to the following page of
 2 this document, the very top says, "Draft (DB letterhead)."
 3 Do you see that there?
 4 A I do.
 5 Q Dated "July blank, 2014," yes?
 6 A Correct.
 7 Q And it appears that there is an addressee, Morgan
 8 Stanley. Do you have any understanding as to why Morgan Stanley
 9 is listed there?
 10 A Morgan Stanley was handling the sale.
 11 Q Of the Buffalo Bills?
 12 A Of the Buffalo Bills.
 13 Q Okay. And the address is blank, the attention is
 14 blank, yes?
 15 A Correct.
 16 Q But it states "re: Mr. Donald Trump," yes?
 17 A Correct.
 18 Q And there is some language in the center here.
 19 MS. FAHERTY: We can zoom out a little bit so we
 20 can put the full letter up.
 21 Q Okay. And there is a second page to this letter. Do
 22 you see in the capital -- all caps at the top of the second page
 23 it states, "Can you not replace the whole following paragraph
 24 with the below statement. It says the same thing without this
 25 overkill belt" and it states "suspenders" [sic]. I think that's

M. Cohen - Plaintiff - direct (Faherty) Page 2255

1 supposed to be "suspenders" --
 2 THE COURT: I'm sure it is.
 3 Q Language. Do you see that there?
 4 A I do.
 5 Q Do you recall including language like this as an edit
 6 to a Deutsche Bank financial wherewithal letter?
 7 A No.
 8 MR. KISE: Objection.
 9 Q Any reason to dispute that you received this forward
 10 from Ivanka Trump that included her edits to a letter to
 11 Deutsche Bank?
 12 A Well, her requested edits to the letter and yes, it
 13 came to my e-mail address.
 14 MS. FAHERTY: Your Honor, I move to admit this into
 15 evidence.
 16 THE COURT: Granted. It's in.
 17 (Whereupon, the item previously referred to is
 18 received and marked Plaintiff's Exhibit Number 3159 in
 19 evidence.)
 20 MR. KISE: Your Honor, not only is it statute of
 21 limitations. I'm just wondering -- I object on relevance
 22 grounds. What does this have to do with anyone in the case?
 23 Ms. Trump is no longer a party to the case and this
 24 transaction as far as I know it doesn't form the basis for
 25 any cause of action that's in the complaint at all, so I'm

M. Cohen - Plaintiff - direct (Faherty) Page 2256

1 not sure why we're talking about the Buffalo Bills other
2 than it does generate some press interest. I'm sure this is
3 the Buffalo Bills.
4 THE COURT: You know, I think Mr. Cohen referred to
5 Buffalo Bills many times and I'm thinking that's the
6 football team, right? Without saying the football team.
7 What's the relevance?
8 MS. FAHERTY: Your Honor, they're writing to
9 Deutsche Bank to get financing, they're providing comfort to
10 the bank to get financing, they're making financial
11 representations connection with the purchase of the Buffalo
12 Bills. It is an aspect of our complaint and the Attorney
13 General intends to prove the allegations within our
14 complaint. So this is square within the case that we have
15 brought. It is a continued pattern of fraud.
16 MR. KISE: There is no transaction at all
17 associated with it. Nothing ever happened and it's not --
18 it doesn't form the basis for any of the counts.
19 The counts are connected to loan transactions that
20 were actually consummated loan transactions and insurance
21 transactions and insurance policies. This is just simply a
22 free-for-all on anything that everyone went out at anytime
23 and place and where -- and Ms. Trump who sent this e-mail is
24 no longer a party to the case. So not only is it outside
25 the statute of limitations, but it just simply has nothing

Page 2258

1 Transcript continues on the following page....
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M. Cohen - Plaintiff - direct (Faherty) Page 2257

1 to do with the claims asserted in the complaint.
2 I realize there is 200-something pages and
3 800-something paragraphs and one of those paragraphs makes
4 some drive by mention of the Buffalo Bills. I do realize
5 that, but that doesn't make it relevant in this trial
6 proceeding now that the issues have been narrowed and the
7 case has been joined.
8 THE COURT: I think we can all agree that Mr. Trump
9 never owned the Buffalo Bills; right?
10 MS. FAHERTY: We can agree that that did not come
11 to fruition, Your Honor, yes.
12 THE COURT: Nevertheless, I will admit it as
13 possible evidence of pattern and practice of the
14 organization back at that time generally speaking and the
15 witness himself was on this. If it's not relevant, it's not
16 relevant, but I think it is anyway, so.
17 MS. FAHERTY: Your Honor, it might be a good moment
18 for a break.
19 THE COURT: Did we get an answer to the last
20 question?
21 MS. FAHERTY: I thought we did.
22 MR. SOLOMON: Yes.
23 THE COURT: All right. Ten-minute break. We'll
24 see you in 15 minutes.
25 (Whereupon, there is a recess in the proceedings.)

M. COHEN - PLAINTIFF - DIRECT(MS. FAHERTY) Page 2259

1 THE OFFICER: Come to order. Part 37 is back in
2 session. Please be seated and come to order.
3 THE COURT OFFICER: Witness entering.
4 (Witness resumes the stand.)
5 THE COURT: Okay. Please proceed.
6 MS FAHERTY: Thank you, Your Honor. I'd like to
7 hand up to the witness a document that I've marked for
8 identification as PX-3276.
9 Q Mr. Cohen, I ask you to take a minute and look at the
10 document in front of you and then I'll ask you a question.
11 (Witness reviewing document.)
12 Q Mr. Cohen, this document is an e-mail from Jason
13 Greenblatt to you, Ivanka Trump and Allen Weisselberg, yes?
14 A Correct.
15 Q Dated July 29, 2014?
16 A Correct.
17 Q With the subject "executed Buffalo Bills bid-related
18 documents," yes?
19 A Yes.
20 Q And then there appear to be a series of attachments in
21 included with this document?
22 A Correct.
23 Q And Mr. Greenblatt's message says, "All, FYI, attached
24 are copies of the documents executed today in connection with
25 the bid made by DJT." Do you have any understanding as to who

M. COHEN - PLAINTIFF - DIRECT(MS. FAHERTY) Page 2260

1 DJT is?
 2 A Donald J. Trump.
 3 Q "For the Buffalo Bills." He then goes on to state,
 4 "Items 1, 2, 3 were submitted to Morgan Stanley. Items 4-5 are
 5 documents between Trump and DB." Any understanding as to who DB
 6 is?
 7 A Deutsche Bank.
 8 Q "(And were not submitted to Morgan Stanley)."
 9 Do you see that there?
 10 A I do.
 11 Q And item number one appears to be a letter from DJT.
 12 Donald J. Trump, yes?
 13 A That's what it says, yes.
 14 Q To Morgan Stanley?
 15 A Yes.
 16 Q Then two is "owner background form," correct?
 17 A Correct.
 18 Q And three is a letter from Deutsche Bank to Morgan
 19 Stanley, yes?
 20 A Yes.
 21 Q And those were the three items submitted to Morgan
 22 Stanley?
 23 A Correct.
 24 Q And then four and five, number four is a certification
 25 of the financial position of DJT or Donald J. Trump, yes?

M. COHEN - PLAINTIFF - DIRECT(MS. FAHERTY) Page 2261

1 A Yes.
 2 Q Executed by J. McConney. Do you understand who J.
 3 McConney is?
 4 A Yes.
 5 Q Who is that?
 6 A Jeffrey McConney.
 7 Q Item five is an executed letter from Deutsche Bank to
 8 Donald J. Trump, "Re: No waiver of Deutsche Bank/Trump loan
 9 terms," yes?
 10 A Yes.
 11 Q And do you recall putting documents together in
 12 connection with the Buffalo Bills bid?
 13 A I remember seeing these documents.
 14 Q And this was something that you worked on when you were
 15 at the Trump Organization, yes?
 16 A Correct.
 17 Q Turning your attention to the first attachment then,
 18 I'll ask you to turn the page of this exhibit. This appears to
 19 be a Trump Organization letterhead, yes?
 20 A That's correct.
 21 Q And this letter is dated July 29, 2014, yes?
 22 A Yes.
 23 Q Do you recall the name K. Don Cornwell?
 24 A I recall the name.
 25 Q Who do you understand K. Don Cornwell to be?

M. COHEN - PLAINTIFF - DIRECT(MS. FAHERTY) Page 2262

1 A Managing director of Morgan Stanley. He was the
 2 individual that was compiling all the bids on behalf of the
 3 Buffalo Bills.
 4 Q And so this is a letter -- and if we could just pull
 5 back and turn to the second page of this letter. Do you
 6 recognize the signature on this letter addressed to K. Don
 7 Cornwell dated July 29, 2014?
 8 A Yes.
 9 Q Whose signature do you recognize that to be?
 10 A Donald J. Trump.
 11 Q And there's a title underneath the word "sincerely."
 12 It is "Trump Acquisition, LLC." Do you see that there?
 13 A I do.
 14 Q The letterhead of this letter, however, is the Trump
 15 Organization. What is the connection between the Trump
 16 Organization and Trump Acquisition, LLC?
 17 A It is a subsidiary for new acquisitions. They would do
 18 it under its own specific LLC.
 19 Q Was it still an entity contained under the umbrella of
 20 the Trump Organization to your understanding?
 21 A To my understanding, yes.
 22 Q And you stated that's Donald J. Trump's signature, yes?
 23 A Yes.
 24 Q Now, turning back to the first letter, first page of
 25 the letter, the first paragraph states, "Please let this letter

M. COHEN - PLAINTIFF - DIRECT(MS. FAHERTY) Page 2263

1 serve to represent my bid to purchase the Buffalo Bills football
 2 team for \$1 billion."
 3 Do you recall the bid made to purchase the Buffalo
 4 Bills for \$1 billion in 2014?
 5 A \$1 billion, yes.
 6 Q Turning to the next paragraph, the letter continues, "I
 7 have a net worth in excess of \$8 billion (financial statements
 8 to be provided upon request), comprised of substantial cash
 9 balances, highly liquid assets (including Class A real estate)
 10 and very little debt." Do you recall seeing that?
 11 A I do.
 12 Q Do you recall a representation made by Mr. Trump in
 13 connection with his bid to buy the Bills asserting a net worth
 14 in excess of \$8 billion?
 15 MR. KISE: Objection. In addition to this document
 16 or this document?
 17 THE COURT: I think that's a fair question. So
 18 let's make the question more specific. By fair question, I
 19 meant Mr. Kise's question.
 20 Q Do you recall Mr. Trump, separate and apart from this
 21 letter, making a representation that he had a net worth in
 22 excess of \$8 billion in connection with his attempt to purchase
 23 the bills?
 24 A Yes.
 25 Q And that is reflected here in this letter, yes?

M. COHEN - PLAINTIFF - DIRECT(MS. FAHERTY) Page 2264

1 A Yes.

2 Q And then this letter also states in the following

3 paragraph, "I'm enclosing a letter from Deutsche Bank which

4 indicates my financial strengths, both from a liquidity and

5 asset value standpoint, and confirming that I have the financial

6 capability to consummate the transaction, yes?

7 A That's what it says.

8 Q And this was submitted to Mr. Don Cornwell at Morgan

9 Stanley in connection with the Buffalo Bills bid, yes?

10 A Yes.

11 Q And then I'll draw your attention to -- we'll skip the

12 background form which is the second attachment to this letter.

13 So let's go to the third document that was attached to this

14 letter and submitted to Morgan Stanley. Go to page 17 of 22.

15 And this is a letter from Rosemary Vrablic, managing

16 director at Deutsche Bank. That was the relationship partner we

17 spoke about before, yes?

18 A Correct.

19 Q Dated July 29, 2014?

20 A Yes.

21 Q Also addressed to Mr. Cornwell at Morgan Stanley?

22 A Yes.

23 Q Drawing your attention to the first paragraph, do you

24 recall that Deutsche Bank submitted a letter stating that they

25 have been asked by Mr. Donald J. Trump to provide this letter in

M. COHEN - PLAINTIFF - DIRECT(MS. FAHERTY) Page 2265

1 connection with his bid for the acquisition of the Buffalo Bills

2 of the National Football League (the transaction)?

3 A Yes.

4 Q And drawing your attention to the third paragraph, the

5 letter reads, "Our understanding is that Mr. Donald J. Trump has

6 made, or intends to make a bid for the Buffalo Bills in the

7 amount of \$1 billion in the aggregate. Based on our preliminary

8 review of the current financial information of Mr. Donald J.

9 Trump made available to us, including liquidity and asset value,

10 it is our assessment that Mr. Donald J. Trump would have the

11 financial wherewithal to fund his bid." Do you see that there?

12 A I see that.

13 Q What, if anything, do you understand Deutsche Bank to

14 have reviewed to make this statement, "Based" on our preliminary

15 review of current financial information of Mr. Donald J. Trump

16 made available to us"?

17 A The Statement of Financial Condition.

18 Q And if we turn the page, you'll see that this document

19 is signed. Does that appear to be the signature of Rosemary

20 Vrablic of Deutsche Bank?

21 A I don't know her signature, but yes, it says Rosemary

22 T. Vrablic.

23 Q No reason to doubt that that's her signature, right?

24 A No.

25 Q There is a copy here. Is that for Mr. Donald J. Trump?

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1 A Correct.

2 Q You will recall that Mr. Greenblatt's cover e-mail

3 suggested that there are two other documents attached that were

4 just transmitted to Deutsche Bank, right?

5 A Correct.

6 Q Turning your attention to the next page of this

7 document, do you recognize the signature on the bottom of this

8 page titled, "Certification of the Financial Position of Donald

9 J. Trump"?

10 A Yes.

11 Q Whose signature do you recognize that to be?

12 A That's Jeff McConney.

13 Q The Jeffrey McConney that we spoke about before? He

14 worked in the accounting department at the Trump Organization?

15 A Yes, the controller.

16 Q The controller?

17 A Yes.

18 Q And if you see in that very first paragraph, it states,

19 "I, Jeffrey McConney, controller;" is that right?

20 A That's correct.

21 Q And there are certain numbers included in here that

22 "DT's current liquidity is approximately 310 million." Do you

23 have an understanding as to who DT is?

24 A Donald Trump.

25 Q And then it states in paragraph B, "There has been no

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1 material decrease (in excess of 10%) in the aggregate value of

2 his illiquid assets since the financials were reported to

3 Deutsche Bank as of June 30, 2013 that were certified by DT,

4 Donald Trump, on October 30, 2013," yes?

5 A That's what it says.

6 Q And those financials, do you have any understanding as

7 to what those financials as of June 30, 2013 are?

8 A The assets described in the Statement of Financial

9 Condition.

10 MS. FAHERTY: Your Honor, I move to admit this

11 document and the exhibits into evidence.

12 MR. KISE: Your Honor, I'm not sure where to begin,

13 but I'll start with statute of limitations.

14 THE COURT: Overruled.

15 MR. KISE: I know where you are going on that, but

16 again, I'm not sure of the relevance of any of these

17 documents to the proceeding. I mean, is it the government's

18 intention to establish that President Trump did not have the

19 financial capability to consummate the transaction? Unless

20 they are going to connect this up somehow with some actual

21 alleged fraudulent activity, there's no -- there's no

22 transaction that was ever consummated.

23 And in order to demonstrate that there's anything

24 false or fraudulent here about this, we have to go into an

25 entire, which we can, I guess if we are going to be here

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1 until next March, an entire analysis whether he had the
2 financial capability to consummate the transaction. The
3 documents are all hearsay, so I'm wondering what purpose
4 they're being offered for. What are we proving? What
5 relevance, what fact at issue that is material to the issues
6 before the Court is being established by this because on its
7 face, there's nothing to indicate that President Trump
8 didn't have the financial ability to consummate the
9 transaction and Deutsche Bank says itself based on their own
10 assessment, they say that he did.

11 So are we going to go down this path? This is the
12 danger of these hypothetical transactions that never took
13 place and they need to be more connected to some actual
14 cause of action.

15 THE COURT: Jeffrey McConney, who I believe the
16 witness has testified, signed the letter, submitted the
17 certification. He is a defendant, right?

18 MR. KISE: He is.

19 THE COURT: And whether everything in this document
20 is accurate or not, I think is a factual issue.

21 MR. KISE: Well, but if it is a factual issue, then
22 we have to go through whole society of facts and whether he
23 had the financial ability to consummate the transaction. It
24 doesn't just come in because it is a statement and then the
25 government gets to assume that there is some falsity here.

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1 They are going to have to establish all of that which is why
2 it needs to be connected to some actual cause of action.

3 THE COURT: Do you plan to establish all that?

4 MS. FAHERTY: We do, Your Honor. I think that the
5 evidence has come in that it has established a significant
6 number of the facts relevant to the evidence we're putting
7 forward. I am concerned that there is an unnecessary
8 objection here. He's given testimony about this
9 transaction. We're seeing information about financials that
10 are being proffered in order to receive the benefit.

11 This is our case. Because the fraud was not fully
12 perpetrated does not mean it is not relevant to the
13 allegations brought by the Attorney General. This is a
14 pattern and practice. There are co-defendants here. There
15 is a plethora of reasons why this evidence comes in, Your
16 Honor, respectfully.

17 MR. KISE: Your Honor, the entirety of Ms.
18 Faherty's presentation presumes the ultimate question. I'm
19 back to my point that they're presuming that there is some
20 fraudulent activity here without actually establishing that
21 he did not have the financial capability to consummate the
22 transaction.

23 THE COURT: But that isn't the only statement
24 inherent in this document.

25 MR. KISE: But it is because they're all connected

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1 to that point. I mean, you can't just say that. Are we
2 going to debate whether his current liquidity was 310
3 million in 2014? I think it has already been established.
4 If this one piece they're focusing on right now, that's up
5 on the screen, but it is all part of one exhibit that
6 relates to no transaction that was ever consummated.
7 There's no connectivity to anything that's at issue.

8 It doesn't go to the element without establishing
9 that he did not, in fact, have the financial capability to
10 consummate the transaction which I would disagree with Ms.
11 Faherty. That has not been established. We don't know
12 that. I mean, there is certainly no evidence that would
13 indicate that he did or did not. I mean, with the evidence
14 that is before the Court as to this transaction, it
15 certainly seems sufficient that he had the financial
16 wherewithal to buy more than one NFL team. I mean, at the
17 time. That's what I'm saying.

18 Are we going to go down this path of debating
19 whether or not there is a truth or falsity here on an issue
20 that doesn't relate to the actual claims and causes of
21 action that are being presented? This is tangential and
22 remote and unless -- Ms. Faherty just admitted she does not
23 plan to connect this up. She's simply saying that the fraud
24 has already been established, that it is already
25 established, that this document is evidence itself of fraud

M. COHEN - PLAINTIFF - DIRECT(MS. FAHERTY) Page 2271

1 and I don't see how, how this exhibit is evidence of fraud.
2 He had the financial capability to consummate the
3 transaction and, again, perhaps more than one, maybe two or
4 three. You can't own more than one NFL team as far as I
5 know.

6 THE COURT: Are you testifying as an expert to the
7 NFL?

8 MR. KISE: I am more of an expert on --

9 THE WITNESS: You can't own more than one.

10 THE COURT: As part of this document, I only have
11 the one sheet in front of me now. Wasn't there a statement,
12 a claim that the defendant's net worth was \$8 billion?

13 MR. KISE: Yes. Has that been disproved?

14 THE COURT: Well, we don't have to disprove it. We
15 are in the middle of a trial at this point.

16 Do you agree that his net worth was \$8 billion at
17 that time?

18 MS. FAHERTY: No.

19 THE COURT: Are you going to try to prove that it
20 wasn't or do you feel you've already proved it wasn't?

21 MS. FAHERTY: For one, Your Honor, the inherent
22 falsity of a Statement of Financial Condition has already
23 been decided by this Court on summary judgment. Those have
24 been determined to be false. I don't think I need to prove
25 up or prove down. Although, there is evidence as to the

M. COHEN - PLAINTIFF - DIRECT(MS. FAHERTY) Page 2272

1 inherent falsities and values contained in that Statement of
 2 Financial Condition that we have put in evidence in this
 3 trial and will continue to do so. So yes, we are continuing
 4 to prove our case, Your Honor, and connect all of those
 5 dots.
 6 MR. KISE: But this document is not the Statement
 7 of Financial Condition, this document, and I would disagree
 8 strongly with Ms. Faherty. I mean, if we are in a place now
 9 where the statements are irretrievably proven false, then
 10 without a jury, without a trial and now we are going to be
 11 here and we're not -- why are we even putting on a defense
 12 then if that's already been established? We might as well
 13 close it up now. It doesn't make any sense what Ms. Faherty
 14 is saying.
 15 They have to establish the elements of their claims
 16 and they can't simply rely on the fact that well, it's
 17 established that it is false and, thereby, that establishes
 18 the remainder of their claims. And here, we are not even
 19 talking about an actual claim. We're talking about a
 20 theoretical claim. It doesn't form the basis for any of the
 21 counts that are at issue in the trial. And unless we're
 22 going to go down the path, unless the government intends to
 23 go down the path of proving up that President Trump, which I
 24 don't think they can do that, that President Trump did not
 25 have the financial capability to consummate this

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1 transaction, this document has no relevance at all.
 2 THE COURT: Couple of things. It is a non-jury
 3 trial, of course. I tend to be somewhat liberal in what I
 4 let in. I believe that I am evenhanded about what I'm
 5 letting in and what I'm not letting in. I think it's
 6 arguably false, particularly, again, the \$8 billion. I
 7 don't -- arguably, I don't know whether Mr. Trump did or
 8 didn't have the --
 9 MR. KISE: But that's precisely the point, Your
 10 Honor.
 11 THE COURT: Wait. Wait, please. Well, yeah,
 12 that's why we're having a trial. I think this
 13 tends -- again, arguably tends to show a pattern and
 14 practice of broad, to use a loaded term, so the objection is
 15 overruled. Let's just move on.
 16 MR. KISE: Again, I'm starting to feel like Paul
 17 Newman at this point. Every objection is overruled. I
 18 mean, this evidence should not come in respectfully. It
 19 really shouldn't. There's no indication as to where that
 20 even 8 billion -- 8 billion includes brand value. There's
 21 so many issues here that again, we're going down this path
 22 of litigating something that isn't even relevant to the
 23 claims and causes of action before the Court.
 24 THE COURT: One other thing. Maybe the only banned
 25 word in my courtroom is "again." You don't have to say

M. COHEN - PLAINTIFF - DIRECT(MS. FAHERTY) Page 2274

1 things again. The objection is overruled for the reasons I
 2 already stated and the reasons that Ms. Faherty stated.
 3 It's duly noted that you strongly object. Let's move on.
 4 MS. FAHERTY: One more document, Your Honor.
 5 Q Mr. Cohen, do you recall in connection with the attempt
 6 to purchase the Buffalo Bills that you attended a meeting in
 7 Detroit called a management presentation?
 8 A Yes.
 9 Q Do you recall who was at that meeting in Detroit?
 10 A Myself, Mr. Trump, Jason Greenblatt, Allen Weisselberg,
 11 and I don't recall if Ivanka was there.
 12 MS. FAHERTY: Your Honor, I handed up to the
 13 witness a document we've marked for identification as
 14 PX-981.
 15 Q Take a quick look at that document, if you will, Mr.
 16 Cohen, and then I'll ask you a quick question.
 17 (Witness reviewing document.)
 18 A Yes.
 19 Q Just drawing your attention to the third page, there is
 20 an e-mail sent by you to Alex Hill dated July 29, 2014 at
 21 3:36 p.m. Do you see that message there?
 22 A I do.
 23 Q And do you recall who Alex Hill (IBD) is?
 24 A I don't recall him specifically.
 25 Q If I said the Morgan Stanley investment banking

M. COHEN - PLAINTIFF - DIRECT(MS. FAHERTY) Page 2275

1 division, would that refresh your recollection as to what IBD
 2 stood for?
 3 A Yes. Again, I don't know him.
 4 Q Do you have any understanding that Mr. Hill was an
 5 employee at Morgan Stanley?
 6 A Yes.
 7 Q So fair to say that this e-mail is a reflection that
 8 you dropped off the bid packet for the Buffalo Bills, yes?
 9 A Correct.
 10 Q And then drawing your attention through the e-mail all
 11 the way to the top, this is just a continued e-mail thread,
 12 right?
 13 A Correct.
 14 Q You remain on the e-mail chain in this thread, right?
 15 A Correct.
 16 Q And on August 4th, the second message on that first
 17 page, there's an e-mail from Alex Hill to you and Jason
 18 Greenblatt with a copy to K. Don Cornwell, right?
 19 A Correct.
 20 Q And Mr. Hill says wanted to confirm if the 6th worked
 21 for the management presentation. Do you see that there?
 22 A I do.
 23 Q And then following up on the 6th, Mr. Hill writes to
 24 you again saying, "Michael, Jason, looking forward to meeting
 25 you all today. One near term NFL item we would like you to all

M. COHEN - PLAINTIFF - DIRECT(MS. HABBA) Page 2276

1 fill out and have Mr. Trump sign is the attached authorization
 2 and consent to release records. If you all could get that back
 3 to us home, that would be greatly appreciated. Also, we would
 4 like to offer you all the opportunity to tour the
 5 newly-modernized Ralph Wilson Stadium the week of the 18th.
 6 Please let us know if there is a day that works that week for a
 7 trip to Buffalo. Looking forward to meeting you."
 8 Does this message reflect that a meeting occurred in
 9 Detroit on August 6th in connection with the Buffalo Bills bid
 10 package?
 11 A Yes.
 12 MS. FAHERTY: Your Honor, I have no further
 13 questions on this document and this witness. I would like
 14 to move that document into evidence, please.
 15 MR. KISE: Same objections, Your Honor. Statute of
 16 limitations and relevance.
 17 THE COURT: Same ruling. Granted. It is in.
 18 (Whereupon, the Document was marked in evidence as
 19 Plaintiff's Exhibit 981.)
 20 MS. FAHERTY: I rest, Your Honor. Thank you.
 21 THE COURT: Well, will there be any
 22 cross-examination?
 23 CROSS-EXAMINATION BY
 24 MS. HABBA:
 25 Q Hello, Mr. Cohen.

M. COHEN - PLAINTIFF - DIRECT(MS. HABBA) Page 2277

1 A Hello, Ms. Habba.
 2 Q How are you?
 3 A Well. Thank you.
 4 Q We've met a few times, haven't we?
 5 A We have.
 6 Q Do you want me to call you Mr. Cohen today or Michael?
 7 I know before, we've changed that up. What are you comfortable
 8 with?
 9 A I think Mr. Cohen for the day since we are here in
 10 court.
 11 Q I'll be Ms. Habba for the day. So I'm going to ask you
 12 a series of questions today. Before I do, first of all, when I
 13 do ask you my series of questions and I pace, I move when I am
 14 on my feet, so I apologize. I am going to ask you questions
 15 that are going to be yes-or-no questions and I'm going to try to
 16 keep it that way other than when I ask you to read something, so
 17 that we can move this along and make sure we get through
 18 everything that's per the judge's instructions, but I will try
 19 to make the questions super clear, so we have no issues.
 20 Before we start, I want to discuss your health. I'm
 21 not going to get into anything that's uncomfortable. I don't
 22 really do that, but I need to make sure that you are able to
 23 testify completely, clearly and understand what you're doing
 24 today.
 25 Do you have any health issues particularly at this

M. COHEN - PLAINTIFF - DIRECT(MS. HABBA) Page 2278

1 moment that would cause you a reason to not be able to sit
 2 through the testimony under oath in this court today?
 3 A Asked and answered.
 4 Q I forgot that you like to do this. You did this with
 5 me in the depositions. Okay.
 6 MR. KISE: The judge doesn't like that objection.
 7 Q That's not good. So here is how this is going to go.
 8 They get to object. They get to object. We all get to do our
 9 thing. You get to answer my questions. The more we do that,
 10 this will go better. We are not in a deposition. That's the
 11 judge. Ready? Mr. Cohen --
 12 THE COURT: Even if you were asked before by a
 13 different party particularly, just answer it. It will be
 14 quicker.
 15 Q Answer the questions and we will be here until January.
 16 Okay.
 17 Mr. Cohen, are you on any medication that would affect
 18 your ability to testify honestly to me today?
 19 A No.
 20 Q No. Okay. Do you have any medication that would
 21 change your method of thinking at this moment, so that you're
 22 not clear in any sort of way?
 23 A No.
 24 Q So you are fully prepared to testify to me today?
 25 A Yes.

M. COHEN - PLAINTIFF - DIRECT(MS. HABBA) Page 2279

1 Q Under oath?
 2 A Yes.
 3 Q And you understand what "under oath" means? Is that
 4 right, Mr. Cohen?
 5 A Yes.
 6 (Continued on the next page.)
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M. Cohen - Plaintiff - cross (Habba) Page 2280

1 Q Good. And you've been deposed, even by me, many times
2 before, haven't you, Mr. Cohen?
3 A I have.
4 Q And you've been in courts many times before, haven't
5 you, Mr. Cohen?
6 A I have.
7 Q Good. Let's go through that.
8 So previously you pled guilty to a number of felonies.
9 Isn't that correct?
10 A Yes.
11 Q And today, alone, you testified that you pled guilty to
12 five counts of evasion and assessment of income tax liability
13 for 2012 to 2016 --
14 MS. HABBA: I'm sorry is that not making a weird
15 sound? Can you guys hear it?
16 Q In violation of 26 USC Section 7201; is that correct?
17 A Correct.
18 Q And you pled guilty to making false statements to a
19 financial institution in connection with a credit decision in
20 violation of 18 USC Subsection 1014; is that correct?
21 A I take your word that the sections are correct.
22 Q No, no. I don't want you to take my word.
23 MS. HABBA: Let's pull up Exhibit D 951.
24 Q Mr. Cohen, this document is an allocution dated
25 August 21, 2018 for financial crimes. Do you see this?

M. Cohen - Plaintiff - cross (Habba) Page 2281

1 A I do.
2 Q Do you see that it says "United States of America
3 versus Michael Cohen?"
4 A I do.
5 Q Do you see that it's case 1:18-CR-00602-JMF?
6 A I do.
7 Q It's filed on 9/14/18, that's 2018; is that correct?
8 A Correct.
9 Q Okay. Do you recognize this document by the Honorable
10 William H. Pauly, III?
11 A I do.
12 Q Okay. Do you recognize it as your allocution?
13 A Not from this appearance page, no.
14 Q Okay. Well, let's go through this.
15 So, if you go to --
16 MS. HABBA: Peter, have him pull up the next page,
17 please. No, I'm going to go to -- one second.
18 Q Let me ask you this: You were a lawyer at one point;
19 right?
20 A I was.
21 Q Okay. And do you know what a docket number is?
22 A I do.
23 Q And does this have a docket number, this document that
24 I showed you, that I read it before?
25 A Yes.

M. Cohen - Plaintiff - cross (Habba) Page 2282

1 Q Yes, okay.
2 So that means it's a publicly filed court document;
3 right?
4 A Correct.
5 Q Okay. So do you see in line 19 here, I'm going to read
6 this to you, Mr. Cohen:
7 "How do you now plead to the charge in Count 1 of
8 evasion of personal income tax for the calendar year 2012."
9 And the judge asked you, "do you plead guilty or not
10 guilty?" Do you see that?
11 A I do.
12 Q And what was your answer, Mr. Cohen?
13 A "Guilty, Your Honor."
14 Q Correct.
15 And the Court said:
16 "And how do you plead to the charge in Count 2 of the
17 Information of evasion of personal income tax for the year 2013,
18 guilty or not guilty?" And what did you say?
19 A "Guilty, Your Honor."
20 Q Thank you.
21 So let's move on to the next one. This is all from the
22 same allocution that I'm showing you.
23 Did you plead guilty to causing an unlawful corporate
24 contribution in violation of 52 USC Subsection 30118 A and --
25 THE COURT REPORTER: I'm sorry, Ms. Habba.

M. Cohen - Plaintiff - cross (Habba) Page 2283

1 MS. HABBA: Sure.
2 Q You pled guilty to causing an unlawful corporate
3 contribution in violation of 52 USC Subsection 30118 (A), that's
4 and 30109 (D)(1) (A) and 18 USC Section 2 (B); is that correct?
5 A I don't see where you're reading that from.
6 Q No problem.
7 A Can you provide me --
8 Q I'm actually not reading it. I'm just asking, but we
9 can confirm it.
10 MS. HABBA: Can you please pull it up?
11 Q I'm going to read from what they pulled up from your
12 allocution, which we identified before.
13 "How do you plead to the charge in Count 3 of evasion
14 of personal income tax for the year 2014, guilty or not guilty?"
15 What did you respond, Mr. Cohen?
16 A "Guilty, Your Honor."
17 Q Thank you.
18 Next, you pled guilty to making an excessive campaign
19 contribution in violation -- and I'm going to read this slow
20 into the record -- of 52 USC Section 30118 (A) -- excuse me --
21 I'll withdraw that.
22 52 USC 30116 (A) (1) (A), 30116 (A) (7) and 30109 (D)
23 (1) (A), as well as 18 USC Section 2 Subsection B.
24 You pled guilty to that; correct, Mr. Cohen?
25 A Again, I don't see what you're reading.

M. Cohen - Plaintiff - cross (Habba) Page 2284

1 Q Sure.

2 MS. HABBA: Let's make that bigger, please?

3 Q "How do you plead to the charge in Count 5 of evasion

4 of personal income tax for the calendar year 2016, guilty or not

5 guilty, Mr. Cohen?" What did you respond?

6 A "Guilty, Your Honor."

7 Q Thank you.

8 MS. FAHERTY: Can I just note I think there is some

9 discrepancies, Ms. Habba.

10 MS. HABBA: I was getting to that.

11 Q So I think that what you're not understanding is the

12 subsections, so let me just take --

13 MS. HABBA: I'm take a representation --

14 Q Would you trust my word that those are the subsections

15 you pled guilty to in the allocution, now we're putting this

16 allocution in for evidence or would you like me to go through

17 the process?

18 A No, I would take your word for it.

19 Q Thank you, Mr. Cohen.

20 MS. HABBA: And first, I'm going to submit Exhibit

21 D 951, if it's already not submitted into evidence. Okay.

22 MS. FAHERTY: No objection, Your Honor.

23 THE COURT: It's in evidence.

24 By the way, we'll go until 4:40 and I'll give you a

25 five-minute warning.

M. Cohen - Plaintiff - cross (Habba) Page 2285

1 (Whereupon, the item previously referred to is

2 received and marked Defendant's Exhibit Number D 951 in

3 evidence.)

4 MS. HABBA: Okay. Thank you.

5 Q Okay. In connection with that proceeding that we just

6 discussed in the Southern District of New York there is a

7 sentencing memorandum submitted. Do you recall that?

8 A My sentencing memorandum or the government's sentencing

9 memorandum?

10 Q It was at the U.S. Attorney for the Southern District

11 of New York Robert Cuzan?

12 A That would be government's, yes.

13 Q Do you remember that being submitted?

14 A I do.

15 Q Okay. And that was submitted in reference to you

16 committing the crimes that you were motivated by personal greed.

17 Isn't that correct, Mr. Cohen?

18 A That's what it's stated, yes.

19 Q Do you remember that it stated in particular that you

20 as an attorney and businessman committed four distinct federal

21 crimes over the period of several years and that you were

22 motivated to do so by personal greed and repeatedly used your

23 power and influence for deceptive ends. Do you remember that?

24 A Those are the statements of the government.

25 Q Great.

M. Cohen - Plaintiff - cross (Habba) Page 2286

1 And that you "repeatedly used your power and influence

2 for deceptive ends." That was what it said, right, deceptive?

3 A Again, yes.

4 Q And deception is a form of lying, isn't it, Mr. Cohen?

5 A I'll acknowledge that, yes.

6 Q Okay. In fact, he also noted that your crimes were

7 marked by a pattern of deception that permeated your

8 professional life, did he not?

9 A He said that, yes.

10 Q Okay. And his quote was, I believe, "but the crimes

11 committed by Cohen were more serious than his submission allows

12 and were marked by a pattern of deception that permeated his

13 professional life and was evidently hidden from the friends and

14 family members who wrote on his behalf." Is that correct?

15 A This is what he wrote.

16 Q I know that's what he wrote.

17 A Do I agree with the statement?

18 Q No, do you recollect him saying it; yes or no?

19 A I recollect that it's written here and you're reading

20 it appropriately.

21 Q Okay. Didn't he also note that you abused both your

22 standing as an attorney and your relationship with my client,

23 President Trump?

24 MS. HABBA: Let's pull it up.

25 Peter, pull it up, please.

M. Cohen - Plaintiff - cross (Habba) Page 2287

1 Q Those are the exact words. Would you like me to read

2 them?

3 A No.

4 Q Okay. Do you disagree that that is what he said in

5 that statement?

6 A I don't disagree that's what he said. I disagree with

7 the premise.

8 Q That's the question. It's a yes-or-no question.

9 THE COURT: Just answer the question, please.

10 Q Do you agree that is what he said?

11 A That is what it says.

12 Q Good.

13 And you ultimately accepted a plea deal for those eight

14 felony counts that were in the allocution that we put into the

15 evidence prior?

16 A I did.

17 Q And in connection with accepting your plea deal, you

18 appeared before the Honorable William Pauly of the Southern

19 District of New York on August 21, 2018. Isn't that correct?

20 A That's correct.

21 Q Okay. And you were required in that agreement to

22 answer a series of questions under oath, the same oath that you

23 had in your deposition with me on this case a few months ago and

24 the same oath that you're under today; isn't that correct?

25 A That's correct.

M. Cohen - Plaintiff - cross (Habba) Page 2288

1 Q And you understood on August 21, 2018 that by being
2 under oath, the same oath that you are on today and the same
3 oath that you were in when I deposed you, that you had a legal
4 obligation to testify truthfully and honestly; is that correct?
5 A That's correct.
6 Q Good. And you committed perjury in that proceeding,
7 didn't you?
8 A Excuse me?
9 Q You committed perjury under oath with Judge Pauly,
10 didn't you?
11 MS. FAHERTY: Objection, Your Honor.
12 MS. HABBA: It's a direct question. Yes or no?
13 THE COURT: Objection overruled.
14 A Did I commit perjury to Judge Pauly?
15 Q Did you lie to Judge Pauly when you said that you were
16 guilty of the counts that you said under oath that you were
17 guilty of? Did you lie to Judge Pauly?
18 A Yes.
19 Q You have an attorney here today, don't you, sir?
20 A I do.
21 Q You actually have several attorneys here. I recognize
22 them some from other cases they're here, aren't they?
23 A They are.
24 Q Good.
25 In connection with your guilty plea to Counts 1 through

M. Cohen - Plaintiff - cross (Habba) Page 2289

1 5 for evasion of assessment of income tax liability for the
2 calendar years 2012 through 2016, you testified that for the tax
3 years that I just identified you willfully evaded paying
4 substantial taxes on income that you received in which you knew
5 was not reflected in the returns you filed; correct?
6 A I don't understand your question.
7 MS. HABBA: Okay. Let's pull up the next exhibit,
8 please, Peter.
9 Q I'll quote you. You see right here it says:
10 "As to Counts 1 through 5 in the tax years of 2012 to
11 2016, I" -- and the "I" is you; correct, Mr. Cohen?
12 A Correct.
13 Q "I evaded paying substantial taxes on certain income
14 received that I knew was not reflected on the return and that I
15 caused to be filed. The income intentionally not included was
16 received by me in the Southern District of New York." Didn't
17 you say that?
18 A I did.
19 Q Okay. That doesn't say "tax omission," does it?
20 A No, it does not.
21 Q But you earlier testified today that you omitted, you
22 didn't evade, isn't that right?
23 A I did say that.
24 Q Right. So you lied when you said that you evaded taxes
25 to a judge under oath; is that correct?

M. Cohen - Plaintiff - cross (Habba) Page 2290

1 A Yes.
2 Q So during 2012 to 2016, did you ever tell your wife
3 that you were committing tax evasion, Mr. Cohen?
4 THE WITNESS: Objection, Your Honor.
5 Q No. You don't get to object.
6 A Actually, in all fairness, I absolutely do. Roswell
7 versus United States, 1954 Supreme Court. We can also go on to
8 Houston versus the United States. We can also go on to your
9 favorite case of United States versus Nixon.
10 THE COURT: One at a time.
11 MR. KISE: It's very simple. Did he tell his wife
12 that he was committing tax evasion at the time. That's a
13 simple yes-or-no question and it's perfectly within the
14 scope. He is a serial liar and if he lied to his wife, it's
15 relevant for impeachment. It's absolutely irrelevant for
16 impeachment.
17 THE WITNESS: It calls into question the fact that
18 there was no tax evasion.
19 MR. KISE: I'm not directing anything to you,
20 Mr. Cohen, I'm sorry.
21 THE COURT: Ms. Faherty?
22 MS. FAHERTY: Aside from the fact that the question
23 is palpably improper --
24 THE COURT: Well, on what grounds? I'm not
25 disagreeing.

M. Cohen - Plaintiff - cross (Habba) Page 2291

1 MS. FAHERTY: First, marital privilege. Let's
2 just get that out of the way --
3 THE COURT: Spousal privilege?
4 MS. FAHERTY: Please, Your Honor, and I think this
5 is below the belt he is giving testimony about the lies.
6 Let's keep this focus, Your Honor.
7 THE COURT: I think it falls right within the
8 spousal privilege. You don't have to testify about what you
9 and your spouse talked about. I'll make it simple and leave
10 it at that. Yes, go ahead.
11 MS. HABBA: Your Honor, I apologize, but his wife
12 was on that return and I will get to why it's important
13 because in his deposition we did discuss his wife, so I'm
14 sorry, but that wasn't objected to then, so it shouldn't be
15 objected to now.
16 Q And clearly, I hit a trigger with you, so Mr. Cohen
17 noted, but I will say is it true or not true that your wife
18 signed those returns?
19 MS. FAHERTY: Objection.
20 A Excuse me?
21 Q Did she sign those returns?
22 MS. FAHERTY: Stop.
23 MS. HABBA: What? That's just a factual question.
24 THE COURT: Yes, I'll allow that.
25 MS. HABBA: Thank you.

M. Cohen - Plaintiff - cross (Habba) Page 2292

1 Q Mr. Cohen, did your wife sign those returns?
 2 A Yes.
 3 Q But you knew that the statement, this statement, was
 4 false when you made it, didn't you?
 5 A Yes.
 6 Q So you lied to Judge Pauly which we've now established,
 7 but I'm supposed to admit that you're not going to lie to me
 8 now; is that correct? It's a yes-or-no question.
 9 A Unfortunately, I'm going to have to object to that, as
 10 well.
 11 Q Yes, you can't object. That's not how this works.
 12 See, if you still had your law license, you'd understand that.
 13 It's a yes-or-no question.
 14 A And your question is?
 15 Q You lied to Judge Pauly; correct?
 16 A Asked and answered.
 17 Q No. Again, yes or no?
 18 THE COURT: Asked and answered.
 19 A How many times are you going to ask me the same
 20 question?
 21 MR. KISE: Your Honor, this witness is completely
 22 out of control so I would ask the Court to direct the
 23 witness to answer the questions. I mean, the witness
 24 doesn't get to sit here and play judge. That's your job.
 25 THE COURT: And I'm doing it the best I can.

M. Cohen - Plaintiff - cross (Habba) Page 2293

1 That question -- well, it's hard to say because it
 2 was really more of a statement than a question. There's
 3 already -- we've already been through it.
 4 Why don't we again start from scratch. What
 5 question would you like to ask?
 6 MS. HABBA: Sure. Why don't I instead play from
 7 his deposition. Let's pull that up.
 8 (Whereupon, there is a pause in the proceedings
 9 while a portion of video is played.)
 10 THE COURT: Asked and answered many times already.
 11 Q Great. And you have stated earlier --
 12 THE COURT: Wait. So I had said to --
 13 MS. HABBA: I'll move on.
 14 THE COURT: Ms. Faherty, when she was examining or
 15 cross examining, please don't categorize the answers or your
 16 point. You said "great," she said "great." Just ask
 17 questions, he'll answer and I'll make sure that happens.
 18 MS. HABBA: Sure, Your Honor.
 19 Q In the deposition that we just saw from April 28, 2023
 20 -- well, first, let me just get some foundation questions.
 21 You remember me deposing you on April 28, 2023, do you?
 22 A I do.
 23 Q And was that from your testimony when I deposed you?
 24 A Yes.
 25 Q Okay. And in connection with your guilty plea to Count

M. Cohen - Plaintiff - cross (Habba) Page 2294

1 6 for making false statements to a financial institution in
 2 connection with the credit decision, you testified that you
 3 knowingly submitted an application for a HELOC loan that
 4 contained false representations?
 5 A I'm sorry, can you repeat your question?
 6 Q Sure.
 7 MS. HABBA: Your Honor, can I get a read back?
 8 THE COURT: Read back, please.
 9 (Whereupon, the requested portion of the
 10 proceedings was read back by the court reporter.)
 11 A Again, I don't really understand your questions. It's
 12 a compound question. I don't understand it.
 13 Q So you don't understand the question.
 14 So let me do something else.
 15 MS. HABBA: Let's pull up the Exhibit 951-22,
 16 please.
 17 Q Okay. This is the same document that we put in before.
 18 It's the allocution.
 19 Do you see that docket number? I'll represent that
 20 that's the same and this is the allocution that we put in as the
 21 exhibit.
 22 A Correct.
 23 MS. HABBA: Okay. Can you just zoom in on that
 24 portion?
 25 Q I'll read it to you. You can have a minute to read it

M. Cohen - Plaintiff - cross (Habba) Page 2295

1 yourself, if you'd like.
 2 "As to Count 6, on or about February of 2016, in order
 3 to be approved for a HELOC, a home equity line of credit, I
 4 reviewed an application form that did not accurately describe
 5 the full extent of my liabilities. I did not correct the
 6 inaccurate information on the form. I signed it knowing that it
 7 would be submitted to the bank as part of their HELOC
 8 application process. The bank was federally insured and is
 9 located in Manhattan.
 10 As to Count 7:
 11 THE COURT: Did you know that those statements were
 12 false when you made them?
 13 THE DEFENDANT: They were omitted" --
 14 MS. HABBA: The defendant is you --
 15 "They were omitted, Your Honor, as opposed to being
 16 false.
 17 THE COURT: While you knew it was false?
 18 THE DEFENDANT: Yes, Your Honor."
 19 MS. HABBA: Not that part. Can you pull up the
 20 right part?
 21 Q But I'm reading from your allocution. They can pull it
 22 up so you can review it.
 23 A Count 7 was campaign finance violation, not Count 6.
 24 Q It's 22:6-21.
 25 A Can you --

M. Cohen - Plaintiff - cross (Habba) Page 2296

1 THE COURT: Okay. Two things. I advise all
 2 attorneys on. People tend to read faster than they talk and
 3 numbers are difficult for court reporters to take down, so
 4 you have to really go slowly.
 5 MS. HABBA: Noted, Your Honor.
 6 A The document is inaccurate on line 14 as to Count 7, 7
 7 had nothing do with the financial statements unless it refers to
 8 the campaign finance violation. We're referring to Count 6.
 9 Q So you're saying that Judge Pauly's -- the transcript
 10 from Judge Pauly's hearing is inaccurate?
 11 A I'm saying as to Count 7 and Count 6 are obviously two
 12 different counts.
 13 Q Okay. Taking away the count number --
 14 MS. HABBA: This is unbelievable.
 15 Q Okay. For your HELOC, Mr. Cohen, did you not say that
 16 you submitted to the bank application process, a bank that was
 17 federally insured and is located in Manhattan, that you omitted
 18 information. Was that not true?
 19 A No. It states I did not correct the inaccurate
 20 information on the form.
 21 Q Okay. Let's stop there. You did not correct the
 22 inaccurate statement on the form. Did you sign that form?
 23 A Sign the form.
 24 Q Okay. So you did not correct the inaccurate
 25 information? Is that your way of saying I didn't lie because

M. Cohen - Plaintiff - cross (Habba) Page 2297

1 you didn't correct an inaccurate information?
 2 A No.
 3 Q Okay. Did you plead guilty to this?
 4 A I did.
 5 Q Okay.
 6 MS. HABBA: This -- I believe you said we're going
 7 to stop at 4:40. This might be a good space.
 8 THE COURT: You don't want another five minutes?
 9 MS. HABBA: Your Honor, if it's entertaining, I'm
 10 happy to go all night. I can continue.
 11 THE COURT: All right. If you're willing, I value
 12 every five minutes.
 13 MS. HABBA: Sure, sure.
 14 Q So when you --
 15 THE COURT: Five-minute warning.
 16 MS. HABBA: Noted.
 17 Q You knew that that statement to Judge Pauly that you
 18 were guilty of the HELOC was false, didn't you?
 19 A Yes.
 20 Q You affirmed under oath that the HELOC statement and
 21 the deposition in your April 28, 2023 deposition that you lied
 22 to Judge Pauly about the HELOC; isn't that correct?
 23 A Correct.
 24 Q So I just want to understand you were not lying in your
 25 deposition, but you were lying to Judge Pauly. Is that your

M. Cohen - Plaintiff - cross (Habba) Page 2298

1 testimony today?
 2 A I took the plea.
 3 Q Do you understand -- did you have lawyers representing
 4 you when you took the plea, Mr. Cohen?
 5 A I did.
 6 Q Okay. And did your lawyers explain to you what a plea
 7 is?
 8 A Yes.
 9 Q And did your lawyers explain to you that when you plead
 10 to something you are saying that you are guilty of that crime,
 11 do you understand that?
 12 A Yes.
 13 Q And do you understand that right now in front of all
 14 this press, in front of these lawyers, in front of the several
 15 lawyers that you decided to bring in here today, you are
 16 admitting that you lied to Judge Pauly. Do you understand that,
 17 Mr. Cohen?
 18 A I've already stated that, yes.
 19 Q So that --
 20 A In fact, it's actually in the document that we
 21 presented to Judge Pauly.
 22 Q Mr. Cohen, here's how this is going to work. You're
 23 not on Mea Culpa. You're not on your podcast and you're not on
 24 CNN. You're here with me?
 25 MS. FAHERTY: Objection, Your Honor.

M. Cohen - Plaintiff - cross (Habba) Page 2299

1 Q You're going to answer them yes or no.
 2 THE COURT: No speeches. Just ask the questions.
 3 MS. HABBA: Well, it works both ways, Your Honor.
 4 Q You also submitted false sworn statements to the House
 5 Select Committee approximately one year earlier on August 28,
 6 2017. Isn't that correct?
 7 A Yes.
 8 Q And as a result of those false statements you pled
 9 guilty to the crime of making false statements to the United
 10 States Congress in violation -- and I'm going to say this slowly
 11 -- of 18 USC 1001 Subsection A Subsection 2. Isn't that
 12 correct?
 13 A That's correct.
 14 Q And in connection with accepting your plea deal, you
 15 appeared before the Honorable Andrew Carter of the Southern
 16 District of New York on November 29, 2018. Isn't that correct?
 17 A That's correct.
 18 Q And when you were in front of Judge Carter, you were
 19 required to answer a series of questions under oath, the same
 20 oath that you're under right now, isn't that correct?
 21 A That's correct.
 22 Q And you admitted under oath that on August 28, 2017,
 23 you submitted a false sworn statement to the Senate Select
 24 Committee on Intelligence. Isn't that correct?
 25 A Yes.

M. Cohen - Plaintiff - cross (Habba) Page 2300

1 Q And unlike your other plea hearing, you were being
2 honest with the judge this time; is that correct?
3 A Is there a question?
4 Q Yes.
5 A What is it?
6 Q Do you need me --
7 MS. HABBA: Can we get a read back?
8 THE COURT: Read back, please.
9 (Whereupon, the requested portion of the
10 proceedings was read back by the court reporter.)
11 A Yes, that was correct.
12 Q And you stated that you did submit false sworn
13 statements to Congress, didn't you?
14 A Yes.
15 Q So you have lied under oath numerous times, Mr. Cohen,
16 isn't that correct?
17 A That's correct.
18 Q And you no longer have your law license, isn't that
19 correct?
20 A Asked and answered.
21 Q Answer the question, please, Mr. Cohen.
22 THE COURT: Just answer.
23 A Yes.
24 Q And that's because you were disbarred in 2019; correct?
25 A Correct.

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1 MS. HABBA: Your Honor?
2 THE COURT: You want to stop?
3 MS. HABBA: This is right before our next section.
4 THE COURT: Okay. We'll resume tomorrow at
5 10 o'clock.
6 MS. HABBA: Thank you.
7 MR. KISE: Please remind the witness he's not to
8 talk to anyone, including his lawyers about his testimony.
9 THE COURT: Mr. Cohen, I hereby order you not to
10 talk to anybody, including your lawyers about this trial or
11 your testimony or anything related.
12 THE WITNESS: Yes, Your Honor.
13 THE COURT: Thank you. Have a good evening
14 everyone.
15 (Whereupon, the trial proceedings are adjourned to
16 Wednesday, October 24, 2023 at 10:00 a.m.)
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NYSCEF DOC NO. 1637
 NYS Attorney General v.
 Donald Trump, et al.

RECEIVED NYSCEF: 11/15/2023
 William Kelly, Michael Cohen
 October 24, 2023

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William Kelly, Michael Cohen
October 24, 2023

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NYSCEF DOC. NO. 1637
NYS Attorney General v.
Donald Trump, et al.RECEIVED NYSCEF: 11/15/2023
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October 24, 2023

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RECEIVED NYSCEF: 11/15/2023
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NYSCEF DOC. NO. 1637
NYS Attorney General v.
Donald Trump, et al.RECEIVED NYSCEF: 11/15/2023
William Kelly, Michael Cohen
October 24, 2023

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In The Matter Of:
PEOPLE OF THE STATE OF NEW YORK v.
DONALD J. TRUMP, et al.

MICHAEL COHEN
October 25, 2023

NICOLE C. ROBINSON

Original File 102523TRUMP.txt

Min-U-Script® with Word Index

PEOPLE OF THE STATE OF NEW YORK v. DONALD J. TRUMP, et al.

MICHAEL COHEN October 25, 2023

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1 SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF NEW YORK : CIVIL TERM : PART 37
 2 ----- X
 3 PEOPLE OF THE STATE OF NEW YORK, BY
 LETITIA JAMES, ATTORNEY GENERAL OF
 THE STATE OF NEW YORK,
 4
 Plaintiff,
 5
 Index No.
 6 -against- 452564/2022
 7 DONALD J. TRUMP; DONALD TRUMP, JR.; ERIC TRUMP;
 IVANKA TRUMP; ALLEN WEISSELBERG; JEFFREY MCCONNEY;
 8 THE DONALD J. TRUMP REVOCABLE TRUST; THE TRUMP
 ORGANIZATION, INC.; TRUMP ORGANIZATION, LLC;
 9 DJT HOLDINGS, LLC; DJT HOLDINGS MANAGING MEMBER;
 TRUMP ENDEAVOR 12, LLC; 401 NORTH WABASH VENTURE,
 10 LLC; TRUMP OLD POST OFFICE, LLC; 40 WALL STREET,
 LLC.; AND SEVEN SPRINGS, LLC,
 11
 Defendants. ----- X
 12 Supreme Courthouse
 60 Centre Street
 13 New York, New York
 October 25, 2023
 14 B E F O R E:
 15 HONORABLE ARTHUR F. ENGORON,
 Justice, Supreme Court
 17
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 SHERIEF GABER, ESQ.
 25 (Appearances continued on the next page.)

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PROCEEDINGS

1 THE COURT OFFICER: All rise. Part 37 is now in
 2 session. The Honorable Judge Arthur Engoron presiding.
 3 Make sure all cellphones are on silent. Laptops and
 4 cellphones will be permitted, but only to members of the
 5 press. There's absolutely no recording or photography of
 6 any kind allowed in the courtroom. Now, be seated and come
 7 to order.
 8 THE COURT: Human bodies absorb sound. Can you
 9 imagine how loud that would be if the room was vacant? All
 10 right. Let's get the issue of the photographers.
 11 MR. KISE: Not for us.
 12 MS. HABBA: They're not going to want to come in.
 13 MR. KISE: Can we do housekeeping?
 14 THE COURT: Chris, they told me you're particularly
 15 photogenic.
 16 MR. KISE: My family for sure.
 17 THE COURT: When can we expect the missing person?
 18 MR. KISE: I think momentarily, Your Honor, but can
 19 I raise two minor housekeeping matters?
 20 THE COURT: Attorney General, ready to do some
 21 housekeeping matters?
 22 MR. KISE: So, and Mr. Robert I think will back my
 23 memory and we will, of course, do whatever the Court wants,
 24 but so last night when we realized we did not receive
 25 anything on the Ivanka Trump motion from the Government, we

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1
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 19 ATTORNEY GENERAL OF
 THE STATE OF NEW YORK
 20
 21
 22
 23
 24 NICOLE C. ROBINSON, CSR
 JANELLE LONDON, RMR, CRR
 Senior Court Reporters
 25

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PROCEEDINGS

1 went back and looked. Our understanding from our -- the
 2 conversation was they were going to file on Monday and we
 3 were -- you asked me how long we needed and we were going
 4 to have two days, so Wednesday.
 5 But apparently, when I looked at the e-mail that
 6 was sent, it says everybody files on Wednesday, but that
 7 wasn't certainly our understanding. So what I'd like,
 8 because if the Court still plans to proceed on Friday, which
 9 is fine, with the hearing, I would just ask then that we
 10 have until tomorrow. If they filed something tonight, then
 11 we have until tomorrow night, 24 hours, but that was what we
 12 agreed to, was two days.
 13 THE COURT: The motion is by a non-party, so I'm
 14 not sure --
 15 MR. KISE: So we just -- until we see -- that was
 16 the point I made to Your Honor last week. Until we see what
 17 they have to say and the other side -- the other ones say,
 18 I don't know -- I'm just guessing at that point.
 19 THE COURT: Does the Attorney General object to
 20 giving them until tomorrow?
 21 MS. FAHERTY: Your Honor, I think just in the
 22 orderly, efficient management of business, we're all
 23 commenting on a third party's motion. I think we can all
 24 put in our papers today.
 25 THE COURT: Well, how about some compromise

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1 tomorrow at --

2 MR. KISE: Tomorrow is just one day. That was

3 certainly our understanding of my dialog with you, Your

4 Honor, was that you asked me how many days we needed after

5 their response.

6 THE COURT: Can we do until noon, so we can read

7 it, too, by noon tomorrow?

8 MR. KISE: Okay, yes, Your Honor.

9 THE COURT: All right. Thanks. You had a second

10 issue?

11 MR. KISE: Just an order of witnesses. I know that

12 the witness from the Parks Department who was deposed Monday

13 by video, I don't know if they're planning on calling that

14 witness this week or if it is going to be next week.

15 THE COURT: Well, let's ask.

16 MS. FAHERTY: Your Honor, I think what we are

17 trying to understand is how today's proceedings are going to

18 time out. We have a witness lined up for this afternoon.

19 That will be Ms. Sherri Dillon if the time permits.

20 Otherwise, we still have the remaining video of Ms.

21 Mouradian. We have -- and we've informed counsel the

22 remaining witnesses for this week.

23 Mr. Gaber is intending to take the

24 deposition -- the testimony of Mr. Cerrone. I believe he

25 might get pushed into next week as a result of Mr. Gaber's

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1 absence, but for the remainder of this week, we have three

2 of our witnesses that are lined up to fill the time. I can

3 speak with counsel to make sure they're fully informed about

4 our order of witnesses. If they can equally just give us an

5 update on their timing on crosses, so we can make sure all

6 the witnesses are here, everybody is prepared to take the

7 testimony as necessary.

8 MR. KISE: I think Ms. Faherty's commentary,

9 because I forgot the point she just made, the reason I was

10 asking about this witness in particular is because Ms.

11 Hernandez who intends to do the cross of that witness, she's

12 out with COVID, so she won't be back until Monday. So all

13 I'm asking is we make sure that witness is next week when

14 she's back, which I think based on what Ms. Faherty said

15 will work. Otherwise, we are fine with whatever other

16 schedule.

17 THE COURT: All right. Good.

18 And Chris, make it one o'clock tomorrow.

19 MR. KISE: Okay. Thank you. How about 2:15 since

20 you give us the lunch hour?

21 THE COURT: We need it for that. One o'clock.

22 MR. KISE: Thank you.

23 MS. HABBA: Your Honor, before we bring the witness

24 in --

25 THE COURT: We have the photographers first.

M. COHEN - PLAINTIFF - CROSS(MS. HABBA) Page 2308

1 MS. HABBA: Can we just do this first?

2 THE COURT: Sure. Go ahead.

3 MS. HABBA: It is a little bit delicate and I want

4 to start by saying I served as a law clerk to a judge when I

5 first started practicing law and my candor, my judge was

6 very strict about how I did and didn't behave. It is

7 incredibly distracting when there are eye rolls and constant

8 whispering at the bench when I'm trying to cross-examine a

9 witness. So I'm just asking politely that that be

10 refrained. It is very distracting.

11 THE COURT: Okay. Granted.

12 MS. HABBA: Thank you.

13 THE COURT: Okay, photographers.

14 (Whereupon, there was a pause in the proceedings.)

15 THE COURT: Witness is on his way, right?

16 THE COURT OFFICER: Yes.

17 Witness entering.

18 THE WITNESS: Good morning.

19 THE COURT: Let's continue with the

20 cross-examination of Michael Cohen.

21 MS. HABBA: Thank you, Your Honor. Sounds good?

22 CROSS-EXAMINATION

23 BY MS. HABBA:

24 Q Mr. Cohen, good morning.

25 A Good morning.

M. COHEN - PLAINTIFF - CROSS(MS. HABBA) Page 2309

1 Q I just want to remind you that you're still under oath

2 obviously from yesterday as the judge put you under oath?

3 THE COURT: True.

4 MS. HABBA: Thank you.

5 Q I just want to ask you preliminarily, did you speak

6 with the Attorney General's Office about your testimony between

7 yesterday and today?

8 A No.

9 Q Did you speak with your lawyer about your testimony

10 between yesterday and today?

11 A Yes.

12 Q Did you speak to anybody about your testimony between

13 yesterday and today?

14 A No.

15 Q Okay. Thank you.

16 As a follow-up from yesterday's cross, I just mentioned

17 to Ms. Faherty I would like to admit Defendant's Exhibit 952

18 into evidence. It was the plea hearing allocation dated

19 November 29, 2018.

20 MS. FAHERTY: For the purposes of his allocution.

21 Otherwise, all of the hearsay statements herein, I don't

22 think it needs to be admitted, but for the fact that it was

23 his allocution. No objection to that portion of it.

24 THE COURT: I'm not sure how we are going to

25 distinguish between this and that. Any objection to --

M. COHEN - PLAINTIFF - CROSS(MS. HABBA) Page 2310

1 MS. HABBA: Any response to the objection?
 2 THE COURT: Any response to the objection?
 3 MS. HABBA: Yes. An allocution is his words.
 4 They're not hearsay. The portions where a judge asked him a
 5 question and he responds that he's guilty is not hearsay at
 6 all. He confirmed yesterday that he was guilty and, in
 7 fact, I did ask him to restate the question and he himself
 8 said he responded guilty, so I'm not sure why it's hearsay.
 9 MS. FAHERTY: Any other statements in the
 10 transcript, that's all. Ms. Habba and I are talking the
 11 same language, Your Honor.
 12 MS. HABBA: I'm not sure that we are.
 13 THE COURT: It is admissible for any and all
 14 purposes.
 15 MS. HABBA: Thank you, Your Honor.
 16 THE COURT: That's what he said in open court under
 17 oath.
 18 MS. HABBA: Thank you, Your Honor.
 19 Q Mr. Cohen --
 20 MS. HABBA: And Judge, just so you know before
 21 everybody gets up in arms, I'm just going to do two or three
 22 yes, sir, just to review and clarify the record yesterday
 23 after seeing the transcript and then I'll move on.
 24 THE COURT: Sure.
 25 Q I want to clarify something about your testimony

M. COHEN - PLAINTIFF - CROSS(MS. HABBA) Page 2311

1 yesterday. You stated that you previously pled guilty to
 2 several counts of tax evasion, right?
 3 A Correct.
 4 Q And those counts had nothing to do with Donald Trump;
 5 isn't that correct?
 6 A That's correct.
 7 Q And it wasn't done at the direction of Donald Trump
 8 or --
 9 MR. KISE: We still really can't hear you.
 10 MS. HABBA: Sorry. Is that better?
 11 MR. KISE: Yes.
 12 Q So I had asked you if those counts had nothing to do
 13 with Donald Trump and I believe you responded yes. And it
 14 wasn't done at the direction or benefit for President Trump, was
 15 it?
 16 A For Mr. Trump, no.
 17 Q And when you pled guilty to making false statements to
 18 a financial institution, that had nothing to do with Donald
 19 Trump, did it, for the HELOC?
 20 A I know what you're referring to.
 21 Q Right.
 22 A The answer is no.
 23 Q Okay. Thank you.
 24 And when you lied to Judge Pauley under oath at your
 25 plea hearing for those charges, that had nothing to do with

M. COHEN - PLAINTIFF - CROSS(MS. HABBA) Page 2312

1 Donald Trump correct?
 2 MS. FAHERTY: Objection for the characterization.
 3 We did this yesterday. I'm just going to stand up now and
 4 forewarn my concern at what I thought was a little bit of a
 5 circus yesterday. I'm just putting it on the record now
 6 that if I need to stand up, I will stand up. My objection
 7 stands, Your Honor.
 8 MR. KISE: So, Your Honor, Your Honor --
 9 MS. FAHERTY: Two attorneys.
 10 MR. KISE: Right. The only circus yesterday was
 11 the witness not answering questions, so that's a fair
 12 question. He admitted here today for the first time in open
 13 court that he lied to Judge Pauley right across the street,
 14 right across the street. He lied to Judge Pauley when he
 15 pled guilty. That's what he said under oath in this
 16 courtroom, the same oath that he took there, the same oath
 17 that he took here. So in open court, he has now admitted to
 18 perjury in front of the Judge Pauley. I think that's a
 19 relevant fact for impeachment and -- may I finish? It
 20 should come in. I mean, there's no reason that that
 21 shouldn't come in.
 22 MR. ROBERT: From the moment the case started, from
 23 the moment of my opening, the People started and talked
 24 about credibility. I talked about credibility. Credibility
 25 of the witnesses is what Your Honor is ultimately going to

M. COHEN - PLAINTIFF - CROSS(MS. HABBA) Page 2313

1 have to decide in this case. The fact that the witness
 2 admitted for the first time yesterday that he committed
 3 perjury in the Southern District of New York as part of a
 4 plea, and we are going to get into other acts of perjury
 5 today, couldn't be more relevant in this case in enabling
 6 this Court to determine who's telling the truth and who is
 7 not.
 8 THE COURT: Ms. Faherty, I don't understand the
 9 objection. Maybe say it again. What am I missing?
 10 MS. FAHERTY: First, Your Honor, counsel has twice
 11 now repeated this word "perjury" repeatedly.
 12 THE COURT: Well, that's the definition of perjury,
 13 lying under oath.
 14 MR. KISE: Thank you, Your Honor.
 15 MS. FAHERTY: The legal conclusion of perjury is
 16 very different. If you recall earlier this week or last
 17 week, we had counsel stand up, screaming, "Please don't let
 18 this witness violate his Fifth Amendment rights." I am
 19 quite concerned at the presentation from counsel that they
 20 are standing up, making these accusations while the witness
 21 is still on the stand. I'm quite concerned and so I'm
 22 standing up to indicate that that type of showmanship should
 23 not be permitted.
 24 Now, I agree, Your Honor, I did ask Mr. Cohen the
 25 very questions Ms. Habba is asking him and he has responded

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M. COHEN - PLAINTIFF - CROSS(MS. HABBA) Page 2314

1 consistently. So I would just ask for the courtesy and
 2 respect that we proceed without this showmanship of words
 3 like "perjury" thrown in this court which is a legal
 4 conclusion. It is unnecessary. Yes, untruthful. Yes, an
 5 admission of a lie. However, please, can we, please,
 6 proceed?
 7 MR. KISE: Your Honor --
 8 THE COURT: Wait. Wait. Wait.
 9 MR. KISE: Okay.
 10 THE COURT: Mr. Robert, Mr. Kise, I'll tell you
 11 rule number one in Engoron's courtroom, which I often say,
 12 if I'm arguing for you, you don't have to argue for you. So
 13 far, I totally agree with you.
 14 So Ms. Faherty, is the basic point the word
 15 "perjury," is that what we're trying to avoid here?
 16 MS. FAHERTY: I think it is a legal conclusion,
 17 Your Honor, and I think that it instills a certain type of
 18 fear and intimidation in the witness in particular. That
 19 gives me great concern.
 20 MS. HABBA: Your Honor, if I may?
 21 THE COURT: Yes.
 22 MS. HABBA: The perjury, although, the press is
 23 just hearing about it now, the perjury was heard at his
 24 deposition when he first said that he lied under oath with
 25 Judge Pauley. It is only now coming to light. He has

M. COHEN - PLAINTIFF - CROSS(MS. HABBA) Page 2315

1 counsel. He had counsel then. This is not a shock. This
 2 is not showmanship. Everybody has had the transcript. It's
 3 just that the media hasn't heard about it until now. I'm
 4 just doing my job, sir. Mr. Cohen, as we know, is a witness
 5 who has interjected in many cases against my client and his
 6 credibility is the most important thing that I will attack.
 7 THE COURT: Well, can we limit it to --
 8 MS. HABBA: Frankly, I'm done with that line of
 9 questioning. It's done. I will be honest with you.
 10 MS. FAHERTY: If we could move on --
 11 MR. KISE: I don't know that we're done with that
 12 and --
 13 MR. ROBERT: I'm certainly not.
 14 MR. KISE: I will certainly say there is nothing
 15 wrong with calling a liar a liar. There's nothing wrong
 16 with calling someone who admits in open court to perjury.
 17 He was under oath in front of Judge Pauley. He was under
 18 oath in front of Judge Pauley. He said here yesterday under
 19 the same oath, "I lied to Judge Pauley." That's perjury.
 20 As Your Honor said, that's the definition of perjury. So we
 21 should not be expected to dance around it for someone's
 22 sensibilities.
 23 A serial liar is a serial liar and since the entire
 24 case of the Attorney General hinges on this perjurious
 25 witness who has lied to everyone he has ever spoken to,

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1 we're entitled to bring that out. We're entitled to raise
 2 that. I think it is highly relevant. I think it is highly
 3 probative and we shouldn't have to dance around because of
 4 some sensitivity about words. Perjury is perjury and it is
 5 obvious what's going on here. The Attorney General is
 6 trying to cover for an extraordinarily defective witness
 7 that they're putting on the stand who has no credibility.
 8 THE COURT: Now, you are violating two of my rules.
 9 First is what I just said. You don't have to argue if I'm
 10 arguing for you. Second rule, which I believe I've said
 11 during this trial, I know I've said, let's not make
 12 speeches. We are here for questions, answers, maybe
 13 argument, but we don't need speeches at this point.
 14 My understanding, try to see if we can all agree, I
 15 believe that perjury implies conviction. You want to say
 16 he's lying, say he's lying, but let's not use the word
 17 "perjury" especially if you're asking him a question that
 18 might ask for a legal conclusion and let's move on.
 19 MR. KISE: I'll just note my exception to that,
 20 Your Honor.
 21 THE COURT: To which part of that?
 22 MR. KISE: To the part that we are limited to what
 23 we can do. It doesn't imply a conviction. If he perjured
 24 himself, he perjured himself.
 25 THE COURT: I'll have to --

M. COHEN - PLAINTIFF - CROSS(MS. HABBA) Page 2317

1 MR. KISE: You don't need to have a conviction for
 2 that.
 3 THE COURT: I'm not sure. I will have to research
 4 that. I take your point.
 5 MS. HABBA: I can state my question in a way that's
 6 acceptable to the Court and it is my last question on this.
 7 It is my last question on this at least.
 8 Q Mr. Cohen, as a clarifying point, yesterday was the
 9 first time you admitted in open court that you lied to Judge
 10 Pauley, correct?
 11 A In open court?
 12 Q Yes.
 13 A Yes.
 14 Q Thank you. Okay. Let move on to your work with the
 15 Trump Organization.
 16 You were an employee of the Trump Organization from
 17 2007 to 2017; is that correct?
 18 A Correct.
 19 Q And you previously testified yesterday that you
 20 personally participated in the preparation of the Statements of
 21 Financial Condition for years 2012 through '15, that you don't
 22 recall working on the Statement of Financial Condition in 2011,
 23 correct?
 24 A That's correct.
 25 MS. HABBA: Okay. If I could, please, pull up the

M. COHEN - PLAINTIFF - CROSS(MS. HABBA) Page 2318

1 transcript --

2 Q Well, you said correct, so let me move on. And you

3 previously testified in your deposition that you and Allen

4 Weisselberg were tasked with coming up with valuations of the

5 assets listed on the Statements of Financial Condition for those

6 years, correct?

7 A Correct.

8 Q And you testified that Allen Weisselberg prepared the

9 first draft of those Statements of Financial Condition for

10 Mazars, correct?

11 A I'm sorry. Can you say that again?

12 Q Sure.

13 You had stated that Allen prepared the first draft of

14 the Statements of Financial Condition with Mazars, correct?

15 A I don't believe that's how I stated it, no.

16 MS. HABBA: Okay. If we could pull up 86:25 to

17 87:7 from the transcript, please.

18 MR. KISE: We still --

19 MS. HABBA: Can't hear? Can we put the volume up?

20 IT SPECIALIST: Every time it gets bumped up a

21 little bit --

22 MS. HABBA: I almost want to take the mic off. I

23 think everyone can hear me without it. I'll speak very

24 loudly. Sorry. Let's move on. Can we, please, play that.

25 Thank you.

M. COHEN - PLAINTIFF - CROSS(MS. HABBA) Page 2319

1 (Whereupon the video was played.)

2 Q Do you remember saying that, Mr. Cohen?

3 A Yes, which is not what you were just stating.

4 Q So I asked if Allen Weisselberg -- you testified that

5 Allen Weisselberg prepared the first draft. Isn't that what you

6 stated you believed Allen Weisselberg did?

7 A No. I suspect that Allen -- I do not know who did it.

8 That was the point and that's exactly what I stated in the

9 deposition.

10 Q Okay. So you suspect it was Allen Weisselberg, but you

11 testified that you were personally involved in coming up with a

12 valuation for almost every asset on the Statements of Financial

13 Condition, correct?

14 A No, that's also not correct.

15 Q Okay.

16 A Every asset? Almost every asset?

17 Q Okay.

18 MS. HABBA: If we could play that back, please.

19 (Whereupon, the video was played.)

20 Q Right. Almost every asset, correct?

21 A As the ones that I stated the other day.

22 Q We'll get to that. And in coming up with a valuations

23 for almost every asset, you testified that you would determine

24 the valuations by going on Google and finding a comparable

25 property with a price per square-foot that was higher, correct?

M. COHEN - PLAINTIFF - CROSS(MS. HABBA) Page 2320

1 A Correct.

2 Q Okay. And you testified under oath that you would

3 handwrite the new valuations on the Statement of Financial

4 Condition, correct?

5 A That's correct.

6 Q And Allen would do the same thing, right?

7 A Yes.

8 Q And I want to be clear. Allen Weisselberg, right?

9 THE COURT: That's a question.

10 Q Allen Weisselberg, correct?

11 A Yes.

12 Q According to your prior testimony for 2011 to 2015,

13 this entire process of preparing the Statement of Financial

14 Condition consisted of you and Allen taking a printed piece of

15 paper and then writing on it? That was what you did, correct?

16 A Incorrect.

17 Q Incorrect, okay. Let's take a look at what you said in

18 your deposition.

19 (Whereupon, the video was played.)

20 Q Mr. Cohen, you also stated that no computer was

21 involved?

22 A There was a previous question.

23 Q No. The question was did you say it. We played it

24 back. Do you doubt that that was you?

25 A I don't doubt that was me, but I doubt that that is

M. COHEN - PLAINTIFF - CROSS(MS. HABBA) Page 2321

1 responsive to the question that you stated.

2 Q Okay. My question that I stated, we can have a

3 readback if you'd like.

4 A Sure.

5 MS. HABBA: Judge, may I have a readback?

6 THE COURT: The very last question?

7 MS. HABBA: The very last question about his

8 testimony for the handwritten edits, please.

9 THE COURT: Readback, please.

10 MS. HABBA: Thank you.

11 (Whereupon, the requested portion of the record was

12 read back.)

13 A And again, I'll state incorrect because the process was

14 not just Allen and myself as you saw in that deposition. It

15 included Mr. Trump.

16 Q Listen, Mr. Cohen. I'm sure you're going to try and do

17 that with me every time and I'm here for it really, but I would

18 like you to answer the questions that I ask. I didn't ask you

19 who was involved. I asked you --

20 MS. FAHERTY: Your Honor --

21 THE COURT: Overruled. Let's -- let the question

22 finish.

23 MS. HABBA: Thank you.

24 Q I asked you if you made handwritten edits on the

25 Statement of Financial Condition. Is the answer yes or no?

M. COHEN - PLAINTIFF - CROSS(MS. HABBA) Page 2322

1 A I made handwritten edits to the Statement of Financial
2 Condition.
3 Q And you also testified to me that you did not and there
4 was no computer involved in your edits; isn't that correct?
5 A In my edits, correct.
6 Q Okay. But you actually said it wasn't done by you or
7 Allen on your computer. You said Donald Bender did it; isn't
8 that correct?
9 A That's what I believe, yes.
10 Q That's what you believe, yes. Okay.
11 MS. HABBA: Can we, please, confirm that? Can you
12 please play back his dep?
13 MS. FAHERTY: Objection.
14 THE COURT: Why do we have to play it back? He
15 agreed with you.
16 MS. HABBA: Can you just read his answer for me?
17 Sorry. I don't have a feed here just so you know, so it is
18 a little bit tough for me.
19 THE COURT: You would just like his answer read
20 back?
21 MS. HABBA: Yes, please.
22 THE COURT: Please. Thank you.
23 (Whereupon, the requested portion of the record was
24 read back.)
25 Q So it wasn't done on your computer or Allen's, but then

M. COHEN - PLAINTIFF - CROSS(MS. HABBA) Page 2323

1 you and Allen would take these handwritten edits and review them
2 with Donald Trump, right?
3 A Correct.
4 Q And this meeting, according to you, would last about
5 15 minutes; isn't that right?
6 A Correct.
7 Q And the meetings between you, Allen and Donald Trump
8 were never put in a calendar; isn't that right?
9 A To the best of my knowledge, no.
10 Q To the best of your knowledge, no.
11 Did you ever have an assistant?
12 A No.
13 Q No. Did you ever keep a calendar for invitations for
14 meetings on your computer?
15 A No.
16 Q Did you use a computer?
17 A Yes.
18 Q Okay. So you just had meetings in your head and they
19 would happen and you remember them sitting here today; is that
20 correct?
21 A I'm sure. I don't understand your question.
22 Q Okay. Let me ask you this way.
23 Meetings with you, Allen and Donald Trump on a
24 Statement of Financial Condition lasted 15 minutes and were
25 never scheduled; is that your testimony?

M. COHEN - PLAINTIFF - CROSS(MS. HABBA) Page 2324

1 A Correct.
2 Q Right.
3 A I would go into Allen's office and there was an okay,
4 we have it done. We would walk into Mr. -- towards Mr. Trump's
5 office, knock on the door and say, "Mr. Trump, can we speak to
6 you for a second."
7 Q Right.
8 A That's how things worked at the Trump Organization.
9 The door is constantly open for the executives. It was a
10 constant carousel into his office.
11 Q Okay. And Allen Weisselberg would take the handwritten
12 edits on the Statement of Financial Condition and hand it off to
13 Donald Bender, right?
14 A Once authorized to do so, yes.
15 Q That's not my question. He would take it when it was
16 done and he would hand it to Donald Bender? Is that what you
17 testified to?
18 THE COURT: I think when it was done is ambiguous.
19 Q Once the final version of the Statement of Financial
20 Condition was complete in handwritten form, your testimony is
21 that you would then give it to Donald Bender, correct?
22 A No, that's not what I stated.
23 Q Okay. Who --
24 A Allen Weisselberg would hand it off to Donald Bender.
25 I never did.

M. COHEN - PLAINTIFF - CROSS(MS. HABBA) Page 2325

1 Q How do you know that?
2 A Because that was the relationship. The relationship
3 existed between Donald Bender and Allen Weisselberg.
4 Q Okay. It was your testimony that Donald Bender was
5 continuously at the Trump Organization?
6 A Regularly at the office.
7 Q Regularly at the office. What is the difference
8 between the two?
9 THE COURT: There is a clear difference between
10 continuously and regularly.
11 MS. HABBA: Exactly there is, Your Honor, which
12 gets to my point, Your Honor.
13 Can we, please, pull up the deposition?
14 MS. FAHERTY: I'm sorry. Why?
15 MS. HABBA: Because he didn't say "regularly,"
16 Colleen. He said "continuously" in his deposition.
17 THE COURT: All right. Then she is allowed to play
18 it.
19 MS. HABBA: That's how impeachment works.
20 (Whereupon, the video was played.)
21 Q "Continuously," right, Mr. Cohen?
22 A Sure.
23 Q Not "regularly," right? Your words, not mine. Were
24 those your words?
25 A That's what I stated, yes.

M. COHEN - PLAINTIFF - CROSS(MS. HABBA) Page 2326

1 Q Thank you. So Mazars would receive the Statement of
 2 Financial Condition with the handwritten edits that you and
 3 Allen had written on the prior year's Statement of Financial
 4 Condition was your testimony, correct?
 5 A I already stated that, yes.
 6 Q You did not submit any electronic documents or any
 7 other supporting documentation, correct?
 8 A As to what? The Statement of Financial Condition --
 9 Q As to the Statement of Financial Condition. There was
 10 no backup data?
 11 A I don't know the answer to that. I don't recall.
 12 Q You don't know the answer to that?
 13 A No. I don't understand your question.
 14 Q Okay.
 15 THE COURT: I think the question is in addition to
 16 the years in the earlier statement and the handwritten notes
 17 that was then approved, did you give anything else like a
 18 computer printout or computer drive of any sort?
 19 THE WITNESS: I did not.
 20 THE COURT: Okay. That was the question and that's
 21 the answer.
 22 Q Okay. And your testimony is that this entire process
 23 of editing the Statement of Financial Condition from start to
 24 finish with Allen, then approved by Donald Trump took a couple
 25 of days; isn't that right?

M. Cohen - Plaintiff - cross (Habba) Page 2328

1 Q And you never discussed the SOFC with Eric Trump, did
 2 you?
 3 A Not that I recall.
 4 Q And you never discussed the SOFC with Ivanka Trump
 5 either, did you?
 6 A Not that I recall.
 7 Q Mr. Cohen, you claim that you worked on the 2015 SOFC;
 8 is that correct?
 9 A Yes.
 10 Q The 2015 Statement of Financial Condition was President
 11 Trump's net worth just over \$6 billion? Do you know that?
 12 A You'd have to show me the document.
 13 Q Sure. Let's do that.
 14 MS. HABBA: Can you please pull up PX 729?
 15 Q Do you recognize this as the 2015 SOFC?
 16 A I do.
 17 Q Okay.
 18 MS. HABBA: It's already into evidence. If we can
 19 just flip the page.
 20 Q Do you see at the bottom where it says "his total
 21 assets." Can you read for me what that number is?
 22 A 6,580,300,000.
 23 Q Right. And that number is meant to reflect President
 24 Trump's financial status as of June 30, 2015; correct?
 25 A Correct.

Page 2327

1 A That's what I stated.
 2 Q Okay. And you never discussed the Statement of
 3 Financial Conditions with Donald Trump Jr. did you?
 4 A Not that I recall.
 5 (Continued on the next page.)
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M. Cohen - Plaintiff - cross (Habba) Page 2329

1 Q And on July 16, 2015, just two weeks approximately
 2 after, you appeared on CNN and stated that you considered
 3 yourself to be a real estate expert and Donald Trump's net worth
 4 was probably over \$10 billion. Do you remember that?
 5 A I remember saying that.
 6 Q Okay. And, in fact, you stated that you believed a
 7 \$10 billion estimation was low. Do you recall that?
 8 A I recall that's what Mr. Trump wanted me to say, yes.
 9 Q That wasn't the question, Mr. Cohen.
 10 A That's my answer.
 11 Q Is it? I'm not surprised by that, Mr. Cohen. You're
 12 very good at blaming other people.
 13 So \$10 billion estimation was low.
 14 MS. HABBA: You know what, can you play that for
 15 me, please?
 16 (Whereupon, there is a pause in the proceedings.)
 17 Q Okay.
 18 MS. FAHERTY: Can you provide the date on that,
 19 please?
 20 MS. HABBA: I did. It's July 16, 2015. I said it
 21 in -- it's in the transcript.
 22 I'd like to move --
 23 Q That's you on that, I assume? You recognize yourself
 24 there?
 25 A Yes, less gray.

M. Cohen - Plaintiff - cross (Habba) Page 2330

1 Q And that was your clip from CNN on July 16, 2015?

2 A That's correct.

3 Q Okay, thank you.

4 MS. HABBA: Can we please move that into evidence,

5 D 996?

6 MS. FAHERTY: For purposes of those, the statements

7 he made, no objection for that.

8 THE COURT: All right. They're in evidence -- it's

9 in evidence.

10 Q You stated that you considered yourself to be an expert

11 in real estate; correct?

12 A I did say that, yes.

13 Q Why did you say that?

14 A I do have a pretty good understanding of New York City

15 real estate.

16 Q Good.

17 THE COURT: Quick sidebar, Counsels. I can't stop

18 myself from doing this. Just come up.

19 (Whereupon, an off-the-record discussion is held at

20 the sidebar.)

21 THE COURT: Back on the record.

22 MS. HABBA: Thank you.

23 Q Mr. Cohen, you went through a couple properties in that

24 clip that were owned by the Trump Organization; correct?

25 A Correct.

M. Cohen - Plaintiff - cross (Habba) Page 2331

1 Q And you stated that those properties are second to

2 none; correct?

3 A Correct.

4 Q And the Trump brand has value as well; correct?

5 A Yes.

6 THE COURT: Is that a question in the abstract or

7 are you asking if he said that?

8 MS. HABBA: No. Question in the abstract.

9 THE COURT: Okay. Had to be clear.

10 Q And according to Predictive, the Trump brand at Fact

11 Item 2000 -- the Trump brand is worth 3 billion; is that

12 correct?

13 A Is there a document that you're relating to?

14 Q Sure, sure.

15 MS. HABBA: PX 431. Can you please pull up?

16 MR. KISE: And, again, Your Honor, to the extent

17 we're not waiving, you know, this, but I am -- I'm just

18 pointing it out. I believe this is a 2011 document. We're

19 not waiving our statute of limitations argument by

20 introducing it.

21 THE COURT: Understood.

22 MS. HABBA: If we could go to the second page?

23 Q Do you see that it says "based on the information it

24 provided it's concluded that the value of the Trump brand is 2.8

25 to 3 billion?"

M. Cohen - Plaintiff - cross (Habba) Page 2332

1 A That's what it says.

2 Q Correct?

3 MS. FAHERTY: Your Honor.

4 THE COURT: Don't say "correct."

5 MS. FAHERTY: I'm just going to object to this

6 document she's put it in front of him. We already

7 established it's 2011. I don't know what this is. There is

8 no proffer on this document, there is no foundation on this

9 document. I'm objecting to it.

10 THE COURT: Sustained.

11 MS. FAHERTY: Thank you, Your Honor.

12 THE COURT: We don't know what it is.

13 Q The Trump brand was worth billions of dollars; correct,

14 Mr. Cohen?

15 A I don't know that to be the answer.

16 Q But you're a real estate expert, Mr. Cohen, aren't you?

17 A I'm not a brand expert, Ms. Habba.

18 Q You're not a brand expert.

19 Was the brand on the SOFC since you worked on it? Can

20 you answer that?

21 A I don't believe so.

22 Q You don't believe so? Is that a yes or no?

23 A It's an I don't believe so. I don't think it is.

24 Q How can you not be a hundred percent certain when you

25 and Allen Weisselberg were the ones that were tasked with doing

M. Cohen - Plaintiff - cross (Habba) Page 2333

1 it?

2 A Then I don't believe it's on there.

3 Q Yes or no?

4 A I would say no.

5 Q Thank you.

6 THE COURT: Wait. Hold on. You can't make him say

7 yes or no. He's allowed to say "I don't know" or "I'm not

8 sure."

9 MS. HABBA: Okay.

10 Q Did you ever include the brand on the SOFC?

11 A I did not.

12 Q Okay. Did Donald Trump ever include the brand on the

13 SOFC?

14 A No.

15 Q Did Allen Weisselberg ever include the brand on the

16 SOFC?

17 A No.

18 Q Thank you. That answers my question with a no.

19 THE COURT: Please don't comment on the answers.

20 You asked, he answered.

21 MS. HABBA: All due respect, Your Honor.

22 A I've answered every question that you want. Why are

23 you screaming at me? I'm a subpoenaed witness.

24 MS. HABBA: Mr. Cohen, let's continue.

25 Q Okay. You were represented at one point by Robert

M. Cohen - Plaintiff - cross (Habba) Page 2334

1 Costello; correct?
 2 A No.
 3 Q No?
 4 A No.
 5 Q So Robert Costello was not your lawyer at any point?
 6 A No.
 7 Q Okay. Do you know Robert Costello?
 8 A I've met Robert Costello.
 9 Q Have you spoken with?
 10 A I have spoken with Robert Costello.
 11 Q Did you ever tell Robert Costello you don't have
 12 anything on Donald Trump, "I swear to God I don't have anything
 13 on Donald Trump?"
 14 A I don't recall that.
 15 Q You don't recall? Did you --
 16 THE COURT: Please don't comment on the answers.
 17 MS. HABBA: I am phrasing my question.
 18 Q So do you recall that you told him you would "do
 19 whatever the," excuse my French, "F," I'll say, "it takes to
 20 avoid jail time?" Recall that?
 21 A I don't recall that either.
 22 Q Okay. Mr. Cohen, Letitia James, Attorney General of
 23 New York, has personally thanked you as being one of the central
 24 reasons the Attorney General's Office investigation into the
 25 Trump Organization business dealings was initiated. Isn't that

M. Cohen - Plaintiff - cross (Habba) Page 2335

1 correct?
 2 A You're welcome. Yes.
 3 Q You're welcome, you're welcome. That's telling.
 4 So what I'd like to say is you're right --
 5 MS. FAHERTY: Your Honor, please.
 6 MS. HABBA: I withdraw that.
 7 THE COURT: Okay. Withdrawn.
 8 Q Did you -- you just personally thanked her now;
 9 correct?
 10 A I was being comical.
 11 Q You were being comical.
 12 A Yes, I have seen the --
 13 Q Let me ask you a question --
 14 A I did see the video of her thanking me and I never had
 15 a chance to say thank you.
 16 Q You never had a chance to say thank you. So you want
 17 to do it now in court? Great.
 18 You actually did have a chance to say thank you.
 19 MS. HABBA: Can you pull it up, please?
 20 Q Do you see September 21, 2022, is this your handle on X
 21 now at the time Twitter @MichaelCohen212?
 22 A It is.
 23 Q Okay. And do you remember writing that tweet that says
 24 "I want to personally thank Tish James for acknowledging my
 25 participation and assistance in bringing accountability to the

M. Cohen - Plaintiff - cross (Habba) Page 2336

1 manner in Mussolini. My journey to the truth has been filled
 2 with sadness, pain and anger. Today's announcement makes it all
 3 worth it." Do you remember saying that now?
 4 A I wrote that.
 5 Q Okay. So did you thank Letitia James?
 6 A Not personally. I thanked her on the tweet.
 7 Q Okay. Thank you very much.
 8 THE COURT: Please don't comment.
 9 Q And you take pride in your role in commencing the
 10 investigation; correct?
 11 A I acknowledge it.
 12 Q You --
 13 A It's for acknowledging.
 14 Q I don't think I understand that.
 15 So by thanking her you're saying you acknowledge your
 16 participation?
 17 A I thanked her for acknowledging my participation.
 18 That's what it says.
 19 Q Okay. Are you proud that you participated in this
 20 investigation, Mr. Cohen?
 21 A I don't know if the word "proud" is the way I would
 22 describe it.
 23 Q Did you say in your tweet that "this makes it all worth
 24 it?" The tweet's right in front of you.
 25 A Yes, I said that. Does that connote to the term

M. Cohen - Plaintiff - cross (Habba) Page 2337

1 "proud?"
 2 Q Let's just move on.
 3 A Okay.
 4 Q And you personally assisted the Attorney General in its
 5 investigation of the SOFCs; correct?
 6 A No.
 7 Q No?
 8 A No.
 9 Q Okay. Mr. Cohen, did you write a book called
 10 "Revenge?"
 11 A I did.
 12 MS. HABBA: Can we please pull up "Revenge" at 179?
 13 I'll read this just to make it easy.
 14 Q Mr. Cohen, is this your book?
 15 A That is.
 16 Q Page 179 to 180 states: "Part of that offering was
 17 400 hours of testimony before seven different congressional
 18 committees, talking to the Manhattan DA, the Attorney General,
 19 and the Department of Justice. I cooperated with them all."
 20 Are you reading along with me, sir?
 21 A Oh, I am.
 22 Q "As for the substance of cooperation, I want to make
 23 clear exactly what I gave to the government concerning Donald
 24 Trump. I gave them a roadmap. I gave them everything that I
 25 knew about Donald Trump. I provided the government with the

M. Cohen - Plaintiff - cross (Habba) Page 2338

1 basic understanding of how the Trump Organization operates with
 2 Donald at the helm. I explained the various roles of other
 3 executives and countless acts of illegal activities, the crimes
 4 mostly centering around finances. I provided, among other
 5 things, Trump's personal financial statements for various years,
 6 copies of checks and other assorted documents."
 7 Does that refresh your recollection, Mr. Cohen?
 8 A As to what?
 9 Q As to the question that you just answered differently;
 10 that you didn't personally assist the AG with the investigation
 11 of the SOFCs?
 12 A When I was in conversation with the Manhattan District
 13 Attorney, the Attorney General's Office participated in those
 14 meetings and so what I did is I combined them together. There
 15 was no specific AG meetings. They were present at my meetings
 16 with the Manhattan District Attorney's Office.
 17 Q So the Manhattan District Attorney's Office and the
 18 Attorney General's Office were working in tandem. That is your
 19 testimony, correct?
 20 A That's my testimony.
 21 Q And, in fact, you saw them working in tandem; correct?
 22 A They participated in those meetings.
 23 Q Together?
 24 A They were present in those meetings.
 25 Q Were you promised anything from the Attorney General if

M. Cohen - Plaintiff - cross (Habba) Page 2339

1 you agreed to assist in the investigation of the Trump
 2 Organization, Mr. Cohen?
 3 A No.
 4 Q You did claim that you provided a "roadmap,"
 5 quote/unquote, of all the financial crimes that you claim
 6 occurred at the Trump Organization. Isn't that correct?
 7 A That's not what it says.
 8 Q That's not --
 9 A What it says -- I want to make clear exactly what I
 10 gave the government concerning Donald Trump. I gave them a
 11 roadmap.
 12 Q Can I just stop you there, Mr. Cohen?
 13 A You can.
 14 Q Did you just say "I gave them a roadmap?"
 15 THE COURT: He just said that, yes.
 16 Q What's the answer to that?
 17 A Already asked and answered.
 18 Q We're going to --
 19 MS. HABBA: Okay, Your Honor.
 20 MR. KISE: The judge doesn't like that objection.
 21 THE WITNESS: Apologies, Your Honor.
 22 A The answer is yes, that's what I wrote. It's in the
 23 book.
 24 Q Okay. Thank you.
 25 These are your words in the book, correct?

M. Cohen - Plaintiff - cross (Habba) Page 2340

1 A It's my words.
 2 Q And you claimed to have provided documentation which
 3 shows countless acts of illegal activities; correct?
 4 A You're reading that from where? Okay.
 5 Q You can read it to yourself. Take your time.
 6 MR. KISE: Can we have one minute, Your Honor,
 7 while he's reading that? Just counsel?
 8 THE COURT: Sure.
 9 (Whereupon, there is a pause in the proceedings.)
 10 MR. KISE: Thank you, Judge.
 11 Q Okay. According -- were we waiting for an answer? Did
 12 you read it?
 13 A Yes, I read it.
 14 Q And it says that?
 15 A Yes, I read it. It says it perfectly.
 16 Q I'll speak really loud. Your testimony is that you
 17 personally participated in the SOFCs; correct?
 18 A Correct.
 19 Q In fact, you claim you are personally responsible for
 20 coming up with many of the inflated numbers; correct?
 21 A Yes, correct.
 22 Q And you told them that you committed fraud in
 23 connection with preparation of the SOFCs; correct?
 24 A I don't believe that's what I said to them.
 25 Q Didn't you say in the question prior that you told them

M. Cohen - Plaintiff - cross (Habba) Page 2341

1 you were part of the process of inflating the SOFCs?
 2 MS. FAHERTY: Just to clarify, I've lost this line
 3 of questioning. Who is the "them?"
 4 Q Okay. Let me restart it. Let's just be clear. I
 5 appreciate that.
 6 THE COURT: Withdrawn?
 7 MS. HABBA: Withdrawn.
 8 MS. FAHERTY: Thank you, Your Honor.
 9 Q Mr. Cohen, you have testified between yesterday and
 10 today that you were personally responsible for drafting and
 11 coming up with numbers in the SOFCs; correct?
 12 A Which I did at the direction of Mr. Trump.
 13 Q That's not what I asked you, Mr. Cohen.
 14 Yes or no did you partake?
 15 A I did.
 16 Q Okay. And you told the District Attorney's Office that
 17 you did this; correct?
 18 A I can't go into that. There is another case that's
 19 pending right now. It's improper.
 20 Q Not really because you've testified -- I'm sorry.
 21 But you testified they were there, so if you told them,
 22 you told them; right?
 23 MS. FAHERTY: Your Honor, if I could --
 24 MS. HABBA: It's not --
 25 THE COURT: Your microphone isn't working.

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1 MS. FAHERTY: Can you hear me? If I can raise an
 2 objection here. I think this record at this point is a bit
 3 muddled and confusing. There was an excerpt from
 4 Mr. Cohen's book that we were just looking at. The
 5 questions were focused on the excerpt in the book. We have
 6 now closed the book. We're talking about themes, we're
 7 talking about the DA. It is untethered. I'm a bit confused
 8 where this line of questioning is going and I would really
 9 ask that we keep it focused and direct. I don't understand
 10 what testimony is being elicited and I will say there is a
 11 parallel DANY proceeding, so I'm a bit concerned that the
 12 line of questioning is going beyond the scope of this case
 13 and bleeding into another case. So I'm just raising my
 14 concern that this line of questioning which started with the
 15 book is now untethered and I don't know where we actually
 16 are with this testimony.

17 MR. KISE: Well, Your Honor, if you're going to
 18 side with me I'm not going to say anything.

19 THE COURT: You're learning.

20 Well, sustained solely on the ground that I think
 21 it's unclear who "they" are, etc., etc.. I like to go with
 22 the simple rulings.

23 MS. FAHERTY: Thank you, Your Honor.

24 THE COURT: So without prejudice obviously to
 25 whatever you want to ask about.

M. Cohen - Plaintiff - cross (Habba) Page 2343

1 MS. HABBA: Sure.

2 Q Mr. Cohen, no charges were ever brought against you
 3 personally by DANY in connection with your work on the Statement
 4 of Financial Conditions, were they?

5 A No.

6 THE COURT: DANY is the District Attorney of New
 7 York. Not everybody knows.

8 MS. HABBA: Thank you, Your Honor.

9 Q And, in fact, no claims were ever made against you by
 10 the New York Attorney General, were they?

11 A No.

12 Q But you have claimed in your testimony that you are an
 13 essential player in inflating the assets in the SOFC; correct?

14 A I stated that, yes.

15 Q And despite all of that you were never named as a
 16 defendant in this case, were you?

17 A I am not named as a defendant in this case.

18 Q So the Attorney General must not believe that your
 19 story is credible; is that correct?

20 A You are drawing a conclusion that I don't know. You
 21 could ask Ms. James.

22 ATTORNEY GENERAL JAMES: I object.

23 THE COURT: We're still researching that one.

24 Q You even met with Mr. Pomerantz; correct?

25 A I have met with Mr. Pomerantz, yes.

M. Cohen - Plaintiff - cross (Habba) Page 2344

1 Q I'm not going to get into the conversations, just so
 2 you know.

3 Are you aware that he noted in his book that there are
 4 significant risks with using you as a witness because of your
 5 credibility?

6 A I didn't read his book.

7 Q Okay. Prior to termination of your professional
 8 relationship with him, you had a very high --

9 A I'm sorry, who is "him?"

10 Q If you let me finish my question.

11 You had a very high regard of President Trump; is that
 12 correct?

13 A Correct.

14 Q And in the past you had a long history of praising
 15 Mr. Trump, isn't that right, Mr. Cohen?

16 A Also correct.

17 Q In fact, you stated that you worshipped him. Isn't
 18 that correct?

19 A Yes, that's correct.

20 Q And you testified under oath before Congress that you
 21 are very proud to have served Donald Trump and that you would
 22 continue to support him. Isn't that correct?

23 A I don't know what you're referring to.

24 Q Okay.

25 A I testified seven times to congressional committees.

M. Cohen - Plaintiff - cross (Habba) Page 2345

1 Which one?

2 MS. HABBA: Can we please pull it up on 102, D 960?

3 Thank you.

4 Q Mr. Cohen, you were interviewed by -- in an Executive
 5 Session. It was a closed-door session with the Permanent Select
 6 Committee on Intelligence, the U.S. House of Representatives on
 7 October 24, 2017. Do you recall that?

8 A I do.

9 Q Okay. And that was closed to the public; right?

10 A That was.

11 Q This is a transcript from that. As you can see it's an
 12 unclassified transcript from that hearing. Do you see that?

13 A I do.

14 MS. HABBA: Go back to the front page if you need.
 15 At D 960 -- can you please scroll up?

16 Q You state -- sorry.

17 MS. HABBA: The next page.

18 Q Mr. Cohen, it says, "I am very proud to have served
 19 Donald Trump for all these years, and I will continue to support
 20 him." Do you now remember saying that?

21 A This is the document that was prepared by the entire
 22 group that I referred in the direct. This was done by myself
 23 with Alan Garten, this was done with Jay Sekulow, with a whole
 24 slew of individuals, but yes, I did make that statement.

25 Q You made that statement in front of that committee;

M. Cohen - Plaintiff - cross (Habba) Page 2346

1 correct?
 2 A Correct.
 3 Q Thank you.
 4 Your opinion of Mr. Trump was so high, in fact, that
 5 you once stated you would take a bullet for him; is that
 6 correct?
 7 A Vanity Fair, Emily Fox, yes.
 8 Q Thank you're doing my work for me. I appreciate it.
 9 And you referred to yourself as the guy who protects
 10 the President and the family. Isn't that right?
 11 A That's also correct.
 12 Q And you've insisted that you would never walk away from
 13 Donald Trump; correct?
 14 A I stated that.
 15 Q I would like to now show you a political article dated
 16 July 9, 2015, which is in evidence as D 986. I'm going to
 17 highlight a section. If you can just read it, please?
 18 MS. FAHERTY: What is this?
 19 MS. HABBA: You have this -- it's a political
 20 article dated July 9, 2015. It was given two days ago.
 21 MS. FAHERTY: Why are we putting this in front of
 22 him?
 23 MR. KISE: Just sit down and you'll find out.
 24 MS. FAHERTY: Mr. Kise, I appreciate the
 25 commentary, but I would like a proffer of this. When you

M. Cohen - Plaintiff - cross (Habba) Page 2347

1 comment and ask the witness a question, I will extend the
 2 same courtesy to you.
 3 MR. KISE: No. Apparently the Attorney General
 4 hasn't. And as Your Honor knows, we have given,
 5 particularly Ms. Faherty, an extraordinary amount of
 6 latitude in how she asks questions and have sat here with
 7 leading question after leading question and introducing
 8 documents and everything yesterday, everything comes in. So
 9 I think bringing up a document and giving us a moment or two
 10 to tie to it is well within the discretion of the Court.
 11 THE COURT: Mr. Kise, please be respectful to the
 12 attorneys on the other side.
 13 MR. KISE: I am being respectful, but they're not
 14 respectful to me. That group of attorneys over there, they
 15 asked Your Honor to sanction me. 33 years I have been
 16 practicing law. I've argued and won four cases in the
 17 Supreme Court of the United States and I am being subject to
 18 sanction for making legal arguments and they want me to be
 19 respectful to them? Respect is not something -- where I
 20 grew up respect is not something that you get. It's
 21 something that you earn and I believe as a lawyer I've
 22 certainly earned it.
 23 THE COURT: I will try to jump into the fray here.
 24 I will say whenever there is an objection but the question
 25 by the Attorney General's counsel was leading, I always

M. Cohen - Plaintiff - cross (Habba) Page 2348

1 addressed it and I think I sustained probably more than half
 2 of them, so.
 3 MR. KISE: You didn't, Your Honor. But my point
 4 was we didn't object. We just let it go because we're
 5 trying to move the case along and so we're asking the
 6 Attorney General, they're making arguments about documents
 7 and we haven't even had a moment to connect up before we
 8 even get to -- the examiner gets to say anything.
 9 MS. HABBA: And, Your Honor, if I might just add
 10 myself. It is completely disrespectful when I just pull a
 11 document up and don't even get a question out. We'll be
 12 here well into tomorrow, I assure you of that. I have a lot
 13 of questions if this is how we're going to do it. I have a
 14 right to ask him questions. We've given you the exhibits
 15 like we were supposed to several days ago, so I would like
 16 to do my job for my client, please.
 17 THE COURT: This document is already in evidence.
 18 MS. HABBA: Exactly.
 19 MS. FAHERTY: This is not admitted into evidence,
 20 Your Honor, no. It was placed into an exhibit folder --
 21 MS. HABBA: For you.
 22 MS. FAHERTY: -- for us to review two nights ago at
 23 I think 10:30 at night. And, in fact, I came to the
 24 courthouse this morning, there was yet another added.
 25 So if I stand up, respectfully, Your Honor, and say

M. Cohen - Plaintiff - cross (Habba) Page 2349

1 I would like a proffer because I have not heard a proper
 2 foundation laid to either impeach this witness, I haven't
 3 heard it yet. We have repeatedly this morning seen
 4 something thrown onto the screen declaring I'm going to
 5 impeach you with this new evidence when that hasn't been
 6 properly laid down.
 7 Respectfully, I would appreciate Ms. Habba to
 8 continue with the examination in a way that sets the
 9 evidence properly. The foundation is laid, the questions
 10 can be asked, the evidence can come in. We have not been
 11 following that orderly procedure. That is all I've asked,
 12 Your Honor. I stood up and said voir dire this. What is
 13 this and what is its purpose for this particular witness?
 14 MS. HABBA: All due respect, I just ask that it be
 15 put up, Colleen. You've been interrupting me.
 16 MR. ROBERT: Your Honor --
 17 THE COURT: Mr. Robert, you've been relatively
 18 quiet.
 19 MR. ROBERT: And I'll be brief. We have been here
 20 now four weeks and we have sat here while the Attorney
 21 General has put documents in front of witnesses and instead
 22 of putting them into evidence first, ask the witness spend
 23 five and ten minutes discussing them and then putting them
 24 into evidence. We have sat quietly because we wanted to get
 25 this thing done in an orderly and efficient process.

M. Cohen - Plaintiff - cross (Habba) Page 2350

1 As far as exchanging of documents we have been the
 2 ones who have been vigilant. Every night the Attorney
 3 General is sending us five more, 50 more, a hundred more
 4 documents. That's the way this process works.
 5 Ms. Habba is allowed to ask Mr. Cohen a question.
 6 Based on what his answers are and then make the
 7 determination whether the document be put into evidence or
 8 not.
 9 Ms. Faherty now objecting to us being able to lay a
 10 foundation when for weeks now I have listened to them recite
 11 from documents that were not in evidence because we assumed
 12 subject to connection they would come in and they did is
 13 just grandstanding. Let's let Ms. Habba proceed and then
 14 when an application is made to put in evidence, the Court
 15 will deal with it.
 16 THE COURT: I do think that the Attorney General's
 17 objection or interruptions is premature. A document is put
 18 on the screen, I haven't heard anything. I stand corrected.
 19 Somebody said that this document was in evidence. I don't
 20 care who, but can we agree it's not in evidence?
 21 MS. HABBA: It's not in evidence. It was provided
 22 to the AG pursuant to your rules two days ago.
 23 THE COURT: Of course. That's hardly in evidence.
 24 And I will say something else in response to Mr. Kise's
 25 comments on respect. I agree respect isn't mandatory or

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1 assumed. It's earned, but in this courtroom I want
 2 everybody to respect each other.
 3 MR. KISE: And I certainly think I have done that,
 4 Your Honor, while I have suffered through an awful lot at
 5 the hands of the Attorney General in this case throughout
 6 this case. It has been extraordinary in my experience,
 7 extraordinary.
 8 THE COURT: I'm not going to second that. Yes, I
 9 don't know what you have or haven't. So in the courtroom,
 10 no. I haven't seen it, but anyway, all right. We now have
 11 a document on. It's not in evidence and we'll ask Ms. Habba
 12 to proceed.
 13 Transcript continues on the following page....
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M. COHEN - PLAINTIFF - CROSS(MS. HABBA) Page 2352

1 Q Mr. Cohen, do you recall in a political article dated
 2 July 29, 2015 that you stated, "The fact is Mr. Trump has built
 3 a \$10 billion-plus empire, employs thousands of people, has
 4 worked with many leaders around the globe successfully and is
 5 considered one of the best negotiators in history. These are
 6 all qualifications essential to being a great president."
 7 A I made that statement.
 8 Q Thank you. And at that time, you thought Mr. Trump had
 9 all the qualifications necessary to be a great president,
 10 correct?
 11 THE COURT: That's not what we are here for, by the
 12 way, obviously.
 13 MS. HABBA: Your Honor, it actually goes to
 14 credibility. I can explain.
 15 THE COURT: All right. I'll -- I didn't say you
 16 couldn't ask it, but -- or read it, but I just want to make
 17 sure we're focusing on why we're here, not external matters.
 18 MS. HABBA: Absolutely. Absolutely.
 19 THE COURT: Okay.
 20 A Can you state the question?
 21 MS. HABBA: Could I, please, get a readback? Was
 22 there a question?
 23 THE WITNESS: I don't know.
 24 Q I just asked you if you stated that.
 25 A I stated, "yes."

M. COHEN - PLAINTIFF - CROSS(MS. HABBA) Page 2353

1 Q We could do a readback if you want to make sure you
 2 answered, if Your Honor would like.
 3 THE COURT: I am pretty sure he answered.
 4 MS. HABBA: He stated it. He answered the
 5 question.
 6 Q Mr. Cohen, do you recall in a Reuter's article being
 7 quoted saying that "President Trump's record at the time" --
 8 "Mr. Trump's record was proof of" -- "his success was proof
 9 positive of Mr. Trump's character and capabilities."
 10 Do you recall that?
 11 A Is that another 2015 article?
 12 Q That was dated August 28, 2015, yes.
 13 A Can I see it?
 14 Q Sure. We can pull it up. This is D993- 4.
 15 Mr. Cohen, you can see on the bottom that it
 16 says -- from the reuters.com website, correct?
 17 A Yes, I see that.
 18 Q You see we highlighted for you the section, "Trump
 19 lawyer Michael Cohen stated Trump's record of success was "proof
 20 positive of Mr. Trump's character and capabilities."
 21 Do you see that?
 22 A Yes, I see that.
 23 Q And do you now recall saying that in this article for
 24 Reuters on August 28, 2015?
 25 A I'm sorry. Your question is?

M. COHEN - PLAINTIFF - CROSS(MS. HABBA) Page 2354

1 THE COURT: Do you remember saying it to Reuters?
 2 THE WITNESS: Yes, I said this to Reuters.
 3 MS. HABBA: I am saying it, so I don't -- I am
 4 laying a foundation, so I don't get an objection. I will
 5 move on.
 6 MS. FAHERTY: For the sole purpose that this is an
 7 article that captures this statement, no objection. I mean,
 8 I'll also highlight this article also says, "For Trump,
 9 exaggerating has always been a frequent impulse especially
 10 when the value of his Trump brand is disputed." If counsel
 11 wants that in evidence --
 12 THE COURT: You can do that on re-direct or
 13 whatever.
 14 MS. FAHERTY: This is, otherwise, a hearsay
 15 document, Your Honor. So for the purposes of that one
 16 statement --
 17 THE COURT: Admitted just for the fact that he said
 18 it.
 19 MS. HABBA: That's it.
 20 MS. FAHERTY: Thank you.
 21 MS. HABBA: That is, frankly, the only thing I
 22 asked. "Did you say that in this article," period.
 23 Q You said "yes, correct." Just so we are clear we have
 24 an answer, can I have a readback?
 25 THE COURT: Did you say "yes" that you said this to

M. COHEN - PLAINTIFF - CROSS(MS. HABBA) Page 2355

1 the reporter?
 2 THE WITNESS: Yes, I did.
 3 THE COURT: You have to say it into the microphone.
 4 THE WITNESS: I did.
 5 Q Mr. Cohen, you frequently defended Mr. Trump and stated
 6 that he was the only one person who -- "person that could make
 7 America great again"?
 8 A Again, 2015?
 9 Q No, 2016.
 10 A Yes.
 11 Q Did you do it in 2015, too?
 12 A I did.
 13 Q Okay. Do you remember Tweeting, "Thank you and believe
 14 wholeheartedly that only Trump will make America great again on
 15 July 13, 2016"?
 16 A Off the top of my head, no, I don't recall that.
 17 MS. HABBA: If we pull up the Tweet from July 13,
 18 2016.
 19 Q Mr. Cohen, is that your handle on Twitter or what is
 20 now X?
 21 A Yes.
 22 Q It is dated July 13, 2016, correct?
 23 A Yes.
 24 Q 6:15 a.m.?
 25 A That's what it says.

M. COHEN - PLAINTIFF - CROSS(MS. HABBA) Page 2356

1 Q And can you read that for me, please, what you Tweeted?
 2 A "Thank you... and believe wholeheartedly that only
 3 #trumpwill#makeamericagreatagain."
 4 Q Okay. And you tagged "realdonaldtrump," correct?
 5 A Yes, I did.
 6 Q That's President Trump's Twitter account?
 7 A Yes.
 8 Q You tagged "womenforcohen"?
 9 A Yes.
 10 MS. HABBA: I would like to admit the Tweet into
 11 evidence as D995, please?
 12 MS. FAHERTY: No objection.
 13 THE COURT: Admitted into evidence.
 14 (Whereupon, the Document was marked in evidence as
 15 Plaintiff's Exhibit D995.)
 16 Q So Mr. Cohen, after Mr. Trump was elected as president,
 17 you expected to get a position in The White House, didn't you?
 18 A Incorrect.
 19 Q Incorrect. You didn't -- you did not think you were
 20 going to go to the White House? Is that your testimony today?
 21 A I didn't want to go to the White House.
 22 Q My question to you was after Mr. Trump was elected as
 23 president, you expected to be given a position in the White
 24 House; is that correct?
 25 A I received the position that I had asked for.

M. COHEN - PLAINTIFF - CROSS(MS. HABBA) Page 2357

1 Q But you thought you were going to be named chief of
 2 staff?
 3 A No, I did not. It was a joke that went along because
 4 of my relationship to Mr. Trump. I asked for and I received
 5 from Mr. Trump the position of personal attorney to President
 6 Donald J. Trump.
 7 MS. HABBA: Okay. I would like to pull up D58-3,
 8 please.
 9 Q Mr. Cohen, was your home raided by the FBI?
 10 A Yes, it was.
 11 Q When the FBI raided your home, did they take your
 12 phone?
 13 A They took both of my phones.
 14 Q Okay. And were a series of text messages attached as a
 15 memo in opposition to a motion to reduce your sentence?
 16 A I don't even know what you're talking about.
 17 Q Okay. I'll represent to you that this is part of a
 18 docket number 1:18-CR-602. It is on the screen. It's in the
 19 court docket as 58-2. It is United States vs. Cohen. This is a
 20 printout attached to a memo that was submitted by the government
 21 with text messages from your cellphone that they seized by a
 22 subpoena and search warrant. Do you recognize that?
 23 A I don't.
 24 Q Okay. Well --
 25 MS. FAHERTY: Your Honor, I am just going to put an

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M. COHEN - PLAINTIFF - CROSS(MS. HABBA) Page 2358

1 objection on the record to this. It might be premature, but
 2 I'm going to state my objection now. It just seems like
 3 we're delving in a trial within a trial within a trial and
 4 re-litigating issues in the Southern District case. I'm
 5 noting my objection to this exhibit coming in.
 6 MS. HABBA: This has nothing to do with that.
 7 THE COURT: Overruled without prejudice.
 8 MS. HABBA: Thank you, Your Honor.
 9 Q If you see --
 10 MS. HABBA: Can you blow up the text messages here.
 11 Thank you.
 12 Q It states, "Person 4, Cohen or Powell, will be chief of
 13 staff. Cohen, that's you, that's your text message. Neither.
 14 Person 4, who then? Now this is you. Really, question mark.
 15 Person 4, if Powell, she'd be the first woman." Again, they
 16 say, "not Jared. Too close." Not Jared, you're speaking
 17 about -- I assume that's Jared Kushner?
 18 A Again, I don't recognize this document. No, I don't.
 19 Q This is from the FBI when they seized your phone.
 20 A Okay.
 21 Q Cohen really --
 22 A Who's Person 4?
 23 Q I don't know and it is irrelevant quite honestly.
 24 A Well, it's not irrelevant.
 25 Q Okay. Is your name Cohen?

M. COHEN - PLAINTIFF - CROSS(MS. HABBA) Page 2359

1 A That is my name.
 2 MS. FAHERTY: Your Honor, again, I'm going to state
 3 my objection.
 4 THE COURT: Give me your best shot. What's your
 5 best objection?
 6 MS. FAHERTY: First of all, we've already had
 7 testimony from the witness saying he does not recognize this
 8 document. We have log entries here indicating that there is
 9 a Person-4. Based on Ms. Habba's representation, is she
 10 asking the Court to accept the statements of these
 11 outside-of-the-court persons or Person 4 for the truth of
 12 the matter asserted?
 13 There's inherent hearsay problems with this
 14 document. And again, I think we're devolving into a trial
 15 of what? How is it relevant to the matters at hand, Your
 16 Honor? So again, I note my objection to this document,
 17 please.
 18 THE COURT: Any response, Ms. Habba?
 19 MS. HABBA: Motive, Your Honor, motive and
 20 credibility. And I will show Mr. Cohen's comments and the
 21 only comments that are relevant are Mr. Cohen's comments.
 22 These are his text messages. It was submitted on the docket
 23 by the FBI. It is unsealed. There is no question of that.
 24 Unless you're -- it is not hearsay.
 25 I'm -- if you let me finish, I can get to it, but

M. COHEN - PLAINTIFF - CROSS(MS. HABBA) Page 2360

1 you keep interrupting me which frankly, I have not done to
 2 you and had courtesy with you, which I'm getting a little
 3 frustrated. But I understand you don't like some of this
 4 testimony, so if you like, we can finish, and I can make a
 5 ruling, but you keep interrupting me.
 6 THE COURT: Remember, everybody, there's no jury
 7 here.
 8 MS. HABBA: I understand, but Your Honor --
 9 THE COURT: Nobody is interrupting you
 10 particularly. I'm just telling everyone.
 11 MR. KISE: Unfortunately, there isn't.
 12 THE COURT: So you don't ordinarily have juries
 13 maybe.
 14 MR. KISE: Your Honor, as to this document, again,
 15 it's impeachment. It goes to credibility. We're certainly
 16 entitled to explore all the many ways in which this witness
 17 has twisted, moved, shifted very -- you know -- so that's
 18 all we're doing and I think that's appropriate.
 19 THE COURT: Objection overruled. Just go ahead.
 20 MS. HABBA: Thank you. If we could scroll down.
 21 Thank you.
 22 Q Person 4 states, "not Ivanka, too close. You state,
 23 keep guessing, dopey. Person 4, stop. You, question mark."
 24 Then you state, "I will give you a hint... yes."
 25 Do you see that, Mr. Cohen?

M. COHEN - PLAINTIFF - CROSS(MS. HABBA) Page 2361

1 A I see that.
 2 Q Okay. The person responds, "Oh, my God. Please be
 3 true. Are you serious. You need to." And then you say --
 4 A That's why Person No. 4 is important to know what it
 5 is.
 6 Q Mr. Cohen, I'm not finished.
 7 THE WITNESS: Sorry, Your Honor.
 8 Q You state, "He needs to ask." Do you see that?
 9 A I see that.
 10 Q Okay. So in your -- first of all, I'd like to submit
 11 this into evidence. It has already been on the docket, as I
 12 said, in 1:18 CR-602, D958-3.
 13 THE COURT: Hearsay. An out-of-court statement
 14 being introduced to prove the truth of its contents -- are
 15 you introducing it to prove the truth of its contents?
 16 MS. HABBA: I'm proving it to impeach the witness
 17 who stated that he did not want that job. So the truth of
 18 the contents is yes, he stated in a text that he wanted that
 19 job. Solely to Mr. Cohen, Your Honor.
 20 THE COURT: You know, I try to use commonsense when
 21 I'm applying rules. Objection overruled. It's in. I find
 22 enough of a foundation has been laid.
 23 MS. HABBA: Thank you very much, Your Honor.
 24 Q And you were never given a position in the White House,
 25 were you, Mr. Cohen; yes or no?

M. COHEN - PLAINTIFF - CROSS(MS. HABBA) Page 2362

1 A I was given the position --

2 Q Yes or no?

3 A -- that I asked for. There was no shame in being

4 personal attorney to the president.

5 Q We'll get to that, but my question is were you given a

6 position in the White House?

7 A I didn't ask for a position.

8 THE COURT: No. No. You have to answer the

9 question.

10 THE WITNESS: It's a question I -- I don't know

11 how I'm going to be given it if you don't ask for it.

12 THE COURT: Hold on.

13 Q Okay.

14 THE COURT: Hold on. I don't know whether special

15 counsel or counsel to the president or personal counsel -- I

16 don't know whether that's in or out of the White House, but

17 you know, other than that, you have to answer the question.

18 If you don't know whether your job was in or out of the

19 White House, say that; but, otherwise, you were or you

20 weren't.

21 Q Mr. Cohen, did you ever go to the White House as a

22 position as an employee for the President of the United States

23 Donald Trump?

24 A No.

25 Q Thank you.

M. COHEN - PLAINTIFF - CROSS(MS. HABBA) Page 2363

1 Around that same time, you found other ways to

2 personally benefit from your relationship with Mr. Trump,

3 correct?

4 A I'm sorry. And what time frame are you referring to?

5 Q When the president or -- when Mr. Trump became

6 President Trump, you found ways to benefit from your

7 relationship with Mr. Trump, didn't you?

8 A Yes.

9 Q In fact, didn't you candidly admit that you previously

10 cashed in on your relationship with President Trump?

11 A I don't know where you are referring to.

12 MS. HABBA: Could you, please, pull up Disloyal at

13 page 341.

14 Q Mr. Cohen, did you write a book entitled, "Disloyal"?

15 A I did.

16 Q Is this -- does this appear to be what was the cover

17 that was just up from Disloyal?

18 A I'm sorry?

19 MS. HABBA: Can you go back, please. You just had

20 the cover up.

21 Q Is that your book?

22 A That is.

23 Q Okay. Can you, please, turn to page 341. Can you read

24 the part where it says -- the second red box, "Was I cashing in

25 on my relationship with Trump? Of course, I was. What would

M. COHEN - PLAINTIFF - CROSS(MS. HABBA) Page 2364

1 you do." Do you read that?

2 A Yes.

3 Q Were those your words?

4 A My words.

5 MS. HABBA: I would like to admit Disloyal 341 into

6 evidence, please.

7 THE COURT: Granted. It is in.

8 (Whereupon, the Document was marked in evidence as

9 Plaintiff's Exhibit 341.)

10 MS. HABBA: Thank you.

11 Q Back when you acted as personal counsel to President

12 Trump, you launched a personal company known as Essential

13 Consultants, LLC as a way of cashing in on your relationship

14 with the President of the United States; isn't that correct?

15 A No, that's not correct.

16 Q That's not correct. Okay.

17 MS. HABBA: Let's turn to page 341 again.

18 Q It is up. Take a minute to read it. Let me know when

19 you're ready.

20 (Witness reviewing document.)

21 Q "After the election, I set myself up in a New York

22 office of Squire Patton Boggs"?

23 A I don't see where you are.

24 Q At the top, it is highlighted. "A top-tier law firm

25 located at Rockefeller Plaza as a strategic alliance which

M. COHEN - PLAINTIFF - CROSS(MS. HABBA) Page 2365

1 really meant the partners could brag to their clients that the

2 personal attorney to the President of the United States,

3 President Trump, was part of their outfit. I was also using my

4 company Essential Consultants to take on clients like AT&T,

5 Novartis, Columbus Nova and BTA Bank, high-level companies

6 desperate for insights and connections to the President and

7 willing to pay for their assistance."

8 Did you read that?

9 A You read it.

10 Q Did you read it?

11 A I wrote it.

12 Q Correct. You wrote it. So those are your words,

13 right, Mr. Cohen?

14 A Yes, those are my words.

15 Q So when you said you didn't -- my question to you was

16 did you launch a company known as Essential Consultants as a way

17 of cashing in on your relationship with the President of the

18 United States? You did, didn't you, Mr. Cohen?

19 A Again, no.

20 Q You --

21 A Let me explain.

22 Q It is a yes-or-no question, Mr. Cohen.

23 A There is no --

24 THE COURT: You can explain on re-direct.

25 MS. HABBA: Thank you.

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1 Q And didn't you primarily use this company to secure
2 lucrative clients that were "desperate" for connections to
3 President Trump such as AT&T, Novartis, Columbus Nova and BTA
4 Bank?
5 A Insights and connections, yes.
6 Q I'm sorry. What was that word that you said?
7 A Insights and connections.
8 Q You're reading that from your book?
9 A Correct.
10 MR. HABBA: Okay. I would like to submit Disloyal,
11 page 344 -- 341, excuse me, into evidence.
12 THE COURT: Granted. It is in evidence.
13 MS. HABBA: Thank you.
14 (Whereupon, the Document was marked in evidence as
15 Plaintiff's Exhibit 341.)
16 Q And Essential Consulting ultimately received payments
17 of more than \$4 million; isn't that correct?
18 A Correct.
19 Q Similarly, didn't you also enter into a strategic
20 alliance with Squire Patton Boggs where you were paid half a
21 million dollars annually to further capitalize on your
22 relationship again with President Donald Trump?
23 A As well as my other relationships, yes.
24 Q That was not the question. Your book that we just had
25 up said Squire Patton Boggs wanted a relationship with you

M. COHEN - PLAINTIFF - CROSS(MS. HABBA) Page 2368

1 A Not all my animosity.
2 Q But despite your animosity, you continue to financially
3 benefit from President Trump, don't you?
4 A No.
5 Q No?
6 A No.
7 Q Since your release from prison, Mr. Cohen, your career
8 has shifted from the practice of law towards entertainment and
9 media; isn't that correct?
10 A Can you define "entertainment and media"?
11 Q Sure. Mr. Cohen, you have made a career out of
12 publicly attacking President Trump, haven't you?
13 A Yes.
14 Q In fact, a substantial amount of your present day
15 income is derived from publicly criticizing President Trump;
16 isn't that right?
17 A Amongst other people, yes. It is not Mr. Trump only.
18 Q Okay.
19 A It discusses news of the day.
20 Q So your testimony -- so is that a yes or a no?
21 A That would be a no.
22 Q That would be a no, okay.
23 MS. HABBA: Can we, please, pull up the transcript
24 from Galicia.
25 Q Mr. Cohen, do you remember the Galicia case that you

M. COHEN - PLAINTIFF - CROSS(MS. HABBA) Page 2367

1 because of President Trump, did it not?
2 A It did.
3 Q Okay. And the purpose of this strategic alliance was
4 that -- so that the partners of Squire Patton "brag to their
5 clients that the personal attorney to the President of the
6 United States was part of their outfit." Didn't you say that?
7 A I said that.
8 Q And today, you have significant animosity towards
9 President Trump, don't you?
10 A Do I have animosity towards him? Yes.
11 Q That was the question.
12 A Yes, I do.
13 Q Yes, you do.
14 In fact, you often go on social media, don't you,
15 stating all of your animosity?
16 A I use social media.
17 Q That wasn't my question.
18 MS. HABBA: Can you, please, read back the
19 question.
20 THE COURT: Read back, please. And his response
21 was not responsive. It did not answer the question.
22 MS. HABBA: Thank you.
23 THE COURT: Readback.
24 (Whereupon, the requested portion of the record was
25 read back.)

M. COHEN - PLAINTIFF - CROSS(MS. HABBA) Page 2369

1 and I were involved in?
2 A I was a subpoenaed witness, yes.
3 Q You remember that I deposed you, correct?
4 A I remember.
5 Q This is a copy of the transcript from that deposition.
6 Just to lay a foundation, index number 24973/2015. Galicia vs.
7 Donald Trump. The date on that is May 9, 2022. Do you see
8 that?
9 A I see that.
10 Q And the time was 10:11. It was the deposition of
11 non-party witness Michael Cohen. Do you see that?
12 A I do.
13 Q It was held at Belkin Burden Goldman in New York and I
14 deposed you at that time. Do you remember that?
15 A I recall.
16 MS. HABBA: If you could please switch to 103:19.
17 THE COURT: Five-minute warning.
18 MS. HABBA: Thank you, Your Honor.
19 Q My question:
20 "What do you do for to raise money?"
21 You said, "You mean for a living?"
22 I said, "Yes."
23 You said, "Yes. I'm writing a second book which will
24 be called The Department of Injustice. I have a podcast
25 called Mea Culpa, top 50 podcast in the country. I am also

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1 now placing them on YouTube and I also have on YouTube
 2 Michael Cohen Reacts which is I react to the news of the
 3 day or something that I find interesting in the news."
 4 And my question was:
 5 "What do you find interesting in the news, Mr. Cohen?"
 6 You said, "Everything."
 7 And I said, "Let's"-- "Now, let's go one by one. Mea
 8 Culpa is the podcast, correct?"
 9 You said, "Correct."
 10 "What do you discuss on Mea Culpa?"
 11 Your response, "Politics, sometimes cult deprogramming,
 12 various different issues."
 13 "Do you discuss any of the defendants in this case on
 14 Mea Culpa?"
 15 Your response was, "I do."
 16 "Who would that be," I asked.
 17 "Former President Donald Trump."
 18 And I asked you how frequently just as I'm asking
 19 you today.
 20 "How frequently do you discuss former President Donald
 21 Trump?"
 22 Your response said, "Every podcast at some point has
 23 him included in it."
 24 Do you see that, Mr. Cohen?
 25 A I do.

M. Cohen - Plaintiff - cross (Habba) Page 2372

1 THE COURT OFFICER: All rise. Part 37 is back in
 2 session. Please be seated and come to order.
 3 THE COURT: Ms. Habba, before you take -- the
 4 lectern has nothing do with you, but sometime prior to
 5 today, I think it was about a week ago -- no, two or three
 6 weeks ago --
 7 (Whereupon, there is a pause in the proceedings.)
 8 THE COURT: Withdrawn. Let's start from scratch.
 9 Towards the very start of this trial, defendant
 10 Donald J. Trump posted on his social media account or one of
 11 them, I think it was Truth Social, defamatory, disparaging,
 12 completely untrue statements about the law clerk sitting to
 13 my right. I asked that they be taken down.
 14 I was told ten minutes later they were taken down;
 15 turns out they weren't. They remained online and were
 16 e-mailed to thousands of people. I don't remember exactly
 17 how many. They were online for I believe it was 17 days.
 18 At that point when I was alerted to it, I issued a
 19 limited gag order and told Counsel, the parties, that I was
 20 forbidding -- this is a quote, "All parties from posting,
 21 e-mailing or speaking publicly about any members of my
 22 staff," unquote.
 23 I am very protective of my staff, as I believe I
 24 should be. We all know that we are in what I called at some
 25 point, an overheated environment. I don't want anybody

Page 2371

1 Q Okay. So when I asked you do you discuss President
 2 Trump every time you are on your podcast or social media, you
 3 said -- let me just ask the question.
 4 Do you recall that you said that every podcast at some
 5 point has included Donald Trump?
 6 A I said it, yes.
 7 Q Thank you.
 8 MS. HABBA: Your Honor, this might be a good
 9 stopping point.
 10 THE COURT: Okay. Just to make it simple, let's
 11 all be back at 11:45.
 12 (Whereupon, a recess was taken.)
 13 (Continued on the next page.)
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M. Cohen - Plaintiff - cross (Habba) Page 2373

1 killed.
 2 It was just brought to my attention that the
 3 Associated Press reported, I wasn't there, this is the
 4 Associated Press, that Mr. Donald J. Trump just stated the
 5 following to the press outside the courtroom:
 6 "This judge is a very partisan judge with a person
 7 who is very partisan sitting alongside him, perhaps even
 8 much more partisan than he is."
 9 Now, it's very easy for the public, for anyone to
 10 know who that person is.
 11 MS. HABBA: Your Honor, sorry --
 12 MR. KISE: Let me -- I hate to interrupt.
 13 THE COURT: No, don't interrupt me. I'll give you
 14 plenty of time.
 15 MR. KISE: Okay. I think you're under a
 16 misapprehension.
 17 THE COURT: All right. You'll correct me.
 18 MR. KISE: Fair enough.
 19 THE COURT: The last time that this gag order was
 20 violated by the incorrect statement that the post had been
 21 taken down it was actually copied to another post but that
 22 wasn't taken down. I accepted the explanation that it was
 23 inadvertent, I imposed a minimal fine. This recent
 24 statement, assuming the Associated Press is correct,
 25 obviously was intentional.

M. Cohen - Plaintiff - cross (Habba) Page 2374

1 I stated the last time that a -- any future
 2 violations would be severely punished.
 3 I will now give Mr. Kise or anyone else who wants
 4 to a chance to respond. And, again, I'll ask the question
 5 why should there not be severe sanctions for this blatant,
 6 dangerous disobeyal of a court order.
 7 MR. KISE: Your Honor, my understanding of what he
 8 said and the way I understood it and I believe Mr. Trump
 9 will tell you I believe he's talking about Michael Cohen
 10 sitting next to you who is even more partisan -- I mean, his
 11 whole commentary out there related to Michael Cohen and his
 12 credibility as a witness and so forth. We're certainly well
 13 aware of the order, so that's the way I took the statement
 14 and I believe that's the way it was intended, but I'll -- I
 15 don't want -- I don't know any other way to say it but that.
 16 THE COURT: Well, can we ask Mr. Trump to whom he
 17 was referring?
 18 MR. KISE: I have asked him. I mean, if you'd like
 19 to ask him, I have asked and that is exactly what he said
 20 because he's tired of listening. I don't want to go on a
 21 speech. He's tired of listening to what he's hearing and
 22 it's very partisan and you know the rest.
 23 THE COURT: Sitting alongside of him. The person
 24 sitting alongside of me the way I would normally interpret
 25 those words is my principal law clerk. There is a barrier

M. Cohen - Plaintiff - cross (Habba) Page 2375

1 between me and the witness stand. We know from this trial
 2 and from our lives that language is sometimes precise and
 3 sometimes not very precise, sometimes ambiguous and not
 4 clear. Seemed clear to me, but I understand that could be
 5 interpreted another way. I'll take the whole matter under
 6 advisement. Let's not spend anymore time on this. Let's
 7 move ahead with the trial.
 8 MS. HABBA: Your Honor, are we on the record?
 9 THE COURT: If we want to be.
 10 MS. HABBA: I also want to put on the record
 11 obviously we have a lot of press and media here. They
 12 couldn't hear past there. It was brought to my attention
 13 and evidently the feed -- the tech team just informed me the
 14 feed was also not being circulated, which obviously as you
 15 know this is a very heavily press-covered matter and given
 16 that I'm President Trump's lawyer I do think that's
 17 unfortunate and unfair.
 18 THE COURT: And, of course, I'm sorry for that, of
 19 course, and it's very unfortunate.
 20 THE COURT OFFICER: Is the judge ready for the
 21 witness?
 22 THE COURT: Yes.
 23 THE COURT OFFICER: Witness entering.
 24 THE COURT: Okay. Let's continue with the cross
 25 examination of Michael Cohen.

M. Cohen - Plaintiff - cross (Habba) Page 2376

1 MS. HABBA: Thank you.
 2 (Whereupon, the witness enters the courtroom and
 3 approaches the witness stand.)
 4 CONTINUED CROSS EXAMINATION
 5 BY MS. HABBA:
 6 Q Mr. Cohen, you didn't speak to anybody during your
 7 break, your attorney or anybody from the Attorney General's
 8 Office, did you?
 9 A I spoke to my attorneys.
 10 Q Did you speak to them about your testimony?
 11 A No.
 12 Q Did you speak to them about this case?
 13 A No.
 14 Q Okay. You understand that you're still under oath,
 15 correct?
 16 A Correct.
 17 Q Okay. Where we left off I was asking you if you made a
 18 career out of publicly attacking my client, President Trump.
 19 Do you recall that?
 20 A I recall it.
 21 Q And do you make a career out of publicly attacking
 22 President Trump?
 23 A No.
 24 Q Do you admit that Mea Culpa, your podcast, is
 25 substantially focused on President Trump?

M. Cohen - Plaintiff - cross (Habba) Page 2377

1 A Can you define "substantially?"
 2 Q Sure. Earlier we read a transcript of your words where
 3 you say that you speak about President Donald Trump every
 4 episode of your podcast; is that correct?
 5 A I said that.
 6 Q Okay. Do you speak about Donald Trump every day that
 7 you have a podcast? Does it always mention President Trump?
 8 A Yes.
 9 Q Thank you.
 10 And you authored two books that discuss and are
 11 primarily focused on President Trump. Isn't that correct?
 12 A No.
 13 Q No? Okay.
 14 MS. FAHERTY: Is that a question?
 15 Q Mr. Cohen, is this one of your books?
 16 A Yes.
 17 Q I'm holding up "Revenge." Do you read that the cover
 18 says "Donald Trump" on it? Is his name on the cover?
 19 A It is.
 20 Q Thank you.
 21 Did you write another book called "Disloyal?"
 22 A I did.
 23 Q Does that also reference Donald J. Trump on the cover?
 24 A It does.
 25 Q And it does that because you make money off President

M. Cohen - Plaintiff - cross (Habba) Page 2378

1 Trump. Isn't that correct, Mr. Cohen?

2 A I made money off the story.

3 Q And who is the story about?

4 A "Revenge" is about me.

5 Q You're -- I'm not done with my question.

6 A Sorry.

7 Q Who is the story about, Mr. Cohen?

8 A Which book?

9 Q Mr. Cohen, do you make money off President Trump's

10 name?

11 A Yes.

12 Q Thank you.

13 Did you receive an advance for "Disloyal?"

14 A No.

15 Q No?

16 A No.

17 Q Do you make money from "Disloyal?"

18 A Yes.

19 Q How much is in your best estimation have you derived

20 from your book "Disloyal?"

21 A I don't recall.

22 Q You don't recall how much money you made from your

23 book?

24 A No.

25 Q Do you put your income from your book on your returns,

M. Cohen - Plaintiff - cross (Habba) Page 2379

1 your tax returns?

2 A Yes.

3 Q Do you know how much money you make annually,

4 Mr. Cohen?

5 A I do.

6 Q And how much is that?

7 THE WITNESS: I'm sorry, Your Honor. It's -- it's

8 private. I'm not going into my --

9 THE COURT: I think in the abstract it's

10 irrelevant.

11 MS. HABBA: Okay.

12 Q Is your money from "Disloyal" on your returns?

13 A Yes.

14 Q Do you make income from "Disloyal," from selling the

15 book?

16 A Not anymore.

17 MS. FAHERTY: Asked and answered.

18 Q Do you make money from your other book?

19 A "Revenge?"

20 Q Yes.

21 A Yes.

22 Q Okay. Did you get an advance for that book?

23 A No.

24 Q No.

25 And you also have a podcast dedicated to discussing in

M. Cohen - Plaintiff - cross (Habba) Page 2380

1 substantial part your criticism of President Trump; correct?

2 A No.

3 Q No. But you said yes when I asked you prior, isn't

4 that correct?

5 A No. You said it.

6 Q Okay. Let me pull up your words then, Mr. Cohen.

7 MS. HABBA: Can you please pull that back up again?

8 Q Do you remember I went through this Galicia testimony?

9 A I apologize. I thought you were asking about the

10 testimony, not about the Galicia. I really need you to be

11 specific what you're talking about. I'm very confused right

12 now.

13 Q When I asked you if you substantially discuss President

14 Trump on Mea Culpa, your podcast, is the answer yes or no?

15 A I said to you I speak about Mr. Trump. He is the

16 frontrunner of the Republican party and he's in the --

17 THE COURT: That more than answers the question.

18 Just answer the question.

19 Q How much income do you make from the podcast?

20 A Again, going into privacy. It's irrelevant.

21 THE COURT: Is there an objection by the Attorney

22 General?

23 MS. FAHERTY: I'll object, Your Honor.

24 A Thank you.

25 MR. KISE: What would the basis be?

M. Cohen - Plaintiff - cross (Habba) Page 2381

1 THE COURT: Relevance.

2 MS. FAHERTY: What is the relevance here? He has

3 admitted he made income.

4 THE COURT: Overruled.

5 MS. FAHERTY: Thank you.

6 THE COURT: I think there is a question of motive,

7 etc.

8 MS. HABBA: Thank you, Your Honor.

9 Q Please answer the question, Mr. Cohen.

10 A Which podcast?

11 Q Let me ask you a different question.

12 How many podcasts do you have?

13 A Two.

14 Q What are the names of your podcast?

15 A Mea Culpa.

16 Q Right.

17 A And the other one is a live YouTube.

18 Q Is the live YouTube?

19 A Called Political Beatdown.

20 Q It's called what?

21 A It's called Political Beatdown.

22 Q Political Beatdown.

23 And your affiliation with politics is because of my

24 client sitting right here, isn't that correct?

25 A No.

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M. Cohen - Plaintiff - cross (Habba) Page 2382

1 Q Were you involved in politics before President Trump
2 became president?
3 A In 1987 and 1988 I worked for Congressman Joe Moglia.
4 I've also been on other finance committees with Alan Hevesi and
5 other politicians throughout the years.
6 Q Do you talk about them on the two podcasts that you
7 just mentioned, Mr. Cohen?
8 A They're not relevant right now.
9 Q That wasn't the question. Yes or no?
10 A The answer is no.
11 Q That's what I thought.
12 So then you don't talk about anybody but President
13 Trump when you're speaking about politics and that's how you
14 make your money, isn't it, Mr. Cohen?
15 THE COURT: Please no comments on the answers.
16 "That's what I thought." No. Just questions, answers.
17 MS. HABBA: Sure, Your Honor.
18 Q So you can't as you sit here today tell me how much
19 money you make off of the fact that you worked with President
20 Trump; correct?
21 A Correct.
22 Q But you make money off of President Trump; correct?
23 A Correct.
24 Q And you also sell merchandise off of President Trump,
25 don't you?

M. Cohen - Plaintiff - cross (Habba) Page 2384

1 THE COURT: I believe those are the exact words,
2 but just -- we need a read back.
3 A I disagree.
4 THE COURT: Hold on. We're going to get a read
5 back. Sorry.
6 (Whereupon, the requested portion of the
7 proceedings was read back by the court reporter.)
8 THE WITNESS: I disagree.
9 Q Do you have a law license?
10 A Not anymore.
11 Q Your primary form of income is because you speak about
12 President Trump; correct?
13 A It's asked and answered already.
14 Q I'm asking you a question.
15 THE COURT: It was asked and answered, so -- and
16 there is an objection.
17 MS. HABBA: No problem, Your Honor. Let me
18 rephrase.
19 Q The more outrageous your stories are about President
20 Trump the more money you make. Is that accurate, Mr. Cohen?
21 A No.
22 Q If you didn't work for President Trump you wouldn't
23 make most of your income today. Isn't that true, Mr. Cohen?
24 A No.
25 Q But prior you stated that the majority of your income

M. Cohen - Plaintiff - cross (Habba) Page 2383

1 A Yes.
2 Q And that makes you money, doesn't it, Mr. Cohen?
3 A It makes money.
4 Q Outside of your two podcasts or one YouTube as you
5 called it, your merchandise and your books, is there any other
6 form of income that is greater in your life personally?
7 A No.
8 Q Thank you.
9 MS. HABBA: Sorry to thank him. Not thank you.
10 THE COURT: Well, "thank you" is not so bad. It's
11 polite; "okay" is borderline. Anything else, no.
12 Q And you've also been invited on numerous media outlets
13 to discuss President Trump, isn't that correct?
14 A What time period are you referring to?
15 Q Since you started working for President Trump since you
16 -- he became the president you go on TV to discuss him
17 frequently, isn't that true?
18 A Yes.
19 Q And without stories or accusations about President
20 Trump you really don't have anything to sell, do you, Mr. Cohen?
21 A I'm sorry what? You don't have what?
22 MS. HABBA: Can we get a read back?
23 THE COURT: Anything to sell, but let's get a read
24 back.
25 THE WITNESS: Anything to sell?

M. Cohen - Plaintiff - cross (Habba) Page 2385

1 is from talking about President Trump; correct? Yes or no?
2 A Again, you're not providing the time frame. You keep
3 going back and forth. Currently that is a correct answer.
4 Previously you're assuming that I can go back in time when I had
5 multiple real estate buildings and other assets before my
6 five-year scenario that's been taking place, so I don't
7 understand your question. There is no beginning, there is no
8 end to it.
9 Q Because you wouldn't give me -- let me look at last
10 year's tax return.
11 Last year you filed a tax return; correct?
12 A Correct.
13 Q Okay. That tax return had your income on it, we hope;
14 correct?
15 A Correct.
16 Q Okay. And allegedly you had put all of your income on
17 that return; correct?
18 A Correct.
19 Q Okay. You had most of the income on that return
20 because of President Trump; correct?
21 MS. FAHERTY: Your Honor, can we move this -- can
22 we move this along? I do think the questions are a bit
23 muddled, "because of President Trump."
24 We've established he has made money in connection
25 with the work he's performed related to President Trump or

M. Cohen - Plaintiff - cross (Habba) Page 2386

1 Mr. Trump. The time period is a bit confusing. I
 2 appreciate the point we're trying to make. It's a bit
 3 belabored. I'm just noting my objection to how cumulative
 4 this is getting.
 5 MS. HABBA: All due respect, Your Honor, it's
 6 because I'm not getting a yes-or-no answer to a very simple
 7 question.
 8 MR. KISE: Your Honor, I don't know -- now who is
 9 giving the speeches? But yes, all we're trying to get at is
 10 a simple answer to a simple question. He's already
 11 testified that the majority, I think, it's not clear, that
 12 the majority of his current income comes from his activities
 13 associated with harassing, trashing, talking about everyone,
 14 you know, President Trump. So he can affirm that if it was
 15 -- the question was confined to his last year's tax return
 16 did most of your income come from your activities associated
 17 with harassing, trashing, talking about, podcasting about,
 18 whatever it's called on the Internet, about President Trump.
 19 That's it. It goes to motive, it goes to bias.
 20 THE COURT: Maybe we can compromise here.
 21 Ms. Habba, would you rather the question be last
 22 year's tax return or would it be now? And then the rest of
 23 it will basically be is it true that the majority of your
 24 income, last year's tax return or not, is based on
 25 commentary on Donald J. Trump?

M. Cohen - Plaintiff - cross (Habba) Page 2387

1 MS. HABBA: That's perfectly said, Your Honor.
 2 I'll adopt that question, if I may.
 3 THE COURT: Do you want the tax return or now?
 4 MS. HABBA: Now.
 5 THE COURT: Okay. Do you understand the question?
 6 THE WITNESS: I understand the question. It's --
 7 the issue I have is when you say "is the majority." I speak
 8 about all politicians. It's not just Mr. Trump. I speak
 9 about Mark Meadows, I speak about everything that's going
 10 on. I speak about Israel. I speak about many things.
 11 THE COURT: Okay. Next question.
 12 Q But your testimony was today that in every podcast no
 13 matter who you're speaking about, Mark Meadows, no matter if
 14 you're speaking about --
 15 THE COURT: Wait. Before you establish that yes,
 16 he said every podcast these days he mentions Donald Trump.
 17 MS. HABBA: Okay, Your Honor.
 18 THE COURT: And along with what Ms. Faherty was
 19 saying, I think we can move on at this point. He makes
 20 money off his comments, his prior relationship to
 21 Donald J. Trump.
 22 Q And are you promoting your testimony here today,
 23 Mr. Cohen?
 24 A Am I promoting it? I will retweet something. I will
 25 say I am at the trial, but I am not tweeting as per the judge's

M. Cohen - Plaintiff - cross (Habba) Page 2388

1 directive not to about anything specific.
 2 Q So is it your testimony that you have not promoted you
 3 being here in court today?
 4 MS. FAHERTY: Objection. Promoted?
 5 A I don't understand.
 6 MS. HABBA: I'll pull up an exhibit.
 7 Q Is it your testimony that you have not been promoting
 8 the fact that you're coming here to testify against Donald Trump
 9 for the Attorney General?
 10 A I have tweeted about that, yes.
 11 THE COURT: I'll allow that.
 12 Q You tweeted about it and you discussed it on your
 13 podcast; correct?
 14 A I have.
 15 Q And during interviews on TV; correct?
 16 A Correct.
 17 Q And you've even stated that you intend on holding a
 18 press conference after your testimony today is finished, isn't
 19 that correct?
 20 A I don't recall that.
 21 MS. HABBA: Can we please pull up his tweet from
 22 October 15th?
 23 Q Mr. Cohen, we've already established that your Twitter
 24 account is @MichaelCohen212; correct?
 25 A Correct.

M. Cohen - Plaintiff - cross (Habba) Page 2389

1 Q And do you see that on October 15, 2023 at 8:10 p.m.
 2 somebody stated -- just for their privacy I'm not going to read
 3 it in -- "I can't wait to see the reaction of all the haters of
 4 when you do testify... hold a press conference at the end of
 5 your last day, if you can." And there are two emojis there.
 6 And your response was: "I can and I will."
 7 Do you see that, Mr. Cohen?
 8 A I see that.
 9 Q Are you going to speak to the --
 10 THE COURT: Hold on one second.
 11 MS. FAHERTY: Again, I'm going to launch my
 12 objection to what is clearly hearsay evidence. Ms. Habba --
 13 THE COURT: Overruled. Let's move on.
 14 MS. HABBA: Thank you, Your Honor.
 15 Your Honor, I'm just going to state that clearly
 16 she is trying to throw me off by continuously interrupting
 17 me. I would like to just continue or we're going to be here
 18 all day.
 19 MS. FAHERTY: And I would just ask to strike the
 20 portion of the tweet that is put in front of this witness.
 21 That is not his. That is not here, cannot provide any
 22 testimony as to the statements asserted therein. Move to
 23 strike that from the record. It is hearsay, Your Honor.
 24 MR. ROBERT: Your Honor, that is absurd. Mr. Cohen
 25 is giving a statement without the underlying statement which

M. Cohen - Plaintiff - cross (Habba) Page 2390

1 is not for the truth of the matter asserted. He's
 2 responding to it. So if Ms. Habba would not have put in the
 3 bottom part, the objection would have been "it's incomplete,
 4 we don't know what Mr. Cohen is saying, I can and I will."
 5 This is completely admissible and it should be admitted
 6 without objection.
 7 MS. HABBA: And it's for impeachment purposes, Your
 8 Honor.
 9 MS. FAHERTY: Again, she read into the record the
 10 out-of-court statements of another person and as to Michael
 11 Cohen's statements that is on the screen, you have admitted
 12 it, you have overruled as to Michael Cohen's statement. I
 13 accept that ruling by the Court, but as to Ms. Habba reading
 14 into the record third party out-of-court statements, I ask
 15 that they be stricken from the record.
 16 THE COURT: Well, you know, it's always funny you
 17 want to strike it from the record. It's only 200 people out
 18 there that have heard it.
 19 Well, what if we agree, for whatever it's worth,
 20 that the only admissible aspects are starting with dot, dot,
 21 dot, hold a press conference, etc., I can and I will. I
 22 find that admissible. We will take out "I can't wait to see
 23 the reaction of all the haters when you do testify."
 24 MS. FAHERTY: Over my objection, but I understand.
 25 THE COURT: Okay. It's in evidence other than the

M. Cohen - Plaintiff - cross (Habba) Page 2391

1 first part.
 2 Q Mr. Cohen, are you going to speak to the press outside
 3 after today?
 4 A I don't know yet. You're asking me to --
 5 THE COURT: The answer was "I don't know yet."
 6 MS. HABBA: Okay.
 7 Q Mr. Cohen, after I deposed you on other matters, did
 8 you go outside and speak to the press?
 9 A I did.
 10 Q And sometimes when I deposed you on other matters you
 11 had speeches prepared before you walked into your deposition,
 12 isn't that correct?
 13 A That's not correct.
 14 Q That's not correct?
 15 A No.
 16 Q Did you speak to the press before I deposed you on the
 17 Galicia matter?
 18 A Yes.
 19 Q Did you speak to the press when I deposed you on this
 20 matter?
 21 A As did you.
 22 Q That wasn't my question.
 23 THE COURT: Just answer the question, please. Did
 24 you speak to the press?
 25 THE WITNESS: Did I speak to the press, yes, I

M. Cohen - Plaintiff - cross (Habba) Page 2392

1 spoke to the press.
 2 Q President Trump makes you relevant, doesn't he,
 3 Mr. Cohen?
 4 A I think the circumstances make me relevant.
 5 Q The circumstances that you used to work for the
 6 President of the United States who is the single most famous
 7 presidential candidate in this world, you speak about him every
 8 day because it makes you money, isn't that correct?
 9 THE COURT: I thought we were moving on from this
 10 point.
 11 MS. HABBA: Well, he's backtracking, Your Honor.
 12 THE COURT: I didn't notice any backtracking.
 13 MS. HABBA: I'll keep going.
 14 MS. FAHERTY: Can we please stop with the
 15 characterizations, Your Honor, please?
 16 THE COURT: I didn't find anything objectionable
 17 there.
 18 Q Mr. Cohen --
 19 THE COURT: Except I didn't notice any
 20 backtracking. Sorry. Let's just move ahead. The record
 21 says what it says.
 22 MS. HABBA: Thank you, Your Honor.
 23 Q Mr. Cohen, do you sell advertisement spots?
 24 A Yes, there are advertisements in the podcast.
 25 Q Do you sell the advertisement spots?

M. Cohen - Plaintiff - cross (Habba) Page 2393

1 A I don't sell them, no.
 2 Q Do you make money from advertising?
 3 A Good question. Yes.
 4 Q And the more advertisements you sell, the more money
 5 you make; correct?
 6 A That's how it works.
 7 Q Is that a yes, Mr. Cohen?
 8 A That's a yes.
 9 Q Mr. Cohen, would you disagree with the fact that the
 10 only reason you are relevant in the public eye is because of
 11 President Trump?
 12 A No.
 13 Q You take every opportunity to criticize President Trump
 14 and discuss the latest Trump-related news, don't you?
 15 A Along with CNN, MSNBC, Fox, ABC, CBS, NBC. He's
 16 relevant in the news and that's what my podcast discusses.
 17 Q You're right. President Trump is relevant in the news
 18 and President Trump makes money for the news, doesn't he,
 19 Mr. Cohen?
 20 A I don't understand your question, "Mr. Trump makes
 21 money for the news?"
 22 Q Well, you sell advertising, right?
 23 A For me.
 24 Q Do news media sell --
 25 THE WITNESS: I'm so sorry, Your Honor. I don't

M. Cohen - Plaintiff - cross (Habba) Page 2394

1 understand. I apologize. I'm confused by your question.
 2 THE COURT: Let's start again. Withdrawn,
 3 whatever.
 4 MS. HABBA: Sure. Let's keep going and I'll
 5 continue.
 6 THE COURT: And move on to another topic as soon as
 7 possible.
 8 MS. HABBA: I can ask it in one simple question.
 9 Q Mr. Cohen, you have financial incentive to criticize
 10 President Trump; correct? Yes or no, please?
 11 A Yes.
 12 Q Thank you.
 13 But Mr. Cohen, you never used to speak like that, did
 14 you?
 15 THE COURT: Sustained. I don't know what the
 16 context is. Speak like that what?
 17 MS. HABBA: I'll just ask the questions.
 18 Q Mr. Cohen, do you remember in 2015 telling Politico:
 19 "The fact is Mr. Trump has built a 10 billion plus empire,
 20 employs thousands of people, has worked with many leaders around
 21 the globe successfully and is considered one of the best
 22 negotiators in history, these are all qualifications essential
 23 to being a great president." Do you recall saying that?
 24 A I think we already went through this.
 25 Q Yes or no? Yes or no?

Page 2395

1 A It's been asked and answered.
 2 THE COURT: I don't think that particular quote was
 3 -- it was?
 4 MS. FAHERTY: I think so, Your Honor.
 5 MR. KISE: Is the witness now objecting? This is a
 6 new level of low, even for Michael Cohen.
 7 MS. FAHERTY: Again, if we could --
 8 THE COURT: Sustained, sustained.
 9 MS. FAHERTY: Thank you.
 10 Transcript continues on the following page....
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M. COHEN - PLAINTIFF - CROSS(MS. HABBA) Page 2396

1 Q Mr. Cohen, did you state on January 2017, "President
 2 Elect Trump has always stated how much he loves what he does.
 3 Anyone who spends more than four decades building a \$10 billion
 4 empire would clearly be sentimental about relinquishing
 5 control," said Michael Cohen, executive VP of the Trump
 6 Organization. "However," you said, "President Elect Trump has
 7 also stated that there is nothing more important to him than
 8 fixing the mistakes made by the previous administration and
 9 making America great again."
 10 Did you say that, Mr. Cohen?
 11 A I believe those are my words.
 12 Q Do you need me to refresh your recollection?
 13 A No. I'm looking at what it is that you put up on the
 14 screen.
 15 Q So is that a yes?
 16 A I believe those are my words, yes.
 17 Q Is that a quote with your name on it, Mr. Cohen?
 18 A Yes. And this is from 2015 again?
 19 Q This is from January 3, 2017, CNN.
 20 A 2017, yes.
 21 Q Do you recognize that as your words?
 22 A Yes, it seems like it could be my words.
 23 MS. HABBA: I would like to move into evidence this
 24 quote.
 25 I don't have the number, Peter. Do you have it?

M. COHEN - PLAINTIFF - CROSS(MS. HABBA) Page 2397

1 987.
 2 MS. FAHERTY: Your Honor, I'm just re-asserting the
 3 same objection I've had. In fact, I don't even know what
 4 this document is. There's not even a title. There's not
 5 even an author. I don't know who wrote it. There's been no
 6 foundation laid other than there was a statement that at
 7 some point was captured by someone in this article. If it
 8 is as to that one statement, no objections since Mr. Cohen
 9 has testified that those were his words. Otherwise, the
 10 objection remains as to the admission of this document.
 11 THE COURT: You don't want -- you don't want the
 12 document in, but the words that have been read and he said,
 13 "Yes, I could have said that," whatever -- can we just --
 14 MS. HABBA: I could lay the foundation and clear
 15 this up, if you'd like. I don't really -- I mean, it is
 16 for impeachment purposes, number one. I asked him if he
 17 said it. He said he didn't recollect, so I brought it up
 18 and now he recognizes that he brought -- he said it, so I'm
 19 moving it into evidence.
 20 I'm not sure -- we're really going to be here all
 21 day, Ms. Faherty if this is what we are going to keep doing.
 22 It is a CNN article. Look at it. Here is the website. I
 23 don't even need the whole article in. I just asked Mr.
 24 Cohen if he said what he said and now he said, "yes."
 25 THE COURT: So, then, we don't need the article.

M. COHEN - PLAINTIFF - CROSS(MS. HABBA) Page 2398

1 THE FOREPERSON: And we don't need --

2 MS. HABBA: I won't move it.

3 Q Thank you for acknowledging you said it. Moving on, "I

4 worked for Mr. Trump now for a long "-- "long time," you said.

5 I can tell you that Mr. Trump's memory is fantastic and I never

6 come in a situation where Mr. Trump has said something that is

7 not accurate."

8 Do you recall saying that in an interview with CNN on

9 November 30, 2015, Mr. Cohen?

10 A Can you provide me with a document?

11 Q Sure. I will provide you with a document.

12 MS. HABBA: Can we, please, zoom out first.

13 Q Do you see the website on the bottom of this document?

14 Do you see that it says, "cnn.com?" I'm not going to read it

15 all in, but do you see that?

16 A I do.

17 Q It is from the CNN website?

18 A Yes.

19 Q Okay. Do you see that there is a title, "Trump lawyer:

20 Never known him to say something inaccurate."

21 Do you see that on the top, on the top? Do you see

22 that?

23 MS. FAHERTY: No.

24 Q No. Do you see on the top of the page that it says --

25 A Yes, I see it.

M. COHEN - PLAINTIFF - CROSS(MS. HABBA) Page 2399

1 Q Thank you.

2 MS. HABBA: Can you, please, go to his quote.

3 Q Does this appear to be from the website from CNN?

4 A It appears to be, yes.

5 Q Okay. Do you recall saying, "I'm not so sure that

6 that's true and I've worked for Mr. Trump for" "now for a long

7 time," Cohen said. "I can tell you that Mr. Trump's memory is

8 fantastic and I've never come in a situation where Mr. Trump has

9 said something that is not accurate."

10 Is that in quotations, Mr. Cohen?

11 A That's in quote.

12 Q And you understand the press, don't you, Mr. Cohen?

13 A I do.

14 Q And if you don't speak on the record, the press can't

15 put you in quotes and relate it to your name. Isn't that true,

16 Mr. Cohen?

17 A For the most part, yes.

18 Q In fact, you used to record yourself speaking well

19 about the president to the press sometimes, didn't you, Mr.

20 Cohen?

21 A I don't understand your question.

22 Q How often did you speak to the press when you worked

23 for President Trump?

24 A Every day.

25 Q So you know that they would never put that in quotes

M. COHEN - PLAINTIFF - CROSS(MS. HABBA) Page 2400

1 unless you said it was on the record, correct, or forgot to say

2 that it wasn't? Isn't that how it works?

3 A Yes, that's how it works.

4 Q Is that your quote, Mr. Cohen?

5 A That would be my quote.

6 Q Okay. Thank you. I don't need it into evidence. So

7 I'm not going to, but you know what. Actually, let's move it

8 into evidence. We laid the foundation anyway. I'd like to move

9 that into evidence, CNN article dated November 30, 2015.

10 MS. FAHERTY: Same objection and -- same

11 objection, Your Honor.

12 THE COURT: Overruled. It's in.

13 MS. HABBA: Thank you.

14 (Whereupon, the Document was marked in evidence as

15 Plaintiff's Exhibit 987.)

16 Q April 15, 2011, you interviewed with ABC News and said,

17 "It's very, very surreal. I've been admiring Donald Trump since

18 I was in high school."

19 Do you remember saying that?

20 A You are going, again, have to refresh my memory.

21 Q Sure.

22 MS. HABBA: Pull it up, please.

23 Q Mr. Cohen?

24 A Yes.

25 Q Do you see the website on the top of this screen?

M. COHEN - PLAINTIFF - CROSS(MS. HABBA) Page 2401

1 A Yes.

2 Q It says, "The wayback machine." You see ABC News on

3 the top right?

4 A I do.

5 Q Okay.

6 MS. HABBA: Can you get out, please zoom out. Can

7 you put in his quote and blow it up.

8 Q Do you see that, again, in quotations, it has the quote

9 that I just read? It says, "Cohen told ABC News "and then it

10 states, "I've been admiring Donald Trump since I was in high

11 school. He said that when he was a young man, he read Trump's

12 1987 book, "The Art of the Deal" cover to cover twice." Isn't

13 that correct?

14 A Yes.

15 Q Do you doubt that those are your words, Mr. Cohen?

16 A No.

17 Q Did you read "The Art of the Deal" twice when you were

18 in high school?

19 A No.

20 Q So were you lying?

21 A No. I read it twice when I was in college.

22 Q Oh, okay. In college. I got it. So you read, "The

23 Art of the Deal" twice in college, right?

24 A I just answered that.

25 Q But that was before you worked for President Trump,

M. COHEN - PLAINTIFF - CROSS(MS. HABBA) Page 2402

1 correct?

2 A Correct.

3 Q Did you admire President Trump in college?

4 A I did.

5 Q Okay. Let's move on. Do you recall saying, "That's

6 what people want to see, authenticity. I mean, who's smarter

7 than Donald Trump. He's the greatest negotiator on the planet.

8 He is presidential." You said that on Sean Hannity on August 4,

9 2015. Do you recall that?

10 A I recall that.

11 Q Do you recall that you also said on Sean Hannity on

12 July 21, 2016, "I know Mr. Trump. I've stood by him shoulder to

13 shoulder for the past decade. I've seen him in action. He

14 knows how to build things. He knows how to fix things. He

15 knows how to make them better. He knows people. He loves

16 people. He said it himself. He's able to relate to the

17 plumber, to the electrician, to the laborer because that's what

18 his father Fred taught him and he learned values and that's

19 something that a lot of politicians, specifically Hillary, does

20 not have, is values."

21 Do you remember saying that to Sean Hannity?

22 A If you can show me. It sounds correct.

23 Q Sure?

24 A But I don't recall that that's exactly what I said.

25 Q Sure. We can show you.

M. COHEN - PLAINTIFF - CROSS(MS. HABBA) Page 2403

1 MS. HABBA: Can you pull it up? Is it a video?

2 We're having some technical issues.

3 A I'll tell you what. I'll acknowledge.

4 Q No, I don't want you to do that, Mr. Cohen.

5 A I will acknowledge that I did, so we can move this

6 thing faster.

7 Q Did you say to Vanity Fair on September 26, 2017, "I'm

8 the guy who protects the president and the family. I'm the guy

9 who would take the bullet for the president." Did you say that?

10 A Yes.

11 Q Did you say to Hannity on March 20, 2017, "I think he's

12 a wonderful man. I think he's going to be an amazing president.

13 The family is just, you know, fantastic." Do you remember

14 saying that?

15 A I don't remember saying that.

16 MR. HABBA: Do we have that one? Thank you.

17 Q Do you see this is Fox News article dated March 20,

18 2017?

19 A I will remain the personal attorney to Trump?

20 Q That's right. That's what the title is. That wasn't

21 my question. The question is, is this dated March 20, 2017 from

22 Fox News?

23 A That's what it says.

24 Q Great.

25 THE COURT: Please, no comments on the answer.

M. COHEN - PLAINTIFF - CROSS(MS. HABBA) Page 2404

1 MS. HABBA: Sorry.

2 Can you blow up the portion, please. Thank you.

3 Q Can you read that to yourself, so I don't have to read

4 it again.

5 (Witness reviewing document.)

6 Q Do you recall now saying what I read, "I think he's a

7 wonderful man. I think he's going to be an amazing president.

8 The family is just, you know, fantastic." Do you remember

9 saying that now?

10 A I have said that.

11 Q Thank you.

12 Do you remember on April 15, 2011 in an interview with

13 ABC News saying, "I think the world of him. I respect him as a

14 businessman and I respect him as a boss." Do you remember saying

15 that?

16 A Where are you reading from?

17 Q It's not here. I'm asking you.

18 A From where?

19 Q ABC News, April 15, 2011.

20 A Again, I'll need to see something to refresh my memory.

21 Q Sure. Let me ask you. I'm going to move this along.

22 Would it surprise you to hear that you said to Reuters on

23 August 28, 2015, "Trump's lawyer, Michael Cohen, said Trump's

24 record of success was proof positive of Mr. Trump's character

25 and capabilities." Is that something you would say, Mr. Cohen?

M. COHEN - PLAINTIFF - CROSS(MS. HABBA) Page 2405

1 A Yes.

2 Q Do you believe or have any reason not to believe that

3 you said that to Reuters on August 28, 2015?

4 A I don't know. I'd have to see the document.

5 Q Okay. We can pull it up. This is an article from

6 Reuters. You see that dated August 28, 2015 and the title is,

7 "Best President ever. How Trump's love of hyperbole could

8 backfire." Do you see this?

9 A I do.

10 Q Can you, please, pull up his quote. "Trump's lawyer,

11 Michael Cohen, said Trump's record of success was proof positive

12 of Mr. Trump's character and capabilities." You see that?

13 A I do.

14 MS. FAHERTY: Your Honor, didn't we do this before?

15 I thought I quoted from the below line, "For Trump,

16 exaggerating has always been a frequent impulse, especially

17 when the value of his trump brand is disputed." Can we move

18 it along? I thought we did this already.

19 THE COURT: I believe we saw that, character and

20 capabilities.

21 MS. HABBA: Did we see this one?

22 MS. FAHERTY: We saw that.

23 MS. HABBA: Okay. We'll move on.

24 THE COURT: Ms. Habba, how much longer will we hear

25 this sort of -- these statements?

M. COHEN - PLAINTIFF - CROSS(MS. HABBA) Page 2406

1 MS. HABBA: I have a ton, Your Honor, but I can
 2 move it along.
 3 THE COURT: Okay. --
 4 MS. HABBA: Let me try --
 5 THE COURT: They're getting cumulative.
 6 MS. HABBA: Sure. Give me a moment. I will move
 7 it along.
 8 Q Do you recall speaking to HuffPost and saying to them
 9 that "He is worth a lot, substantially more than what's recorded
 10 in Forbes. They don't take into account the value of the Trump
 11 brand, of the mark, one of the most valuable marks that's ever
 12 been created. He has very little debt, AAA assets." Do you
 13 remember saying that on April 22, 2011?
 14 A I would need to see the document.
 15 Q Okay. Do you have any reason to believe -- I'm going
 16 to try to move it along for the tech people.
 17 Do you have any reason to believe that if they quoted
 18 you as saying that, that you didn't say it? Do you have any
 19 reason --
 20 A Sorry. That's 2011?
 21 Q Yes.
 22 A Yes.
 23 THE COURT: Yes meaning --
 24 THE WITNESS: That I probably said it.
 25 THE COURT: Okay.

M. COHEN - PLAINTIFF - CROSS(MS. HABBA) Page 2407

1 MS. HABBA: Okay. This will be my last one, Your
 2 Honor.
 3 Q And in July 31, 2014, The Associated Press quoted you
 4 as saying "Mr. Trump's significant wealth, name, recognition and
 5 real estate knowledge makes him a viable option." Do you recall
 6 saying that?
 7 A Again, I need to see the document.
 8 MS. HABBA: Can we pull up the AP document, please.
 9 Do we have it?
 10 I was moving very quickly, so I feel for my tech
 11 team right now. I'm not going to admit it into evidence.
 12 Q Mr. Cohen, would you doubt if the Associated Press
 13 quoted you, put your words in quotes, that that was something
 14 you said on the record?
 15 A It's possible.
 16 Q Do you believe the AP would do that without --
 17 A Again, I don't know. I haven't seen the document.
 18 Q Okay. Let's move on. Mr. Cohen, you testified under
 19 oath in your April 28, 2023 deposition that Mr. Trump tasked you
 20 and Mr. Allen Weisselberg with inflating the numbers on the
 21 Statement of Financial Condition to reach a certain
 22 pre-determined number for his net worth, correct?
 23 A Correct.
 24 Q But Mr. Cohen, in February of 2019, just two years
 25 after leaving the Trump Organization, you testified under oath,

M. COHEN - PLAINTIFF - CROSS(MS. HABBA) Page 2408

1 the same oath that you're under now, the same oath that you were
 2 under at your deposition, and the same oath that you were under
 3 when you spoke to Judge Pauley, you said to the Permanent Select
 4 Committee that you couldn't recall President Trump ever asking
 5 you to inflate the numbers in his Statement of Financial
 6 Condition. Do you remember that?
 7 A I don't.
 8 MS. HABBA: Let's pull it up.
 9 Q Mr. Cohen, do you see this document? Please go to the
 10 front page. Does it say, "Executive Session Permanent Select
 11 Committee on Intelligence U.S. House of Representatives in
 12 Washington DC?"
 13 A Yes, it does.
 14 Q It does? Does it say that you were deposed?
 15 A It says, "deposition of Michael Cohen."
 16 Q Were you deposed?
 17 A I was.
 18 Q Were you deposed on Thursday, February 28, 2019?
 19 A That's what it says.
 20 Q Okay. At -- commencing at 9:35 a.m.?
 21 A Yes.
 22 Q And you can see who was present there, correct?
 23 A Correct.
 24 Q Do you remember this?
 25 A I do.

M. COHEN - PLAINTIFF - CROSS(MS. HABBA) Page 2409

1 MS. HABBA: Can you, please, pull up 92:6.
 2 "QUESTION: Did Mr. Trump direct you or Mr.
 3 Weisselberg to inflate the numbers on his personal
 4 statement?"
 5 Your answer, "I'm sorry." Did he ask me to inflate
 6 the numbers?"
 7 And what do you say, Mr. Cohen?
 8 A I stated, "not that I recall."
 9 Q Not that I recall. That's not all you said.
 10 A No.
 11 Q No. Those are your words, correct?
 12 A Those are my words.
 13 Q And did you say -- you don't dispute that that was
 14 you, correct, in front of the committee two years after you left
 15 the Trump Organization?
 16 A I already stated that's my deposition.
 17 Q So Mr. Cohen, as you sit here today, are you telling me
 18 the truth and the Attorney General the truth or were you telling
 19 the truth then?
 20 A I was in the camp of Donald Trump --
 21 Q Yes or no? It was two years after you stopped
 22 working --
 23 A You didn't ask me a yes-or-no question.
 24 Q Yes, I did.
 25 A No, you didn't.

M. COHEN - PLAINTIFF - CROSS(MS. HABBA) Page 2410

1 Q Okay, Mr. Cohen.
 2 MS. HABBA: Can we, please, get a readback of my
 3 original statement, question?
 4 THE COURT: It wasn't yes or no, but it was
 5 either/or.
 6 THE WITNESS: So, please, allow me to answer.
 7 MR. HABBA: Let me rephrase my question, Your
 8 Honor.
 9 THE COURT: Okay.
 10 THE WITNESS: Can I not answer the question that's
 11 in front of me?
 12 MS. HABBA: Withdrawn.
 13 THE COURT: Her question is withdrawn.
 14 MS. HABBA: Question is withdrawn. I'm going to
 15 rephrase my question.
 16 Q Mr. Cohen, were you being honest in front of the
 17 Permanent Select Committee when you testified on February 28,
 18 2019?
 19 A No.
 20 Q So you lied under oath in February of 2019? Is that
 21 your testimony?
 22 A Yes.
 23 Q Mr. Cohen, I just have one more question, maybe two.
 24 Did you ever ask President Trump to pardon you while he
 25 was in the White House?

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1 A No.
 2 Q He didn't pardon you, did he, Mr. Cohen?
 3 A No.
 4 MS. HABBA: Thank you. I'm done.
 5 THE COURT: Well, we have about eight or nine more
 6 minutes. Re-direct?
 7 MR. ROBERT: Your Honor, I have cross-examination.
 8 THE COURT: Oh, I'm sorry.
 9 MR. ROBERT: I think it may make sense to take the
 10 lunch break now, so we can work out the mechanics of the
 11 microphone and we can start at 2:15.
 12 MR. KISE: We may be able to streamline it as well.
 13 MR. ROBERT: Yes. I will be as brief as I can.
 14 THE COURT: So I'm breaking until 2:15, everybody.
 15 Thank you.
 16 (Whereupon, a luncheon recess was taken.)
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1 A F T E R N O O N S E S S I O N
 2 THE COURT OFFICER: All rise. Part 37 is back in
 3 session. The Honorable Judge Arthur Engoron presiding.
 4 Make sure all cell phones are on silent. Laptops and cell
 5 phones will be permitted, but only to members of the press.
 6 There is absolutely no recording or photography of any kind
 7 allowed in the courtroom. Now be seated and come to order.
 8 THE COURT: Well, at least my microphone is working
 9 this time.
 10 I want to resume the discussion about what happened
 11 this morning when Defendant, Donald J. Trump, apparently
 12 made a statement to the press referring to "the person next
 13 to me," and I'll pick up where I left off.
 14 Mr. Kise I believe said on behalf of Defendant
 15 Trump, I'll call him, that he was referring to Michael Cohen
 16 when he said what he said about the "partisan democrat,"
 17 etc.; is that correct?
 18 MR. KISE: Yes.
 19 THE COURT: I'm going to hold a hearing right now
 20 about that.
 21 MR. KISE: Okay.
 22 THE COURT: And I'll have as my -- as the first
 23 witness, Defendant Donald J. Trump.
 24 Mr. Trump, would you like to be on the witness
 25 stand to testify? Come on up.

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1 THE COURT OFFICER: Please raise your right hand.
 2 Do you solemnly swear or affirm any testimony you give will
 3 be the truth, the whole truth and nothing but the truth?
 4 THE WITNESS: I do.
 5 THE COURT OFFICER: You may have a seat.
 6 Please state your name and either home or business
 7 address on the record.
 8 THE WITNESS: Donald John Trump, New York, the
 9 Trump Organization.
 10 THE COURT: Mr. Trump, did you say out in the
 11 hallway this morning, "This judge is a very partisan judge
 12 with a person who is very partisan sitting alongside of him,
 13 perhaps even much more partisan than he is?"
 14 THE WITNESS: Yes.
 15 THE COURT: To whom were you referring when you
 16 said "the person sitting alongside of him?"
 17 THE WITNESS: You and Cohen.
 18 THE COURT: Are you sure that you didn't mean the
 19 person on the other side of me, my principal law clerk?
 20 THE WITNESS: Yes, I am sure.
 21 THE COURT: Have you in the past referred to her,
 22 my principal law clerk, as partisan, and/or partisan
 23 Democrat?
 24 THE WITNESS: Maybe unfair. I think she is very
 25 biased against us. I think we've made that clear. We put

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1 up the picture and you didn't want that up. I think they
 2 got it off her website, however, so we didn't necessarily
 3 agree, but -- and we did take it down, Your Honor, but we
 4 have so many different sides and I believe -- and I may be
 5 wrong on this, but I believe it was one of the political
 6 groups or one of the pacts that had it up or left it up, but
 7 I didn't knowingly do that.

8 THE COURT: Well, I'm more interested right now in
 9 -- to whom you were referring as you can see and as everyone
 10 can see, first of all, my principal law clerk is very close
 11 to me. In fact, Ms. Habba would refer to the notes back and
 12 forth and even the conversations, but you and I, we can see
 13 each other and we're close, but not as close clearly and
 14 there is a barrier between us. So wouldn't that be at best
 15 somewhat ambiguous as to whom you are referring? Have you
 16 also -- have you -- I know I'm doing a compound question
 17 here.

18 MR. KISE: I was going to say am I allowed to
 19 object to the question?

20 THE COURT: Sure, it's a hearing.

21 Don't you always refer to Michael Cohen as Michael
 22 Cohen?

23 THE WITNESS: No.

24 MR. KISE: Many things, even worse than that.

25 MS. HABBA: Yes, Your Honor. I can confirm that,

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1 much worse.

2 THE WITNESS: Much worse.

3 THE COURT: Would anybody else like to question the
 4 witness, either from the defense or the Attorney General?

5 MR. KISE: No, Your Honor.

6 MS. HABBA: No, Your Honor.

7 THE COURT: The witness is excused. I have no
 8 further questions. Thank you.

9 THE WITNESS: Thank you, sir.

10 (Whereupon, the witness is excused from the witness
 11 stand.)

12 THE COURT: Thank you.

13 As the trier of fact, I find that the witness is
 14 not credible; that he was referring to my law clerk, who is
 15 principal law clerk, who is sitting much closer to me, who
 16 doesn't have a barrier, whom I believe has been accused by
 17 the defendant of being partisan or Democrat or partisan
 18 Democrat. I hereby fine you \$10,000, which is on the low
 19 side, to be paid within 30 days to the Lawyer's Fund for
 20 Client Protection.

21 Would anybody like to say anything else?

22 MR. KISE: Your Honor, I would just object to that.
 23 I mean, there is one witness on the stand, the only witness
 24 on the stand. There is no evidence to the contrary other
 25 than in your mind and I don't want to go to a place where I

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1 don't think any of us want to go that you presupposed some
 2 ill motive on behalf of the only witness. I think that's a
 3 dangerous place to go, not just for the sanction, but also
 4 for the whole trial. I do think there is clear separation
 5 between the two.

6 I mean, the President was talking about the witness
 7 on the stand. I mean, we can all agree we have different
 8 views about whether it's next to you or next to you with a
 9 barrier, but he's next to you. I also think that there is
 10 -- respectfully, I think there is considerable tension
 11 caused by at least -- and I'll let Mr. Robert speak to this.
 12 It is unusual in my experience to have a law secretary, a
 13 law clerk sit on the bench. I will say that. And so I
 14 think that may have created some of the confusion.

15 Ordinarily, in my experience, law clerks are in,
 16 you know, not sitting right next to the judge on the bench,
 17 but in the morning where we have a principal witness on the
 18 stand who has lied, lied, lied and as I said earlier this
 19 morning, I'm not going to go back into that speech, but that
 20 was the focal point of the examination today, that was the
 21 focal point of the animus today, that was the focal point of
 22 the questions today from the media today, so I just would
 23 ask you to reconsider.

24 I mean, certainly I don't want to have to file,
 25 frankly, yet another appeal and I just think if you want to,

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1 again, warn the defendant about the responsibilities, but I
 2 just don't think there is any clear record here.

3 And in order to impose sanctions generally the
 4 record needs to be very clear. And see, that's what just
 5 happened is kind of what is creating the issue is that like
 6 I'm talking to you and the notes are being passed to you
 7 about things and I think from a defendant standpoint, not
 8 from a lawyer standpoint, from a defendant standpoint, that
 9 creates an appearance that is uncomfortable and I think that
 10 has created some of the confusion here.

11 But the President has testified that that's what he
 12 said. That's what I told you before. I think that's a fair
 13 interpretation of what's said and sanctions are not granted
 14 when there is gray. Sanctions are reserved for situations
 15 where it's a very clear situation. Last week, you exercised
 16 your discretion. I didn't object to that discretion in
 17 terms of what happened with the website. We explained it, I
 18 gave you as much detail as the Court asked for and we have
 19 since complied fully. "We" meaning the clients, have since
 20 complied fully with the order. So I would just ask that we
 21 don't create that -- another issue here because I think it
 22 has further ramifications for the overall proceeding,
 23 respectfully I do.

24 THE COURT: Just in response, I'll just say to me,
 25 totally separate from the trial. I mean, if you wanted to

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1 have ramifications you can have ramifications, but I don't.
 2 Mr. Robert?
 3 MR. ROBERT: So, Your Honor, I will speak from my
 4 experience in New York State. It is incredibly unusual and,
 5 quite frankly, in my experience, I've never seen a situation
 6 where you're literally trying the case to two judges it
 7 would appear whereas there are notes that are constantly
 8 being passed, rulings that it would appear that the Court is
 9 in consultation with the law secretary. I think it started
 10 out less frequently. Now I would say it's almost with each
 11 ruling. There is some concern on part of defendants as a
 12 result of that.
 13 I agree with Mr. Kise's statement about opposing
 14 any imposition of sanctions in this case, but I do think
 15 this is as good a time as any to express the defendant's
 16 concern about what would appear to be the problem or the
 17 challenge that we face and that we feel like we're trying
 18 the case before two judges and sometimes you appear to be
 19 leaning in one direction and then you'll either receive a
 20 note or there will be an eye gesture or a roll of the face
 21 and something changes and it is of significant concern to
 22 us, not just during examination of witnesses by us,
 23 examination by the Attorney General, but also in the general
 24 presentation of our case here. So I just wanted to put that
 25 on the record, sir.

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1 THE COURT: Okay.
 2 Ms. Habba?
 3 MS. HABBA: I'd just like to say as I said this
 4 morning, I'm going to reiterate something. I, myself, was a
 5 law clerk. I never sat next to the judge. The judge would
 6 actually never even allow me to come in front unless to
 7 watch oral argument, but all discussions about the case were
 8 when we were researching and deciding what the order can be.
 9 I've never experienced this and I've been practicing law for
 10 quite sometime now, unfortunately, for my age, but, Your
 11 Honor, all due respect, I agree with the sentiments.
 12 I also think that we have to remember that you made
 13 your decision on this trial before we walked in regarding
 14 liability and we've been sitting here like he said -- and,
 15 frankly, I would like to add that I've been sitting here for
 16 longer than both my cocounsel. I've been doing this with
 17 you for now a few years from the Special Proceeding and now
 18 the trial and I have had issues, numerous issues, and if
 19 we're going to make a complete record with the treatment
 20 that I've received from Ms. Greenfield from the bench, it is
 21 inappropriate. I do not like having eyes rolled, I do not
 22 like being yelled at by law clerks who did not earn the robe
 23 and I think this is completely inappropriate.
 24 And, quite honestly, Your Honor, with this
 25 sanction, it only furthers my belief that the influence that

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1 is happening from the bench is completely inappropriate and
 2 should stop. Thank you.
 3 MR. KISE: Can I just say one more thing, Judge?
 4 THE COURT: Sure.
 5 MR. KISE: Thank you. I just want to go back to
 6 where I began because the record on the sanction relates to
 7 what happened outside. The testimony you received in the
 8 courtroom and neither of those present a clear picture of
 9 the supports and award of sanctions. It's clear that it's
 10 fully subject to interpretation. I think the speaker has to
 11 be taken at face value as to what he was talking about and
 12 the entirety of the conversation related to the testimony as
 13 it usually does when these press conferences occur. They
 14 usually relate to what just happened in the courtroom and
 15 what is happening in the courtroom is Michael Cohen. And so
 16 that's top of line. Whether you and I or anyone else would
 17 agree "next to you" means next to you on the left or next to
 18 you on the right, you know, everyone has a different
 19 interpretation of it and because of that I would say that
 20 the President's interpretation is a fair interpretation.
 21 It's what he meant. He's the speaker. There is nothing in
 22 the record that would refute that, so I just again would
 23 urge the Court to reconsider the judgment of sanctions
 24 because there is just not a clear record here.
 25 If you are concerned about future violations or a

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1 violation then that is within your province to direct
 2 further the defendant or any of us for that matter, but I
 3 would say this record does not support any sanction and I
 4 would urge the Court to reconsider.
 5 THE COURT: Let me address all the comments about
 6 my consultations, I'll call them. I make the final
 7 decisions. I value input from both of my law clerks. Every
 8 judge does things differently. I don't know whether there
 9 are other judges in this courtroom or city or country have
 10 their law clerks sit up on the bench. That's how I do
 11 things and I make the final decisions.
 12 I guess I can't consult now, you know, and look
 13 terrible, wouldn't it? So I won't. I am reconsidering.
 14 I don't think I said this before, but the idea that
 15 the statement would refer to the witness, you know, there is
 16 somebody sitting up there alongside of him, that was a
 17 partisan Democrat whatever, that doesn't make any sense to
 18 me.
 19 MR. KISE: I mean, it -- again, in context, it
 20 certainly does, to me, given the circumstances and given the
 21 obvious animus, the admitted animus on the witness stand
 22 that Mr. Cohen has for my client. So, again, in context, I
 23 just think it has to be taken that way.
 24 If Your Honor would like to -- I know you want to
 25 keep the schedule moving. If you want to take it under

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1 advisement further and reconsider, I'll just leave that to
 2 you, but I just would ask that you take time and reconsider
 3 this. Thank you.
 4 THE COURT: I've been thinking about it obviously
 5 for quite a while now.
 6 Ms. Habba?
 7 MS. HABBA: The only factual thing I would like to
 8 add is the questions that have been out and I have obviously
 9 standing there have been related to Michael Cohen's
 10 testimony as well as to political matters. That has been
 11 the scope of their questions.
 12 Ms. Greenfield was never in the front of mind or
 13 even asked about. So for what it's worth, Your Honor, I
 14 have not heard that, nor would he be responding to that. It
 15 just doesn't make sense.
 16 THE COURT: I just need a little technical
 17 assistance. I want to see the exact quote again. I'm
 18 quoting in part, "with a person who is very partisan sitting
 19 alongside of him, perhaps even much more partisan than he
 20 is." I think the three attorneys that just spoke you've
 21 made my whole point. That's what he's worried about, that
 22 there is sitting alongside of me who is consulting with me.
 23 MR. KISE: Respectfully, I disagree with that. The
 24 person that's sitting next to you this morning is way more
 25 partisan than -- well, I'm not saying -- I'm going to leave

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1 THE COURT: Can you hear him in the back?
 2 Yes, I think so. The mic's picking up.
 3 MR. ROBERT: And I'll speak louder.
 4 So the housekeeping item was Defendant's
 5 Exhibit 953, which was the December 12, 2018 transcript from
 6 Judge Pauly and the Defendant's Exhibit 961, which was the
 7 February 28, 2019 deposition transcript. Just want to make
 8 sure those are in evidence and if not, to move them in now
 9 just to make things run smoother and quicker this afternoon.
 10 MS. FAHERTY: I think, Your Honor, I believe you
 11 admitted 953 over my objection and the transcript for 961 is
 12 the transcript for 961. I don't have a basis to object
 13 here.
 14 THE COURT: They're both in evidence.
 15 MR. ROBERT: Thank you.
 16 THE COURT OFFICER: Witness entering.
 17 (Whereupon, the witness enters the courtroom and
 18 approaches the witness stand.)
 19 THE COURT: I'll remind the witness he's still
 20 under oath.
 21 Let's proceed with the questioning.
 22 CROSS EXAMINATION
 23 BY MR. ROBERT:
 24 Q Good afternoon, Mr. Cohen.
 25 A Good afternoon.

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1 that alone, but the witness is the one that's obviously
 2 partisan. That's been the whole point of the cross
 3 examination. That's been the whole point of the morning is
 4 that he's partisan. He's a liar, he's biased, he makes
 5 money off of -- again, you know, you heard my speech.
 6 That's really the focal point.
 7 THE COURT: I think that -- I would disagree. The
 8 focal point was he's dishonest, not that he's some sort of
 9 partisan democrat.
 10 MR. KISE: Well, that, too. I'll take that.
 11 THE COURT: I've reconsidered. The ruling stands.
 12 You're fined \$10,000. Don't do it again or it will be
 13 worse. Let's get the witness in.
 14 MR. ROBERT: Your Honor, just a couple of
 15 housekeeping things as we're waiting for the witness.
 16 THE COURT: Sure.
 17 MR. ROBERT: I just want to make sure Defendant's
 18 Exhibit 953, which is the December 12, 2018 transcript and
 19 Defendant's Exhibit 961, which was the February 28, 2019
 20 transcript are in evidence. I don't --
 21 MR. KISE: Your microphone.
 22 MR. ROBERT: Can you hear me?
 23 MS. HABBA: Yes, but we can't hear him and I'm
 24 sitting right here.
 25 MR. ROBERT: Is this better? Can you hear he now?

M. Cohen - Plaintiff - cross (Robert) Page 2425

1 Q You took an oath yesterday before you took the stand,
 2 did you not?
 3 A I did.
 4 Q And you promised to tell the truth, did you not?
 5 A I did.
 6 Q And you realize that if you don't tell the truth you're
 7 committing a lie; correct?
 8 A Correct.
 9 Q And that's perjury; correct?
 10 A Correct.
 11 Q And you remember in times past you've also taken an
 12 oath when you've testified; correct?
 13 A Correct.
 14 Q And you testified this morning that other times that
 15 you've testified under oath you've testified falsely; correct?
 16 A Correct.
 17 Q And one of those times was in the Southern District of
 18 New York; correct, sir?
 19 A Correct.
 20 Q And that's literally if we can see out the window next
 21 door; correct?
 22 A If you say so.
 23 Q Well, it was in the Southern District of New York;
 24 correct?
 25 A Yes.

M. Cohen - Plaintiff - cross (Robert) Page 2426

1 Q You had been indicted by the United States Attorney of
 2 the Southern District of New York; correct?
 3 A Yes.
 4 Q And the criminal proceedings relating to that
 5 indictment was in the Southern District of New York; correct?
 6 A Yes.
 7 Q And you remember appearing in court for those various
 8 indictments; correct?
 9 A Correct.
 10 Q I think it was a total of, what was it, eight or nine
 11 indictments that you faced?
 12 A Initially eight and another one for the 1001 violation,
 13 so nine.
 14 Q So a total of nine indictments?
 15 A Correct.
 16 Q And the first indictments were heard before Judge
 17 Pauly; correct?
 18 A That's correct.
 19 Q And the second one was heard before Judge Carter;
 20 correct?
 21 A Yes.
 22 Q And would you agree with me, sir, that when a person is
 23 charged with a serious felony, it's serious?
 24 THE COURT: That's a tautology.
 25 MR. ROBERT: It's like an Austin Powers question,

M. Cohen - Plaintiff - cross (Robert) Page 2427

1 but I figured I'd try.
 2 Q It's an important event in a person's life when they're
 3 charged criminally; correct?
 4 A Yes, it was.
 5 Q Other than finding out they have cancer, it may be one
 6 of the serious things that happens to a person. Would you agree
 7 with me, sir?
 8 A There are many things.
 9 Q Yes or no?
 10 A I don't agree with you, no.
 11 Q So, sir, being indicted criminally -- withdrawn.
 12 In your case was it serious that you were indicted
 13 criminally?
 14 A Yes.
 15 Q You were facing jail; correct?
 16 A Yes.
 17 Q Prison?
 18 A Yes.
 19 Q You actually went to prison; right?
 20 A Correct.
 21 Q And as part of the process a person is arraigned;
 22 correct?
 23 A Correct.
 24 Q And as it comes a point in time when a person is asked
 25 whether they're guilty or not guilty?

M. Cohen - Plaintiff - cross (Robert) Page 2428

1 A Correct.
 2 Q And at first you pled that you were not guilty;
 3 correct?
 4 A I don't recall that, no.
 5 Q Well, you don't recall originally entering an
 6 appearance of not guilty and then later changing it to guilty?
 7 A No.
 8 Q Well, sir, can we agree that eventually you did plead
 9 guilty?
 10 A Yes.
 11 Q And, sir, the process when you were -- withdrawn.
 12 And the first set of indictments was before Judge
 13 Pauly; correct?
 14 A Yes.
 15 MS. FAHERTY: Just to clarify, I think they were
 16 counts on an indictment. I don't think it was multiple
 17 indictments, just for clarity's sake.
 18 Q So it was two indictments; one was for eight counts and
 19 one was for one count. We understand each other?
 20 A I understand.
 21 MR. ROBERT: The witness and I get it, Ms. Faherty.
 22 Thank you.
 23 Q So it was a series of two indictments; correct, sir,
 24 with nine counts?
 25 A Yes.

M. Cohen - Plaintiff - cross (Robert) Page 2429

1 Q And when you went to court one day it was determined
 2 that you were going to plead guilty to those counts; correct?
 3 A When I appeared in court?
 4 Q Yes.
 5 A Yes.
 6 Q And you understood the importance when you were before
 7 Judge Pauly of pleading guilty; correct?
 8 A Yes.
 9 Q And this was not where you walked into court and five
 10 minutes later you walked out; right?
 11 A Yes, it was.
 12 Q So when you appeared on August 21, 2018 for your -- to
 13 plead guilty, you'd say that was a five-minute appearance?
 14 A Maybe not five minutes, but it wasn't all day.
 15 Q I didn't ask you if it was all day.
 16 A So yes, it was more than five minutes.
 17 Q It was very extensive; right?
 18 A Define "extensive."
 19 THE COURT: Wait. Why don't you just ask him how
 20 long it was.
 21 MR. ROBERT: I'm going to get there, Your Honor.
 22 Q Sir, during the course of that appearance before Judge
 23 Pauly, Judge Pauly made various statements to you, did he not?
 24 A He did.
 25 Q Including he said to you, quote, "Mr. Cohen, do you

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M. Cohen - Plaintiff - cross (Robert) Page 2430

1 understand, sir, that you are now under oath and that if you
 2 answer any of my questions falsely, your false or untrue answer
 3 may later be used against you in another prosecution for perjury
 4 or making a false statement." And you responded, "I do, Your
 5 Honor." Do you remember that?
 6 MS. FAHERTY: Your Honor, I just want to note my
 7 objection for the record, which was similarly raised earlier
 8 this morning. If we are asking the witness to form legal
 9 conclusions, that is entirely improper. I am noting my
 10 objection, especially as we're throwing around the
 11 slanderous buzzword "perjury" like we did earlier.
 12 Reasserting myself, Your Honor.
 13 MR. KISE: Your Honor --
 14 THE COURT: Overruled.
 15 Q Answer my question, sir.
 16 A Can you repeat it?
 17 MR. ROBERT: Could the court reporter repeat it?
 18 THE COURT: Read back, please.
 19 (Whereupon, the requested portion of the
 20 proceedings was read back by the court reporter.)
 21 A I do.
 22 Q And do you further recall Judge Pauly saying to you,
 23 quote, "My questions are intended to satisfy me that you wish to
 24 plead guilty because you are guilty and that you fully
 25 understand the consequences of your plea."

M. Cohen - Plaintiff - cross (Robert) Page 2431

1 Do you remember that, sir?
 2 A I do.
 3 Q This was a serious day; correct?
 4 A Yes.
 5 Q And Judge Pauly took this incredibly seriously, did he
 6 not?
 7 A You're asking me to figure out what Judge Pauly
 8 thought?
 9 Q So you don't think Judge Pauly took the proceedings
 10 seriously? You don't know?
 11 A I'm not in a position --
 12 MS. FAHERTY: Objection.
 13 THE COURT: Sustained. Yes or no?
 14 Q Did you take him seriously?
 15 A Asked and answered, but yes.
 16 Q What was asked and answered? Did you take him
 17 seriously?
 18 A Yes.
 19 THE COURT: You did ask him that and he did answer
 20 that.
 21 Q And, sir, during the course of those proceedings Judge
 22 Pauly asked you over 50 questions about the crimes that you are
 23 about to plead guilty to, didn't he?
 24 A I don't know the number.
 25 Q Well, sir, I mean, I can spend the next two days going

M. Cohen - Plaintiff - cross (Robert) Page 2432

1 through it, but in the document that's in evidence as
 2 Defendant's Exhibit 951, Judge Pauly asks you over 50 questions.
 3 Do you have a reason to quarrel with me when I say that?
 4 A I don't.
 5 Q And sir, you understood that Judge Pauly was asking you
 6 those 50 questions because he needed to satisfy himself that you
 7 were in fact guilty; correct?
 8 A I don't know what Judge Pauly was thinking.
 9 Q Well, it's not about what he's thinking. He said to
 10 you while you were in court that day to plead guilty, quote:
 11 "My questions are intended to satisfy me that you wish to plead
 12 guilty because you are guilty and that you fully understand the
 13 consequences of your plea." If you want to look, sir, it's on
 14 page eight, lines one through five.
 15 MS. FAHERTY: Is that a question?
 16 MR. ROBERT: It is. I asked him -- we can have the
 17 question read back, Your Honor.
 18 THE COURT: While he's looking, sidebar, please.
 19 Sidebar or front bar I like to call it.
 20 (Whereupon, an off-the-record discussion is held at
 21 the side bar.)
 22 THE COURT: Read back of the last question, please.
 23 (Whereupon, the requested portion of the
 24 proceedings was read back by the court reporter.)
 25 Q It's not about what you think Judge Pauly meant. He

M. Cohen - Plaintiff - cross (Robert) Page 2433

1 explained to you why he was asking all those questions, did he
 2 not?
 3 A He did.
 4 Q And in response to those questions, you lied to him;
 5 true?
 6 A That's true.
 7 Q And then about a month or so later there are additional
 8 charges that are brought against you; correct?
 9 A That's correct.
 10 Q And at that point you appear before Judge Carter;
 11 correct?
 12 A Correct.
 13 Q And at that point you enter a guilty plea before Judge
 14 Carter; correct?
 15 A Correct.
 16 Q And that was for you pleading guilty to lying to
 17 Congress; correct?
 18 A Correct.
 19 Q And on that occasion Judge Carter asked you over 76
 20 questions to satisfy him that you were guilty. Do you remember
 21 that?
 22 A I don't remember the number.
 23 Q Well, do you remember that he asked you several
 24 questions to satisfy himself that you were in fact guilty?
 25 A Yes.

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1 Q And at that point when you gave that testimony in the
 2 Southern District of New York were you lying then?
 3 A No.
 4 Q So you lied to Judge Pauly on August 21st, but you
 5 didn't lie to Judge Carter on November 29th. That's your
 6 testimony here today?
 7 A Yes.
 8 Q Okay. And, sir, you were then subsequently sentenced a
 9 few weeks later, were you not?
 10 A Yes.
 11 Q And that sentencing was on December 12, 2018; correct?
 12 A Correct.
 13 Transcript continues on the following page....
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M. COHEN - PLAINTIFF - CROSS(MR. ROBERT) Page 2435

1 Q And you lied at your sentencing, didn't you?
 2 A On?
 3 Q First, sir, did you lie at your sentencing, yes or no?
 4 A I don't know what you're referring to. I apologize.
 5 Q Well, you don't remember that you were sentenced for
 6 criminal conduct on December 12, 2018?
 7 A I was sentenced.
 8 Q You were sentenced to prison, correct?
 9 A Correct.
 10 Q And you don't know as you sit here today whether you
 11 lied that day?
 12 A At sentencing?
 13 Q Correct.
 14 A I -- I -- I don't know what you're even referring to.
 15 Q It is not a question of what I'm referring to. I
 16 promise you that we are going to get there, sir.
 17 A I can't answer your question.
 18 Q So you don't know as you sit here today whether you
 19 lied to Judge Pauley at your sentencing, do you?
 20 A Are you referring to when I took the -- when I
 21 accepted the sentence?
 22 THE COURT: Mr. Cohen, it is not --
 23 THE WITNESS: I apologize. I'm just lost with the
 24 question.
 25 THE COURT: It seemed pretty straightforward to me.

M. COHEN - PLAINTIFF - CROSS(MR. ROBERT) Page 2436

1 Did you lie at the sentencing hearing?
 2 Q Correct?
 3 THE COURT: And it is not a question of what he is
 4 referring to. He's asking you a question. Did you lie at
 5 the sentencing hearing?
 6 THE WITNESS: I don't recall.
 7 Q You don't recall whether you lied at your sentencing?
 8 A I don't recall. I have no idea what you're talking
 9 about.
 10 Q The man that was deciding how much prison time you were
 11 going to take and you don't remember if you lied? I don't know
 12 who you keep looking at for an answer. Maybe you should look
 13 up.
 14 A I'm trying to understand your question.
 15 MS. FAHERTY: Can we avoid the commentary, Your
 16 Honor?
 17 THE COURT: I thought it was understandable under
 18 the circumstances.
 19 What don't you understand? Did you lie at your
 20 sentencing hearing? You know what a sentencing hearing is.
 21 You know what a lie is.
 22 A I stated I lied at the plea, but the sentencing, I
 23 stood there and I received the sentence. There -- I don't
 24 recall that there was much communication going back and forth
 25 which is why I'm asking you to clarify your question.

M. COHEN - PLAINTIFF - CROSS(MR. ROBERT) Page 2437

1 Q You don't remember making a statement under oath to
 2 Judge Pauley on the day he was going to sentence you to take you
 3 away from your family?
 4 A Yes. Yes. Actually, I know what you are talking about
 5 now.
 6 Q Now, you remember?
 7 A Yes, I do.
 8 Q And you lied?
 9 A I did.
 10 Q So you lied when you pled guilty, right? We know the
 11 answer already, but just tell me.
 12 A Asked and answered. How many times are you going to
 13 ask me the same question.
 14 Q I know you think you're a lawyer, but you're not.
 15 A Yes, I know that.
 16 Q So, sir, you lied at the time -- you lied more than
 17 once in federal court, correct?
 18 A Correct.
 19 Q When the stakes affected you personally, right?
 20 A Correct.
 21 Q And you mislead a federal judge?
 22 A Yes.
 23 Q And one of the charges that you pled guilty to, which
 24 you say today you still are guilty of, is that you lied to
 25 Congress, right?

M. COHEN - PLAINTIFF - CROSS(MR. ROBERT) Page 2438

1 A Correct.

2 Q And you pled guilty to that in December of 2018,

3 correct?

4 A Correct.

5 Q And then, sir, you were sentenced, correct?

6 A Yes.

7 Q And you reported to prison some time thereafter,

8 correct?

9 A Correct.

10 Q So after you lied at your time that you pled guilty,

11 you lied to Judge Pauley at your sentencing. You then lied to

12 Congress couple of months after you lied at your sentencing,

13 didn't you?

14 A I don't recall.

15 Q Sir, this morning you were shown testimony that in

16 February of 2019, you lied to Congress. That was the testimony.

17 Do you remember that?

18 A I remember it being asked.

19 Q Yes. And sir, that is Defendant's Exhibit 961 in

20 evidence and that was in February of 2019. That was less than

21 three months after you had already pled guilty to lying to

22 Congress. You then lied to Congress in between the time you

23 were sentenced and going to prison, true?

24 A What -- and what page are you on?

25 Q I'm not on a page. I'm asking you a question, sir.

M. COHEN - PLAINTIFF - CROSS(MR. ROBERT) Page 2439

1 MR. ROBERT: Your Honor, can I have the question

2 read back, please?

3 THE COURT: Sure. Readback, please.

4 MR. ROBERT: Thank you.

5 (Whereupon, the requested portion of the record was

6 read back.)

7 A I don't know if what I had said here is a lie.

8 Q You testified earlier, sir, that it was a lie.

9 A Off of that sentence.

10 Q So, sir, did -- the question on page 149: "Did Mr.

11 Trump direct you or Mr. Weisselberg to inflate the numbers for

12 his personal statement. Answer, "I'm sorry." "Did he ask me to

13 inflate the numbers? Not that I recall, no."

14 That was your testimony under oath to Congress in

15 February of 2019; yes or no?

16 A No.

17 Q That's not the testimony?

18 A That is the testimony.

19 Q That is --

20 A It is not a lie.

21 Q That's what you said?

22 A That is not a lie.

23 Q So your testimony is that Mr. Trump and Mr. Weisselberg

24 did not tell you to inflate the numbers, correct; yes or no,

25 sir? You can't have it both ways.

M. COHEN - PLAINTIFF - CROSS(MR. ROBERT) Page 2440

1 A I'm sorry. Can you repeat the question?

2 MR. ROBERT: Your Honor, if I could have the

3 question read back.

4 THE COURT: Readback, please.

5 (Whereupon, the requested portion of the record was

6 read back.)

7 A Correct. They did not tell me.

8 Q To inflate the numbers?

9 A To inflate the numbers overtly.

10 Q Sir, that was the sworn testimony you gave to Congress,

11 correct?

12 A That's correct.

13 Q And this morning when you were asked if that was a lie,

14 you said, "Yes, it was a lie." That was your testimony?

15 A Correct.

16 Q So you lied to Congress in February of 2019, correct?

17 It's not that hard.

18 A It is because --

19 Q Sir, yes or no?

20 THE COURT: All right. Just questions.

21 Q Sir --

22 MS. FAHERTY: Thank you, Your Honor.

23 Q February of -- let's do it the easy way. You pled

24 guilty in December of '18, correct?

25 A I did.

M. COHEN - PLAINTIFF - CROSS(MR. ROBERT) Page 2441

1 Q Can we agree that from February of '19 to December of

2 '18 is three months?

3 A Yes.

4 Q So can we agree that within three months --

5 THE COURT: From when to when?

6 MS. FAHERTY: I was a little confusing for me, too.

7 MR. ROBERT: Even better.

8 Q Within two months.

9 A What two months are you now referring to?

10 Q Sir, in December of 2018, you pled guilty in Judge

11 Pauley's courtroom to a smorgasbord of crime, correct?

12 A That's how he characterized it, yes.

13 Q Those were his words, Judge Pauley's, correct?

14 A Yes.

15 Q Those weren't my words. Those were Judge Pauley's.

16 A Correct.

17 Q One of those smorgasbord crime was lying to Congress,

18 correct?

19 A Correct.

20 Q Now we fastforward and I thank Ms. Faherty for helping

21 me with the math. We are now two months ahead.

22 So two months after you plead guilty to lying to

23 Congress -- I don't know why you keep looking to the left.

24 A I'm staring where I want to stare, sir.

25 THE COURT: He can look where he wants. Come on.

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M. COHEN - PLAINTIFF - CROSS(MR. ROBERT) Page 2442

1 Q Two months after you pled guilty to lying to Congress,
 2 before you had to report to prison, you lied to Congress again,
 3 correct?
 4 A No.
 5 Q You didn't lie to Congress again?
 6 A Mr. Trump did not --
 7 THE COURT: No. No. No speech.
 8 THE WITNESS: This will go on forever unless he
 9 lets me explain.
 10 Q I'm sure they are going to try to rehabilitate you. I
 11 don't know how.
 12 A So the answer is no.
 13 Q The answer is no. So now you are saying when you
 14 talked earlier about the fact that that was a lie to Congress,
 15 now that's a lie?
 16 A No. I made a mistake.
 17 Q So you made a mistake --
 18 A I made a mistake.
 19 Q -- when you testified under oath --
 20 A Because it's --
 21 THE COURT: Mr. Cohen. You're interrupting the
 22 lawyer. Just wait and let him finish the question.
 23 THE WITNESS: Okay.
 24 Q So let me get this straight. So now you're saying when
 25 you testified earlier that you lied to Congress in February of

M. COHEN - PLAINTIFF - CROSS(MR. ROBERT) Page 2444

1 the numbers on his personal statement, correct; yes or no? Yes
 2 or no?
 3 A Correct.
 4 MR. ROBERT: If I may have a moment, Your Honor.
 5 THE COURT: Sure.
 6 (Whereupon, there was a pause in the proceedings.)
 7 MR. ROBERT: Your Honor, I have no further
 8 questions at this time, but would ask for an immediate
 9 directed verdict because the state's key witness who they
 10 base their entire case on has now testified that Mr. Trump
 11 and Mr. Weisselberg did not direct him to inflate the
 12 numbers.
 13 We have had other bases and we will make a directed
 14 verdict motion at the end of the plaintiff's case, but I
 15 can't think of anything more appropriate now in light of
 16 this witness' testimony that the case be brought to an end.
 17 THE COURT: Denied.
 18 MS. FAHERTY: Thank you, your Honor.
 19 THE COURT: Ms. Faherty or anyone else, would you
 20 like to re-direct the witness?
 21 MS. FAHERTY: I would, Your Honor. Can I take two
 22 minutes to get my things together?
 23 THE COURT: Sure. Of course.
 24 MS. FAHERTY: Thank you, Your Honor.
 25 (Whereupon, there was a pause in the proceedings.)

M. COHEN - PLAINTIFF - CROSS(MR. ROBERT) Page 2443

1 '19 and you just testified in the last five minutes that you
 2 lied and you testified to Congress in February of '19, now you
 3 are saying, "I didn't lie when I testified to Congress in
 4 February of '19." Is that what you are saying?
 5 A Yes.
 6 Q So now you're saying that that statement is a true
 7 statement, correct?
 8 A Correct.
 9 Q You are now saying under oath after all of the
 10 examination of the Attorney General and all the
 11 cross-examination, you're now saying that Mr. Trump did not
 12 direct you or Mr. Weisselberg to inflate the numbers on his
 13 personal statement? Is that what you're saying, sir; yes or no?
 14 A Mr. Trump did not --
 15 Q Yes or no, sir?
 16 A You know what?
 17 MR. ROBERT: Your Honor, please.
 18 THE COURT: I direct the witness to answer yes or
 19 no and the question was yes or no.
 20 A I stand with that response, "Not that I recall, no."
 21 Q I stand with the response, "Not that I recall, no."
 22 So you're saying that this was truthful testimony; yes
 23 or no?
 24 A Yes.
 25 Q Okay. So Mr. Trump then never directed you to inflate

M. COHEN - PLAINTIFF - REDIRECT(MS. FAHERTY) Page 2445

1 MS. FAHERTY: Your Honor, may I proceed?
 2 THE COURT: Please.
 3 REDIRECT EXAMINATION
 4 BY MS. FAHERTY:
 5 Q Mr. Cohen, you were asked a number of questions about
 6 your sentencing in the Southern District of New York. Do you
 7 recall that?
 8 A Yes.
 9 Q And in connection with your sentencing in the Southern
 10 District of New York, did you and your counsel put together
 11 what's called a sentencing memo?
 12 A Yes.
 13 Q Did you put information about your understanding of the
 14 crimes you had pled guilty to into that sentencing memo?
 15 A Yes.
 16 Q And did you provide information to the court about your
 17 position as to your guilty plea in that sentencing memo?
 18 A Yes.
 19 Q Did you also information to the court about the factual
 20 circumstances surrounding your guilty pleas into that sentencing
 21 memo?
 22 A Yes.
 23 Q Did you submit that to the court in the hopes that the
 24 court would review that information?
 25 A Yes.

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MICHAEL COHEN October 25, 2023

M. COHEN - PLAINTIFF - REDIRECT(MS. FAHERTY) Page 2446

1 Q And accept that information from you?

2 A Yes.

3 Q In connection with the -- your sentence in the

4 Southern District of New York?

5 A Yes.

6 MS. FAHERTY: Your Honor, I'd like to pass forward

7 a document I've premarked as PX 3299. I put it up, the

8 cover page, on the screen. I'll just ask Mr. Cohen if he

9 recognizes this document.

10 A I do.

11 Q What do you recognize this to be, Mr. Cohen?

12 A This is the sentencing memorandum on my behalf that was

13 produced by myself and guy Petrillo of Petrillo, Klein & Boxer,

14 my criminal attorneys at the time.

15 Q And is it your understanding that this sentencing memo

16 was, in fact, considered before the Southern District of New

17 York pronounced sentence on you in connection with the crimes to

18 which you pled guilty in the Southern District of New York?

19 A Yes.

20 MS. FAHERTY: Your Honor, I move to admit this

21 document.

22 MR. ROBERT: Objection, Your Honor. It's

23 bolstering the witness. Unless in these 33 pages it says

24 that he's actually not guilty, it is completely irrelevant.

25 And I haven't read these 33 pages, but I don't think Mr.

M. COHEN - PLAINTIFF - REDIRECT(MS. FAHERTY) Page 2448

1 statements about, you know, why I think the punishment is

2 too severe or why I think my circumstances are different,

3 that's irrelevant and it is completely admissible under the

4 prior consistent statement exception.

5 And I can cite the Court to the Melendez case, 54

6 AD2d 864. It is a First Department case. The Giordano

7 case, 9 AD2d 947. It is a Second Department case. People

8 v. McKlean, 69 NY2d 426 which is a Court of Appeals case. I

9 mean, I probably have 20 here, but you told me before you

10 only need a couple, so -- but -- but unless the statement

11 is fully consistent with what this witness has testified to

12 here in open court, meaning he told Judge Pauley or he wrote

13 something in court back then that says "I'm not guilty of

14 these crimes," it cannot come in under the prior consistent

15 statement exception.

16 It's just completely inadmissible. It doesn't

17 satisfy any of the prerequisites and we haven't had a chance

18 to go through that memorandum, but we can. We could take a

19 few-minutes break and look, but I doubt seriously that there

20 is anything in there that's consistent with what this

21 witness has said today about him not being guilty because

22 Judge Pauley never would have accepted a plea under those

23 circumstances. It is not possible.

24 MS. FAHERTY: He can speak for the judge now.

25 MR. KISE: I can speak to --

M. COHEN - PLAINTIFF - REDIRECT(MS. FAHERTY) Page 2447

1 Petrillo in the sentencing memo told Judge Pauley that the

2 client lied and he is actually not guilty of the crime. So

3 I don't see what the relevance of this would be.

4 MR. KISE: Right, Your Honor. The rule for

5 admissibility of prior consistent statements, which is a

6 very narrow limitation on the hearsay rule, is the statement

7 has to be characterized as a recent fabrication or perjury.

8 We satisfied that and the same statement was made at a time

9 pre-dating the statement in court. So it has to be the same

10 statement. It can't be a different statement. It can't be

11 an inexplorable [sic] statement.

12 If there are statements that say in there, "I am

13 not guilty," "I'm pleading guilty even though I'm not

14 guilty," that might be acceptable. We don't know because we

15 haven't been able to go through it. Anything in there about

16 excuses why he did the crime or why he thinks the penalty is

17 too much or why there's extenuating circumstances, that's

18 all improper rehabilitation. It is all complete hearsay.

19 If he said at the time, which clearly he did, because Judge

20 Pauley would never have accepted the plea. I've been to

21 enough sentencings.

22 So if he said at the time "I'm not guilty," "I'm

23 not guilty," "I'm not guilty" like he said here today under

24 oath, then that statement could come in as a prior

25 consistent statement. But just general statements or

M. COHEN - PLAINTIFF - REDIRECT(MS. FAHERTY) Page 2449

1 MS. FAHERTY: To the extent that we need a rule

2 that supports why this evidence is admissible, 4514, Your

3 Honor, under the CPLR, respectfully, this is perfectly fair

4 game, perfectly admissible and perfectly in line with the

5 evidence these attorneys have put forth before this Court

6 that you and your liberal discretion have permitted with

7 regards to a sentencing of Mr. Cohen.

8 In fact, they moved to admit and you accepted the

9 sentencing memo submitted by the federal government in that

10 action. So, Your Honor, respectfully, this is appropriate

11 and I have moved this into evidence despite the objection.

12 MR. KISE: Your Honor, our document was introduced

13 as impeachment. This document is being introduced to

14 attempt to rehabilitate an un-rehabilitatable witness and

15 the law is just very clear on this. This is not subject to

16 debate. So unless the statement is consistent with the

17 testimony presented in this courtroom, consistent, not

18 inconsistent, not maybe, not moving around it, it has to be

19 fully consistent.

20 I think the example I gave when we had this issue

21 with Mr. Larson is if the witness says today that the light

22 is green and he's challenged that that's a recent

23 fabrication, then you can introduce prior statements that

24 say where the witness said under oath the light was green.

25 Fine, but here, you have a situation where the witness is

M. COHEN - PLAINTIFF - REDIRECT(MS. FAHERTY) Page 2450

1 saying on the stand the light is green and the prior
 2 statements just like with Mr. Larson are the light is red, I
 3 don't know, maybe, I'm not sure, all those things. Those
 4 aren't prior consistent statements.
 5 This is improper bolstering with hearsay. The
 6 prior consistent statement exception to the hearsay rule is
 7 one of the narrowest exceptions that there is. So the idea
 8 they can just bring something in because we introduced a
 9 sentencing memorandum for an entirely different person, this
 10 isn't -- the law doesn't work that way. The statement must
 11 be fully consistent and the Court must make a finding
 12 specifically on the record that it is fully consistent.
 13 So if the government would like to point out
 14 exactly where in that memorandum Mr. Cohen said, "I'm not
 15 guilty of this crime", "I'm pleading guilty even though I'm
 16 not guilty," and "I plan to lie to Judge Pauley by answering
 17 his questions with I'm guilty because I'm pleading guilty
 18 because I am," fine. But I doubt anywhere in that
 19 memorandum is a statement consistent with what this witness
 20 has testified to in this courtroom.
 21 THE COURT: You doubt that anywhere in the
 22 memorandum is a statement --
 23 MR. KISE: I can't imagine again. Look, I can't
 24 speak for Judge Pauley, but I can speak to all the federal
 25 sentencings I attended and I can tell you that no federal

M. COHEN - PLAINTIFF - REDIRECT(MS. FAHERTY) Page 2451

1 judge that I ever encountered would take a plea from an
 2 individual who stood in front of him and said, "Yes, I'm
 3 pleading guilty just because I'm not really guilty." That's
 4 the purpose of the colloquy. That's the purpose of this as
 5 Mr. Robert pointed out, the purpose of the 55 or 58 or 78
 6 questions. I think state judges here, my experience is the
 7 same. In fact, in New York State court, the defendant has
 8 to allocute, specifically allocute. It is even different
 9 than federal court.
 10 THE COURT: What was the CPLR section to which you
 11 referred?
 12 MS. FAHERTY: 4514, Your Honor.
 13 THE COURT: It is very short. Let me read it out
 14 loud because I want to read it anyway. "In addition to
 15 impeachment in the manner permitted by common law," I
 16 studied that in law school, "any party may introduce proof
 17 that any witness has made a prior statement inconsistent
 18 with his testimony if the statement was made in a writing
 19 subscribed by him or was made under oath."
 20 MR. KISE: So now they're proceeding under the
 21 impeachment rule, the inconsistent statement? They're going
 22 to impeach their own witness with prior inconsistent
 23 statements. I mean, that's extraordinary.
 24 MS. FAHERTY: Your Honor --
 25 MR. KISE: The only possible basis it can come in

M. COHEN - PLAINTIFF - REDIRECT(MS. FAHERTY) Page 2452

1 is prior inconsistent statement. They can't impeach their
 2 own witness with prior --
 3 THE COURT: Ms. Faherty, is that the right
 4 provision?
 5 MS. FAHERTY: It is a prior consistent statement.
 6 This counsel is trying to repeatedly impeach the witness
 7 with his statements. He has made prior consistent
 8 statements. Under the rules of evidence, that is
 9 permissible rehabilitation. That is an exception to
 10 hearsay.
 11 THE COURT: Am I correct that that's not the
 12 section you were referring to?
 13 MS. FAHERTY: I pulled the wrong section, Your
 14 Honor. My apologies.
 15 MR. KISE: Again, Your Honor, it has to be a prior
 16 consistent statement. The case law is -- from the Court of
 17 Appeals on down is very clear on this. It can't just be any
 18 statement. It can't be a statement that's general subject
 19 matter. It can't be a statement that's inconsistent. It
 20 has to be the light was green, the light was green. It's
 21 really simple. So if he has -- if they have evidence where
 22 this witness said to Judge Pauley in that proceeding before
 23 "I'm not guilty" and that's in that sentencing memorandum,
 24 then that would be fair game; but it is not if it's just
 25 statements about why it's lenient or why I think I shouldn't

M. COHEN - PLAINTIFF - REDIRECT(MS. FAHERTY) Page 2453

1 be punished, the usual --
 2 MS. FAHERTY: Your Honor, New York Guide to
 3 Evidence 8.31, a prior consistent statement: "A statement
 4 of a witness made prior to his or her testimony and
 5 consistent with that testimony is admissible when offered to
 6 rebut an express or implied claim of recent fabrication and
 7 when the statement was made prior to the circumstances
 8 supporting that claim." I believe that is sufficient, Your
 9 Honor.
 10 MR. KISE: So Your Honor --
 11 THE COURT: Last word.
 12 MR. KISE: First let me applaud Ms. Faherty for
 13 making something that's really mundane very
 14 interesting. I'll give her that.
 15 MS. FAHERTY: I tell you.
 16 MR. KISE: The words that she read are exactly what
 17 we're saying. We're actually saying the same thing. They
 18 have to be prior consistent statements. They have to be the
 19 light was green, the light was green. "I'm not guilty,"
 20 "I'm not guilty." It can't be "I'm not guilty," "I'm
 21 guilty." It can't be "I'm guilty, but I think I should have
 22 these extenuating circumstances and now you say I'm not
 23 guilty." They have to match up. It has to be identical.
 24 It has to match up. So I just think that's the rule.
 25 It's not really difficult. The case law is very

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M. COHEN - PLAINTIFF - REDIRECT(MS. FAHERTY) Page 2454

1 clear. This is a very narrow exception, very narrow
 2 exception and they're trying to shoehorn in a whole litany
 3 of sentencing considerations, none of which I am sure tell
 4 Judge Pauley "I'm not actually guilty of these crimes."
 5 THE COURT: Mr. Robert, quickly, if anything.
 6 MR. ROBERT: I know when to not speak.
 7 THE COURT: I think we're making a mountain out of
 8 a molehill. We've been spending hours and hours about the
 9 witness' credibility or lack thereof. What's sauce for the
 10 goose is sauce for the gander and I think we established
 11 that. The prosecution sentencing memorandum came in. This
 12 is coming in. I don't even know what's in it. We're
 13 arguing about --
 14 MR. KISE: Respectfully, Your Honor, that's the
 15 whole point. In order to admit it, you have to make a
 16 finding that the statements are identical, that they match
 17 up, that they're both consistent. The light was green the,
 18 light was green. That's the requisite finding under the
 19 case law.
 20 MR. ROBERT: Maybe the solution is if the
 21 government wants to show us in here where he says, "I'm
 22 really not guilty," we will look at it.
 23 MS. HABBA: I think they should pull out a specific
 24 portion. I think if it's allowed in, it should be a
 25 specific portion as I did, not the entirety. That's what

M. COHEN - PLAINTIFF - REDIRECT(MS. FAHERTY) Page 2456

1 cited -- again, I can go on with many more. I know. This
 2 is a very narrow exception, very narrow.
 3 THE COURT: Anything else to say before I rule one
 4 way or the other? I have a coin here I can flip, you know.
 5 MS. FAHERTY: I think you have the complete
 6 wherewithal to understand the basis for having this document
 7 in front of you, Your Honor. I think you understand the
 8 speechifying that has occurred unnecessarily. I would like
 9 to move along from this point. Mr. Cohen has testified as
 10 to what this document is, what information was contained in
 11 the sentencing memo, and how, if at all, it impacted
 12 sentencing.
 13 THE COURT: I don't remember him testifying to what
 14 is in this sentencing memo.
 15 MS. HABBA: Thank you, Your Honor.
 16 MR. KISE: That's the point.
 17 MS. FAHERTY: Let's go through it then. Your
 18 Honor, I think if I have to go through it, it is a waste of
 19 this Court's time.
 20 MR. KISE: No. No.
 21 MS. HABBA: That's how this works.
 22 MS. FAHERTY: It is just such a waste of the circus
 23 show that this has divulged into.
 24 MR. KISE: The rules and the case law from the
 25 Court of Appeals on down are a waste of time? I realize

M. COHEN - PLAINTIFF - REDIRECT(MS. FAHERTY) Page 2455

1 she objected to. That was her own objection to my question.
 2 THE COURT: Let's go back a step. It is an
 3 out-of-court statement, right? Are you introducing it to
 4 prove the truth of its contents?
 5 MS. FAHERTY: Sorry, Your Honor?
 6 THE COURT: Are you introducing it to prove the
 7 truth of its contents?
 8 MS. FAHERTY: No.
 9 THE COURT: Then what are you introducing it for?
 10 MS. FAHERTY: To rebut the very testimony that they
 11 solicited on cross-examination which --
 12 MR. KISE: No. She's introducing it to prove the
 13 truth of its contents meaning on a prior date when he didn't
 14 have a reason to -- recent fabrication, that he made a
 15 statement fully consistent, identical statement, an
 16 identical statement. That's the purpose of the prior
 17 consistent statement exception to the hearsay rule.
 18 So yes, it is absolutely being offered to prove the
 19 truth of the matter asserted. The matter asserted is the
 20 contents of the statement, that his statement then and his
 21 statement now are fully consistent. So you can't introduce
 22 a prior consistent statement for any other reason than to
 23 demonstrate that the two are identical.
 24 So it is definitely being offered to prove the
 25 truth of the matter asserted and the cases I've

M. COHEN - PLAINTIFF - REDIRECT(MS. FAHERTY) Page 2457

1 that is the government's position. That's been their
 2 position with President Trump's case from the beginning,
 3 that the rules don't apply, the law doesn't apply, nothing
 4 applies, COVID rules don't apply, everything else doesn't
 5 apply.
 6 MS. FAHERTY: Mr. Kise.
 7 MR. KISE: No, you had your say. So the point is
 8 there are laws and there are rules. If they want to make a
 9 specific proffer to the Court that there are specific
 10 statements that are identical, the light was green, the
 11 light was green and they're identical and the Court finds
 12 that these specific statements are identical, then they can
 13 offer to introduce those. But to just throw the memo over
 14 the top and say, "I want that in there" because I know where
 15 this is headed. I've been down this road before. Born at
 16 night, but not last night.
 17 What they'll do is they'll throw it in there and
 18 then later pull out something in a memo and say, "Look.
 19 Look. Here. This is in evidence now." No. No. It
 20 doesn't operate that way, prior consistent statement
 21 exception. It is very, very, very, very narrow. This is
 22 not a speech. This is a recitation of the law.
 23 MS. HABBA: Your Honor, briefly. As we know, Ms.
 24 Faherty liked to jump up when I was getting up and asked me
 25 what statement I was trying to put in, not an entire

Page 2458

1 document, not even an entire article. I would like to know
 2 what statement she has in this 33 pages, please. Where is
 3 it referenced?
 4 MS. FAHERTY: "Mr. Cohen, in the sentencing memo on
 5 page three, paragraph C, is there a subtopic heading, "The
 6 Nature of the Offense Conduct?" "Yes."
 7 MS. HABBA: What?
 8 MR. ROBERT: What?
 9 MS. HABBA: We must be looking at --
 10 MS. FAHERTY: Page 13, paragraph C.
 11 MR. KISE: Should we do this in the presence of the
 12 witness line by line.
 13 MS. HABBA: Perhaps not.
 14 MS. FAHERTY: Which way would you like it, Counsel?
 15 MR. KISE: With the witness not here and we can go
 16 through it, the way it is contemplated.
 17 THE COURT: Hold on.
 18 (Continued on the next page.)
 19
 20
 21
 22
 23
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 25

M. Cohen - Plaintiff - redirect (Faherty) Page 2459

1 THE COURT: Ms. Faherty, I don't know what's in
 2 here. You'll have to go through it.
 3 MS. FAHERTY: Your Honor, if I may?
 4 THE COURT: If you want to not --
 5 MS. FAHERTY: -- on the issue and I could submit a
 6 letter. It might be more helpful to the Court because
 7 Counsel I don't think will actually allow me to get through
 8 this and I think we can just move it along.
 9 THE COURT: Okay. Sure.
 10 MR. KISE: That's fine if they want to submit
 11 something later after the witness.
 12 MS. FAHERTY: Okay.
 13 Q Mr. Cohen --
 14 THE COURT: By the way, I don't want spend to much
 15 time on this. We keep micromanaging these little pieces of
 16 a big case.
 17 MR. KISE: That's why we're here.
 18 MS. HABBA: He just admitted he didn't tell him to
 19 do what he said he did. We're done. We can move on.
 20 THE COURT: You reserve the right to put it in a
 21 memo why this should come in.
 22 Q Mr. Cohen, you were asked on cross about numerous
 23 positive statements that you made about Donald J. Trump. Do you
 24 recall that?
 25 A I do.

M. Cohen - Plaintiff - redirect (Faherty) Page 2460

1 Q Did that end at some point?
 2 A Yes.
 3 Q When?
 4 A It ended in -- well, it ended with my interview with
 5 George Stephanopoulos where I stated that my wife, my daughter,
 6 my son have my first loyalty, as well as my country, and that I
 7 would not be the villain of his story.
 8 Q Do you recall about when that was?
 9 A 2018, maybe 2019.
 10 Q And can we pull up Defendant's Exhibit D 961 and turn
 11 to page 149?
 12 A Yes.
 13 Q You were asked a number of questions on this particular
 14 page with regard to your prior testimony. Is that fair,
 15 Mr. Cohen?
 16 A Correct.
 17 Q Ms. Habba asked you certain questions; correct? You
 18 recall that?
 19 A Yes-or-no question, yes.
 20 Q Mr. Robert asked you a number of questions; fair?
 21 A Yes.
 22 Q I believe I heard you wanted to offer an explanation
 23 that you may not have been permitted to fully testify on.
 24 Would you like to provide an explanation that you were
 25 not previously able to provide in response to Counsel's

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1 questions earlier on this particular document and this
 2 particular page?
 3 MR. KISE: Objection. Calls for a narrative. She
 4 needs to ask a specific question about what it is she is
 5 seeking. This is a witness on direct, so she needs to ask a
 6 specific questions, but appropriate questions, not a leading
 7 question and not a question that's open-ended. Just tell us
 8 what you know. It needs to be a specific question.
 9 THE COURT: Interesting issue. I don't think it
 10 does. I think you can ask the witness is there anything
 11 else you need to tell us or want to tell us.
 12 So answer the question, please.
 13 A When I was asked the question did he ask me to inflate
 14 the numbers, he did not specifically state "Michael, go inflate
 15 the numbers." As I stated in my books, and I've stated
 16 publicly, Donald Trump speaks like a mob boss and what he does
 17 is he tells you what he wants without specifically telling you.
 18 So when he said to me "I'm worth more than five million. I'm
 19 actually worth maybe six, maybe seven, could be eight," we
 20 understood what he wanted.
 21 So when they asked me did Mr. Trump direct you or
 22 Mr. Weisselberg to inflate the numbers for his personal
 23 statement and I stated "no, not that I recall, no," that's what
 24 I was referring to.
 25 Then, if you continue down as opposed to just cherry

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1 picking the lines, "did overhear any conversations with Allen
 2 Weisselberg" -- "with Mr. Trump and Allen Weisselberg?"
 3 "No."
 4 The statements that I heard from Mr. Trump directing me
 5 and Allen were he wanted to rise in the Forbes 400 list and he
 6 directed that Allen and I go and meet with the writer of Forbes
 7 and give her the information, explain to her the value of the
 8 assets, which we already -- I think we're missing a page.
 9 Q It's on the screen, Mr. Cohen.
 10 A -- were inflated.
 11 "So the value of the assets on those personal financial
 12 statements were to your understanding inflated?"
 13 My answer, "yes."
 14 It then goes on, "Okay. Now, if those were submitted
 15 to an insurance firm or a bank and they were sworn to, might
 16 that be evidence of a crime?" I stated "I actually pled guilty
 17 to it."
 18 Q Was that the clarification you wanted to add to your
 19 answer that you weren't permitted to answer before?
 20 A Yes.
 21 MS. FAHERTY: No further questions, Your Honor.
 22 Thank you, Mr. Cohen.
 23 THE COURT: Any re-recross?
 24 MR. KISE: Give us one minute, Your Honor.
 25 (Whereupon, there is a pause in the proceedings.)

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1 arguably equivocal statement by one witness who I don't
 2 consider the key witness. And there is enough evidence in
 3 this case to fill this courtroom. So denied, but you can
 4 make it again at the end of plaintiff's case.
 5 MR. ROBERT: We will. Thank you, sir.
 6 THE COURT: Since I'm denying it now, I don't think
 7 it's going to change, although actually all the other
 8 evidence presented, I assume. So I understand where it's
 9 coming from, but I hope you understand where I'm coming
 10 from.
 11 MR. ROBERT: Thank you, sir.
 12 THE COURT: All right. Witness is excused. Thank
 13 you.
 14 (Whereupon, the witness is excused from the witness
 15 stand.)
 16 THE COURT: All right. Counsel are going to stay,
 17 but everyone else, 10:00 a.m. tomorrow. Have a good rest of
 18 the day. That's it for the day, except for counsel.
 19 (Whereupon, the trial proceedings are adjourned to
 20 October 26, 2023 at 10:00 a.m.)
 21
 22
 23
 24
 25

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1 MR. ROBERT: Your Honor, we have no further
 2 questions. But, once again, I renew my request for a
 3 directed verdict again because Mr. Cohen in addition to now
 4 admitting to perjury several times, unequivocally has said
 5 that Mr. Trump and Mr. Weisselberg did not direct him to
 6 inflate the numbers and even this purported redirect
 7 examination has done nothing to change the facts that the
 8 government's key witness has fallen flat on his face and
 9 there is no way they can make out a prima facie case.
 10 So, again, at the close of the evidence in the
 11 plaintiff's case we'll make a formal motion for directed
 12 verdict, but at this point I once again must strenuously
 13 request that this Court grant relief and end this case once
 14 and for all on behalf of all defendants, sir.
 15 THE COURT: Absolutely denied. This case has
 16 evidence, credible or not, all over the place. There is a
 17 200-page complaint, there is a 35-page summary judgment
 18 decision referring all sorts of evidence.
 19 The fact that one witness, who I don't necessarily
 20 consider from what I've seen to be a key witness, I don't
 21 think there is a key witness, who said something which he
 22 has now -- however you want to categorize it, taken back.
 23 That's absurd, Mr. Robert. I mean, you and I respect each
 24 other and I -- you're a very good lawyer, but no way, no how
 25 this case is being dismissed because of an equivocal --

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MICHAEL COHEN October 25, 2023

Table with 5 columns containing legal case references and counts. Column 1: year (1), years (11), year's (5), yelled (1), yes-or-no (4), yesterday (17), yesterday's (1), YORK (36), young (1), YouTube (5), Z, zoom (2), 0, 07921 (1), 1, 1:18 (1), 1:18-CR-602 (1), 10 (1), 10:00 (2), 10:11 (1). Column 2: 2369:10, 10:30 (1), 2348:23, 10005 (1), 2302:21, 1001 (1), 2426:12, 10022 (1), 2303:16.5, 101 (1), 2303:3.5, 10165 (1), 2303:14, 102 (1), 2345:2, 103:19 (1), 2369:16, 11:45 (1), 2371:11, 11556 (1), 2303:8, 12 (5), 2302:9.5;2423:18; 2424:5;2434:11; 2435:6, 13 (4), 2355:15,17,22; 2458:10, 1430 (1), 2303:10.5, 149 (2), 2439:10;2460:11, 15 (7), 2317:21;2323:5,24; 2389:1;2400:16; 2404:12,19, 15th (1), 2388:22, 16 (3), 2329:1,20;2330:1, 17 (1), 2372:17, 179 (2), 2337:12,16, 18 (2), 2440:24;2441:2, 180 (1), 2337:16, 19 (4), 2441:1;2443:1,2,4, 1987 (2), 2382:3;2401:12, 1988 (1), 2382:3, 2, 2.8 (1), 2331:24, 2:15 (3), 2307:19;2411:11,14, 20 (4), 2403:11,17,21;. Column 3: 2448:9, 200 (1), 2390:17, 2000 (1), 2331:11, 2007 (1), 2317:17, 200-page (1), 2463:17, 2011 (9), 2317:22;2320:12; 2331:18;2332:7; 2400:16;2404:12,19; 2406:13,20, 2012 (1), 2317:21, 2014 (1), 2407:3, 2015 (24), 2320:12;2328:7,10, 15,24;2329:1,20; 2330:1;2346:16,20; 2352:2;2353:11,12,24; 2355:8,11;2394:18; 2396:18;2398:9; 2400:9;2402:9; 2404:23;2405:3,6, 2016 (5), 2355:9,15,18,22; 2402:12, 2017 (9), 2317:17;2345:7; 2396:1,19,20;2403:7, 11,18,21, 2018 (9), 2309:19;2423:18; 2424:5;2429:12; 2434:11;2435:6; 2438:2;2441:10; 2460:9, 2019 (11), 2407:24;2408:18; 2410:18,20;2423:19; 2424:7;2438:16,20; 2439:15;2440:16; 2460:9, 2022 (2), 2335:20;2369:7, 2023 (4), 2302:14;2389:1; 2407:19;2464:20, 21 (3), 2335:20;2402:12; 2429:12, 21st (1), 2434:4, 22 (1), 2406:13, 24 (2), 2305:11;2345:7, 240 (1), 2303:10.5, 24973/2015 (1). Column 4: 2369:6, 25 (1), 2302:14, 26 (2), 2403:7;2464:20, 28 (11), 2302:20.5;2353:12, 24;2404:23;2405:3,6; 2407:19;2408:18; 2410:17;2423:19; 2424:7, 29 (2), 2309:19;2352:2, 29th (1), 2434:5, 3, 3 (3), 2331:11,25;2396:19, 30 (4), 2328:24;2398:9; 2400:9;2415:19, 31 (1), 2407:3, 32302 (1), 2303:4, 3299 (1), 2446:7, 33 (4), 2347:15;2446:23,25; 2458:2, 341 (7), 2363:13,23;2364:5, 9,17;2366:11,15, 344 (1), 2366:11, 35-page (1), 2463:17, 37 (4), 2302:1.5;2304:1; 2372:1;2412:2, 4, 4 (10), 2353:14;2358:12,14, 15,22;2359:11; 2360:22,23;2361:4; 2402:8, 40 (1), 2302:10, 400 (2), 2337:17;2462:5, 401 (1), 2302:9.5, 426 (1), 2448:8, 42nd (1), 2303:13.5, 431 (1), 2331:15, 4514 (2). Column 5: 2449:2;2451:12, 452564/2022 (1), 2302:6, 4600 (1), 2303:13.5, 5, 50 (5), 2350:3;2369:25; 2431:22;2432:2,6, 526 (1), 2303:7.5, 54 (1), 2448:5, 55 (1), 2451:5, 58 (1), 2451:5, 58-2 (1), 2357:19, 6, 6,580,300,000 (1), 2328:22, 6:15 (1), 2355:24, 60 (2), 2302:13;2303:13.5, 69 (1), 2448:8, 7, 725 (1), 2303:16, 729 (1), 2328:14, 750 (1), 2303:3.5, 76 (1), 2433:19, 78 (1), 2451:5, 8, 8.31 (1), 2453:3, 8:10 (1), 2389:1, 86:25 (1), 2318:16, 864 (1), 2448:6, 87:7 (1), 2318:17, 9, 9 (4), 2346:16,20;2369:7;

**PEOPLE OF THE STATE OF NEW YORK v.
DONALD J. TRUMP, et al.**

**MICHAEL COHEN
October 25, 2023**

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In The Matter Of:
NYS Attorney General v.
Donald Trump, et al.

Michael Holl, Sherri Dillon
October 26, 2023

Janelle C. London, RMR, CRR & Nicole Robinson, SCR

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1 SUPREME COURT OF THE STATE OF NEW YORK
 2 COUNTY OF NEW YORK : CIVIL TERM : PART 37
 3 ----- X
 4 PEOPLE OF THE STATE OF NEW YORK, BY
 5 LETITIA JAMES, ATTORNEY GENERAL OF
 6 THE STATE OF NEW YORK,
 7
 8 Plaintiff,
 9
 10 Index No.
 11 -against- 452564/2022
 12 DONALD J. TRUMP; DONALD TRUMP, JR.; ERIC TRUMP;
 13 IVANKA TRUMP; ALLEN WEISSELBERG; JEFFREY MCCONNEY;
 14 THE DONALD J. TRUMP REVOCABLE TRUST; THE TRUMP
 15 ORGANIZATION, INC.; TRUMP ORGANIZATION, LLC;
 16 DJT HOLDINGS, LLC; DJT HOLDINGS MANAGING MEMBER;
 17 TRUMP ENDEAVOR 12, LLC; 401 NORTH WABASH VENTURE,
 18 LLC; TRUMP OLD POST OFFICE, LLC; 40 WALL STREET,
 19 LLC.; AND SEVEN SPRINGS, LLC,
 20
 21 Defendants. X
 22 60 Centre Street
 23 New York, New York 10013
 24 October 26, 2023
 25

B E F O R E:
 HONORABLE ARTHUR F. ENGORON,
 Justice, Supreme Court

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 (Appearances continued on the next page.)

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1 THE COURT OFFICER: All rise. Part 37 is now in
 2 session. The Honorable Judge Arthur Engoron presiding.
 3 Make sure all cell phones are on silent. Laptops and cell
 4 phones will be permitted, but only to members of the press.
 5 There is absolutely no recording or photography of any kind
 6 allowed in the courtroom. Now be seated and come to order.
 7 THE COURT: Hello, everybody. I don't run and up
 8 down these steps anymore. I don't have the energy to do so.
 9 I don't bow down because I'll probably trip and break my
 10 neck.
 11 Okay. We're up to -- I understand there is five
 12 minutes or so of housekeeping on the record?
 13 MR. KISE: Two minor things -- well, one minor and
 14 one a record item.
 15 We did receive the Attorney General's filings as to
 16 Ivanka Trump last night. It was 11:30, so given --
 17 THE COURT: Sauce for the goose is sauce for the
 18 gander as we say.
 19 MR. KISE: So the 12 hours or so that we have given
 20 -- can we have until 2:15? Can we have until the end of the
 21 lunch break? I mean, we are on trial.
 22 THE COURT: Chris, you ask so much, but okay.
 23 MR. KISE: Thank you, Judge.
 24 The second item -- I mean, if we can do it sooner
 25 we will. I just don't -- we're in process right now and

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 Senior Court Reporters

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1 it's -- the schedule is kind of cramped.
 2 The second is I would just ask Your Honor -- and
 3 I'm just going to make a brief record and a brief plea for
 4 Your Honor to reconsider the sanction order of yesterday,
 5 two parts to that.
 6 Number one, I will say I went back and looked at
 7 the entirety of the video and will say to the Court the
 8 premise is still not supported by any evidence. The only
 9 testimony in the record is that when the statement was made
 10 he meant Michael Cohen. The review of the statement itself,
 11 at least in my mind, and this is where I pointed out to the
 12 Court yesterday and I went back to make sure that my
 13 recollection was correct, that the review of the statement
 14 does not support the sanction either.
 15 President Trump stated "very partisan judge" and
 16 quote, "With a person who is very partisan sitting alongside
 17 of him, perhaps even more partisan than he is."
 18 And the very next sentence after that is "so we are
 19 doing very well. He's a totally discredited witness."
 20 Now, I'm not going to offer a grammar lesson here,
 21 but to me the -- the "he" in the immediately subsequent
 22 sentences is referring to the person in the immediately
 23 preceding sentence. That's how I certainly took it at the
 24 time.
 25 In fact, if you watch the video, I'm standing there

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1 sort of stone faced. I think -- I'm not going to comment on
 2 that. I think -- and if I thought there was a violation of
 3 an order I probably would have reacted. But in all events,
 4 sanctions must be based on clear conduct. This wasn't clear
 5 conduct. The conduct is not -- is susceptible to an
 6 innocent explanation and for that reason I would ask the
 7 Court to reconsider.

8 Secondly, though, and I think as importantly, if
 9 not more importantly, accepting the Court's premise that it
 10 was in fact a reference to your law secretary, I think that
 11 raises even more problematic considerations for the Court to
 12 take into account. These are significant First Amendment
 13 considerations when we're talking about the kind of
 14 statement that was made yesterday. Again, I don't accept --
 15 and President Trump as you can tell from his testimony
 16 doesn't accept the premise that in fact he was referring to
 17 anyone other than Michael Cohen. But to the extent that the
 18 Court is saying that he does -- he was, then barring a
 19 defendant from commenting on his perception of fairness in a
 20 proceeding is simply, you know, based on his own
 21 observations is not, respectfully, constitutional.

22 I mean, these perceptions of the defendant are
 23 perceptions of what he is observing in open court. The case
 24 itself it's fair to say -- I mean, we can debate whether
 25 it's fully political or somewhat political, but in any

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1 event, it's political.

2 The Attorney General has made numerous public
 3 comments both prior to bringing the case and during the case
 4 about getting Trump and a political agenda here and the
 5 defendant is the leading candidate it seems even in New York
 6 now for the presidency of the United States. So he is
 7 entitled to comment even beyond what a normal event would
 8 be. I mean, the restrictions on political speech become
 9 much more -- much greater consideration. So the notion that
 10 he cannot comment on the fairness of a proceeding with even
 11 a general reference to what he sees and perceives
 12 legitimately as bias is constitutionally infirmed.

13 I mean, this violates the First Amendment. His
 14 perception is based on him sitting here in the courtroom,
 15 watching your law secretary make comments to you, pass notes
 16 to you. He's -- he said to me numerous times when I'm
 17 arguing because when I'm arguing I'm focused on the witness
 18 or on yourself, but he's always said every time you get up
 19 to argue the law secretary is writing notes advocating.
 20 These are his perceptions.

21 You, Your Honor, may disagree with those
 22 perceptions, but these are his perceptions. He is a
 23 defendant in a proceeding where his business is being
 24 attacked and he's entitled to comment fairly on what he
 25 perceives in open court. Your law secretary's presence on

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1 the bench is open and public. That's a point that he has
 2 made and I have to echo anyone can observe that. So him
 3 commenting on that fact is well within the bounds of his
 4 First Amendment rights. Him commenting on the bias that may
 5 result from that is well within his First Amendment rights.
 6 He did not name anyone yesterday. Again, he was talking
 7 about Michael Cohen. But accepting the Court's premise
 8 there was no one named and all defendants in any proceeding
 9 have a right to comment on what they believe is a perceived
 10 lack of fairness or on some impediment to receiving a
 11 complete and full, fair trial.

12 We don't have a jury. You've heard him comment on
 13 that before. The system doesn't allow him the jury under
 14 the circumstances and so that's also problematic and he's
 15 free to comment on that as well. But limiting a defendant's
 16 right to comment appropriately on observations that are made
 17 in open court, you know, again, I will note that everyone
 18 can observe your law secretary on the bench and when the
 19 photographers that you have let in here come in they're
 20 photographing the bench. There is no attempt to shield that
 21 public fact from the photographers that the media is
 22 covering this on a daily basis, albeit a little less today,
 23 but on a daily basis.

24 So this is open, public and the defendant has a
 25 First Amendment right to comment on what he believes and

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1 perceives I think legitimately from his perspective as a
 2 potential source of bias and limiting that runs afoul of the
 3 First Amendment in general with respect to defendants, but
 4 also even more under the heightened scrutiny of restricting
 5 and placing prior restraints on political speech of a
 6 presidential candidate.

7 There was no reference to anyone by name, there was
 8 nothing more than an observation about proximity and bias.
 9 Both of those are -- fall well within the fair bounds of the
 10 First Amendment comment, again, for any defendant but
 11 certainly for a defendant who is a candidate for President
 12 of the United States.

13 So, respectfully, Your Honor, I'd ask you to
 14 reconsider your order, one, because the President as he
 15 testified, the only evidence was referring to Michael Cohen;
 16 and two, because as stated the order is constitutionally
 17 infirmed.

18 To the extent, Your Honor intends to proceed then
 19 with the order and affirm the order, then I would ask
 20 respectfully that you reduce it to writing so that it can be
 21 appealed and I would also ask that at some point in the
 22 proceedings during a break that we be allowed since
 23 photographers have been in here to photograph the empty
 24 bench so the Appellate Court has a record of exactly what
 25 the setting is with where you're sitting, where Michael

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1 Cohen would have been sitting, where your law secretaries
2 are sitting so that there is a full record there. I hope
3 that that won't be necessary. I think that -- I know that
4 President Trump understands your order and to the extent you
5 want to reaffirm that order with him when he's back here
6 that's certainly acceptable and appropriate to continue to
7 admonish the defendant of the bound of the order, but I
8 don't think that the order entered yesterday survives
9 constitutional scrutiny, respectfully. Thank you, Judge.

10 MR. AMER: Your Honor?

11 THE COURT: I was going to ask the plaintiff if any
12 Counsel wants to say anything.

13 MR. KISE: One thing I would also point out before
14 Mr. Amer speaks. My understanding of the CDC guidelines and
15 based on their representations is individuals who are
16 returning after five days should be wearing masks. Again,
17 no one seems to be concerned about this on the Attorney
18 General's side and it was represented to us that was going
19 to happen and apparently it was not.

20 MR. AMER: That's not true. The CDC guidelines say
21 if you test negative over a 48-hour period you no longer
22 have to wear a mask and I'm within the guidelines, so I
23 choose not to wear a mask.

24 THE COURT: Okay. Anything else you want to say?

25 MR. AMER: Yes. I want to address Mr. Kise's

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1 arguments he makes. Two points, Your Honor. The first
2 point is request for you to reconsider the sanction order.
3 I would just say I haven't heard anything that justifies
4 granting reconsideration. Your Honor put Mr. Trump on the
5 stand under oath. You heard his testimony, you assessed his
6 credibility that's within your purview and you made your
7 decision which I think should stand. Nothing new or
8 different has been brought to this Court's attention as far
9 as I could tell.

10 With respect to Mr. Kise's second argument, it
11 seems to be a challenge to this Court's gag order. I would
12 suggest, Your Honor, that there is absolutely nothing
13 improper and everything appropriate with your gag order.
14 The First Amendment has limits, Your Honor, carefully narrow
15 tailored the gag order to address the safety of your staff.
16 You did not prevent Mr. Trump from attacking or criticizing
17 you. You did not limit Mr. Trump from criticizing the
18 Attorney General, at least one other judge. A federal judge
19 in Washington, D.C. has issued a similar order to protect
20 her staff. That gag order is appropriate and based on the
21 assumption of Mr. Kise's second argument, which is that
22 Mr. Trump was referring to your law -- principal law clerk,
23 he is asking that you vacate your gag order. We think there
24 is no reason for you to do so and that gag order is
25 perfectly appropriate.

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1 And I would say his second argument suggests that
2 Mr. Trump doesn't believe that your gag order is valid in
3 the first place and has bearing on then whether Mr. Trump
4 took it seriously and who he was referring to during his
5 press conference.

6 I will also say if you watch the video of his press
7 conference he was asked multiple times by the press who he
8 was referring to and he refused to answer that question, so
9 that's all I have to say. Thank you, Your Honor.

10 MR. KISE: Your Honor, one, so I don't know where
11 to begin. First of all, I'm not sure that the Attorney
12 General has a dog in this hunt, but I'll leave that to you,
13 number one.

14 Two, the Attorney General is oversimplifying the
15 constitutional analysis, not surprisingly, because doing
16 that favors their blurring of the lines position. So
17 irrespective of whether we believe the gag order is
18 constitutional facially, certainly there is a distinct
19 difference between facial unconstitutionality and as applied
20 unconstitutionality.

21 The argument that I'm presenting to Your Honor as a
22 basis for reconsideration relates to irrespective of whether
23 the gag order itself is constitutional. The question that
24 hasn't been raised and need not be reached. The question is
25 as applied, your application of that order under these

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1 circumstances, whether that's constitutional and my argument
2 is that it is not because it is impinging upon the right of
3 any defendant to comment on anything that happens in open
4 court in full view of anyone, the media, anyone in this room
5 that impacts the adjudication of the proceeding. It's not
6 naming anyone, it's not a post on a website, it's not a
7 disparaging comment.

8 And setting aside whether those distinctions have
9 constitutional meaning here we're talking about a very
10 narrow and specific question as applied to the comments that
11 were made assuming, again, that he was speaking about
12 Mr. Cohen -- about your law secretary and not Mr. Cohen.
13 And, again, the Attorney General's observations about the
14 video are a non-sequitur -- the other coverage. Because
15 Mr. Trump was asked immediately before that were you talking
16 about the judge's law clerk? Did you violate the order? He
17 affirmatively said no. The fact that he didn't answer,
18 like, 50 more questions about the same subject doesn't
19 prevent anything other than he wasn't going to answer
20 questions about the same subject. But here you've got a
21 true significant, substantial impingement upon the
22 constitutional rights of any defendant. And here, the First
23 Amendment rights to political speech about observations, his
24 observations of what's taking place in open court, whether
25 one can agree or disagree, I think that he has a legitimate

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1 basis to raise these arguments because he is seeing as he's
 2 told me on a regular basis head nods, eye rolls, notes being
 3 passed, head shaking, you know, comments on arguments that
 4 I'm making. Again, usually when I'm making arguments, I'm
 5 doing what I'm doing now. I'm not paying attention to
 6 anybody else, so I don't see those things necessarily but
 7 the client does, the defendant does.

8 He's got every right to comment on -- just like if
 9 anything else were going on in the courtroom, any other
 10 public activity were taking place in the courtroom that
 11 might impact the adjudication of the proceeding. So he has
 12 a right to comment on that and as applied the order impinges
 13 upon that right. Any defendant has this right. And, again,
 14 there's been no attempt to otherwise shield anyone from
 15 public notoriety. The cameras that come into the courtroom
 16 film everyone that's here and everyone's aware of that.
 17 There's been no attempt to shield anyone on the bench or
 18 anyone else in the room from those cameras.

19 So I'm not sure that there is a meaningful
 20 distinction between that sort of notoriety and a comment by
 21 a defendant that hey, I'm not getting a fair trial because
 22 I'm observing that something's going on that's going to
 23 prevent me from getting a fair trial. It's no different
 24 from him saying I'm not entitled to a jury under this
 25 statute and that's wrong. That's not fair, that's not

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1 right.

2 And just because he's a candidate for President of
 3 the United States or, in fact, maybe because he's a
 4 candidate for President of the United States, that doesn't
 5 really alter anyone's ability to impinge on those rights.
 6 He has a right to make fair comment. And again, I don't --
 7 without getting into the issue of whether the overall gag
 8 order is constitutional or otherwise, as applied under this
 9 particular circumstance, it clearly -- I believe
 10 respectfully is not and that's the basis for the
 11 reconsideration. Thank you.

12 THE COURT: Briefly?

13 MR. AMER: Very briefly, Your Honor. I know a
 14 facial challenge when I hear one. That was a facial
 15 challenge, but it doesn't matter whether it's a facial
 16 challenge or a challenge that's applied. We think it's
 17 appropriate under the circumstances and we don't see any
 18 reason why Your Honor should reconsider or change the
 19 sanction order or revisit the gag order. Thank you.

20 THE COURT: Well, I will speak from notes, but
 21 they're my notes.

22 Mr. Kise, you should have seen me in law school. I
 23 was a real defender of the First Amendment. Justice is
 24 black and Douglas is absolutist, but as we all learn it has
 25 limits. Anybody can run for president. I am going to

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1 protect my staff. There are basically about three people.
 2 I don't think that's impinging on somebody's First Amendment
 3 rights to protect my staff.

4 I'll reconsider for -- because I haven't seen the
 5 video or even a full transcript, so let me see that and I
 6 think it may -- based on what was said, may work both ways.

7 In terms of -- Mr. Kise, I think a few times you
 8 said nobody was named. I certainly remember from law school
 9 or cases you can be liable for defamation even though you
 10 don't use the name of the person if it's clear to whom
 11 you're referring. Of course, that's an issue, but that's a
 12 factual issue and I'm the finder of fact.

13 I think I said this yesterday, but I've been
 14 thinking about it since. The irony here, the great irony is
 15 on the one hand you're saying Mr. Trump was not referring to
 16 my law clerk and then you make this whole big deal "but she
 17 is sitting right near me, you're passing notes, you're
 18 talking," which I said yesterday I have an absolute right to
 19 do. I think several members of defense team have said
 20 that's not how it's done, I haven't seen that. Well, this
 21 is how I do it and I think it's certainly within my
 22 discretion and my purview and I think it makes me a better
 23 judge that I listen to other opinions. But I'll stress
 24 again two years of a former Trump's term, I am the decider.
 25 Nobody knows everything, somebody has to decide.

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1 I do not consider this trial political at all. I
 2 understand the points or arguments about history or who said
 3 what to me. It's not a political trial. It's an Executive
 4 Law -- Judiciary Law 6312, whatever the law is and that's
 5 how I'm conducting it, that's how I'm deciding it. Just
 6 what was said doesn't violate the law and maybe finally,
 7 Mr. Kise, you asked that I reduce this to a writing, etc. so
 8 you can appeal. You can appeal the transcript. I did and I
 9 believe it's uploaded. Just confirmed it's been uploaded.

10 MR. KISE: That's fine. I didn't see that. I was
 11 working on the 11:30 filing from the AG, so I must have
 12 missed that.

13 THE COURT: It just happened, like, minutes before.

14 MR. KISE: All right. Thank you.

15 THE COURT: And I'll do this. I'll make you a
 16 deal. I'll reconsider the sanctions decision because I do
 17 want to see that the clip or the transcript. If you read
 18 the opinion and you'll see more reasons why I did what I did
 19 than I was able to enunciate yesterday.

20 MR. KISE: I'll certainly read it. Yes, Your
 21 Honor, absolutely.

22 THE COURT: And that's it. I'll leave it at that.
 23 I'll reconsider, but I made the decision and unless I say
 24 otherwise, the decision stands.

25 Okay. That's it for now, yes?

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1 MS. FAHERTY: One more point, Your Honor.
 2 THE COURT: Sure.
 3 MS. FAHERTY: As Counsel has already recognized we
 4 did have a filing that we e-mailed to the Court last night.
 5 However, we did not file it because in connection with that
 6 service of the papers there were certain exhibits that
 7 defendants have marked as confidential. In an abundance of
 8 caution, we didn't want to violate the protective order that
 9 is in place governing designated confidential materials.
 10 We asked permission to be able to file those
 11 materials. I respectfully request if Your Honor can give us
 12 that direction to do so and I'll make sure that those
 13 documents are filed in the public docket immediately.
 14 THE COURT: Are you looking for permission or
 15 direction?
 16 MR. KISE: Well, once we see what they are.
 17 MS. FAHERTY: You have them. We e-mailed them last
 18 night. You have them.
 19 MR. KISE: I know, but I do get up at 5:30.
 20 Between the hours -- between the hours of 10:30 and 5:30, I
 21 sleep.
 22 THE COURT: Of course. You can do whatever you
 23 want in that regard.
 24 MS. FAHERTY: Thank you, Your Honor.
 25 THE COURT: Sure. And by the way, to correct the

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1 record of sorts, I do think defendants have often filed
 2 papers rather late, maybe not 11, but 9 o'clock.
 3 MR. KISE: I'm still awake at 9:00.
 4 MR. AMER: I think you have a few other people who
 5 could read the papers too.
 6 THE COURT: All right. Let's just move on.
 7 Would you like to call your next witness,
 8 plaintiff?
 9 MR. AMER: Yes, Your Honor.
 10 People call Michael Holl to the stand.
 11 MR. ROBERT: We were told that Ms. Dillon was the
 12 first witness this morning.
 13 MR. AMER: No.
 14 MR. KISE: Ms. Dillon was supposed to be the
 15 witness yesterday afternoon and then she went home.
 16 MS. FAHERTY: Ms. Dillon is here. Mr. Holl will be
 17 a very quick witness. Based on the witness's schedules we
 18 are putting Mr. Holl first so that we could get him out. He
 19 is -- and if I were confusing in explaining this to Counsel,
 20 please accept my sincere apologies. Both witnesses will be
 21 on today. We just need to proceed with Mr. Holl first.
 22 And, again, my apologies to the Court, my apologies to
 23 Counsel. I thought I was clear, but if I was not, I'm
 24 sorry.
 25 MR. ROBERT: Well, first of all, we were under the

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1 impression it was going to be Ms. Dillon followed by
 2 Mr. Flores' continuation.
 3 MS. FAHERTY: No.
 4 MR. ROBERT: I even -- that's what we were told.
 5 MS. GREENFIELD: Yesterday, with Ms. Habba, she
 6 indicated it was going to be Mr. Holl and then Ms. Dillon.
 7 MS. FAHERTY: It's on our list, as well.
 8 MR. ROBERT: I understand. I was under a different
 9 assumption because I actually think that Mr. Flores was
 10 planning to be here this afternoon with his counsel because
 11 they were told to be here at 2:15, I think.
 12 MS. FAHERTY: Later in the afternoon.
 13 MR. ROBERT: So you're going to have three
 14 witnesses?
 15 MS. FAHERTY: Mr. Holl will be a very brief
 16 witness.
 17 MR. ROBERT: I understand. Is he going to appear
 18 on our case in chief if we want him? Is he a New York
 19 resident?
 20 MS. FAHERTY: I have no idea how you're proceeding
 21 with your case.
 22 MR. AMER: We did give you notice that we were
 23 calling him. Really?
 24 MS. FAHERTY: You are not always sandbagged, sir.
 25 I am apologetic that there was confusion. I'm trying to be

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1 clear with the schedule. We have stood up with the Court's
 2 principal law clerk, Ms. Greenfield, to discuss scheduling
 3 with defense counsel present. We have identified our list
 4 for Counsel and I'm sure you would agree that the past few
 5 days have been a bit chaotic. I have had no reasonable
 6 appraisal of the defendant's ability to calculate their own
 7 timing. So respectfully, this is the best we can do and
 8 this is how we are proceeding, sir.
 9 MR. ROBERT: Your Honor, it's the judge's
 10 determination, not yours, Ms. Faherty, but I appreciate your
 11 apology and I accept it. I'm not accusing you of anything.
 12 I'm just talking as a matter of practice and procedure. If
 13 you're going to call a witness then we then have to cross
 14 examine that witness we are entitled to notice of it. We
 15 were told we were starting with Ms. Dillon.
 16 MR. AMER: We were just told that Ms. Habba was
 17 advised that we were calling Mr. Holl first this morning, so
 18 you did have notice.
 19 THE COURT: That was my understanding was always it
 20 would be Holl, then Dillon.
 21 MR. ROBERT: Okay. Well, then, I would ask that
 22 the Attorney General make all accommodations to have him
 23 reappear if we need him.
 24 MR. AMER: No. We're calling the witness, we gave
 25 him notice. If they want to cross examine him, their chance

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1 is after our direct, period.
 2 THE COURT: If you need a little time after the
 3 direct.
 4 MR. ROBERT: I just want to put my objection on the
 5 record. And talk about sandbagging. Ms. Faherty started by
 6 an apology, now Mr. Amer is yelling. I don't know what
 7 their game is, but we'll proceed and our objection is on the
 8 record.
 9 THE COURT: Mr. Amer, stop yelling.
 10 MR. AMER: I don't think I was, Your Honor.
 11 THE COURT: If you weren't, then don't start.
 12 All right. I hope this has much to do about
 13 nothing. I believe you were notified through Ms. Habba.
 14 Let's get Mr. Holl.
 15 Get the witness, please.
 16 Transcript continues on the following page....
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M. HOLL - PLAINTIFF - DIRECT(MR. AMER)

1 A Yes.
 2 Q And how long have you worked at HCC?
 3 A A little over 20 years.
 4 Q Prior to starting at HCC, did you have any other
 5 employment in the insurance industry?
 6 A Yes.
 7 Q Can you describe that for us, please?
 8 A Sure. I worked for the Hartford out of college for
 9 about six months and then I worked for Chubb for about five
 10 years.
 11 Q In what area did you work for the Hartford and Chubb?
 12 A For Hartford, I was in the claims unit and then at
 13 Chubb, I was in the D&O claims unit.
 14 Q What does D&O stand for?
 15 A Directors and officers liability.
 16 Q Can you just describe for the Court very briefly what
 17 that line of insurance covers?
 18 A Sure. It covers exactly that. The directors on the
 19 board of companies and the officers if they're named in
 20 litigation.
 21 Q And is that a liability cover?
 22 A Yes.
 23 Q Focusing on your time at HCC, what department or
 24 division did you start in?
 25 A I started in the claims department.

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M. HOLL - PLAINTIFF - DIRECT(MR. AMER)

1 THE OFFICER: Witness entering.
 2 MICHAEL HOLL, a witness called by the Plaintiff,
 3 after having been first duly sworn by the Clerk of the Court,
 4 took the witness stand and testified as follows:
 5 THE COURT OFFICER: State your name and either home
 6 or business address on the record.
 7 THE WITNESS: Michael Holl. And the business
 8 address is 8 Forest Park Drive, Farmington, Connecticut.
 9 THE COURT: Please proceed.
 10 MR. AMER: Thank you, Your Honor.
 11 DIRECT EXAMINATION
 12 BY MR. AMER:
 13 Q Good afternoon, Mr. Holl. Can you, please, describe
 14 for us your educational background for us after high school?
 15 A I have a four years bachelor's degree of psychology
 16 from Eastern Connecticut State University.
 17 Q And when did you receive that degree?
 18 A In 1995.
 19 Q Are you currently employed?
 20 A I am, yes.
 21 Q And who is your employer?
 22 A HCC Global.
 23 Q And if we -- is that related to Tokio Marine?
 24 A It is.
 25 Q And if we refer to your employer as HCC, is that okay?

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M. HOLL - PLAINTIFF - DIRECT(MR. AMER)

1 Q Just briefly, what were your responsibilities in the
 2 claim department?
 3 A So I would adjust D&O claims.
 4 Q How long did you work in the claims department?
 5 A About three years.
 6 Q And where did you move to next?
 7 A I moved to the public company D&O update writing unit.
 8 Q Just contrast for us what underwriting means as opposed
 9 to claims.
 10 A Sure. So now we're looking at the business and
 11 determining whether we want to provide insurance cover. So
 12 you're underwriting the business and writing policies for
 13 companies.
 14 Q And again, I think you said you were in the D&O area of
 15 the underwriting group; is that right?
 16 A Yes.
 17 Q And what was your title when you moved into the
 18 underwriting group?
 19 A Underwriter.
 20 Q And have you retained that title to date?
 21 A I have.
 22 Q And you mentioned public company. So what does that
 23 entail?
 24 A So it means that they're publicly-traded and their
 25 financials on public record where you can go -- anyone in the

M. HOLL - PLAINTIFF - DIRECT(MR. AMER) Page 2489

1 public can go find them.
 2 Q Did you in that group ever have occasion to underwrite
 3 private companies?
 4 A Yes.
 5 Q And under what circumstances would you as a member of
 6 the public company D&O group be underwriting a private company?
 7 A Generally, if it's a complex risk or a risk that most
 8 private company underwriters or units would just outright deny.
 9 Q I'd like to focus only the period of 2015 to 2018.
 10 Could you tell us who you reported to during that period?
 11 A My manager was Tom Pettit.
 12 Q Did you have any dotted line reporting relationship
 13 with anyone during that period of time?
 14 A Yes.
 15 Q Who?
 16 A Andy Stone.
 17 Q And who was Mr. Stone?
 18 A Andy is the co-founder and president of HCC.
 19 Q Do you have any authority level for underwriting?
 20 A No.
 21 Q Who would you have to seek approval for?
 22 THE COURT: I doubt they can hear you in the back.
 23 I think it's your voice is going.
 24 MR. AMER: It is.
 25 Q Who would you have to seek approval for to underwrite?

M. HOLL - PLAINTIFF - DIRECT(MR. AMER) Page 2490

1 MR. KISE: I can't hear him.
 2 THE COURT: We've got to do something here.
 3 MR. AMER: Short break.
 4 THE COURT: Sure, short break.
 5 MR. KISE: I don't think it's Mr. Amer. We had
 6 this problem yesterday with people with very loud voices as
 7 you know.
 8 THE COURT: I think it's half and half, his voice
 9 and the system.
 10 MR. KISE: Maybe.
 11 Q So who would you seek approval for for underwriting?
 12 A Who would I seek it from?
 13 THE COURT: From, not for, from.
 14 Q Yes, from. Yes.
 15 A I would seek it from either Tom Pettit or Andy Stone.
 16 MR. AMER: I'd like to hand the witness a document
 17 for identification with the number Plaintiff's Exhibit 587.
 18 Q Do you recognize this as a series of e-mails to you and
 19 from you?
 20 A Yes, I do.
 21 MR. AMER: Your Honor, I ask this be admitted into
 22 evidence.
 23 THE COURT: Hearing no objection, it's in.
 24 (Whereupon, the Document was marked in evidence as
 25 Plaintiff's Exhibit 587.)

M. HOLL - PLAINTIFF - DIRECT(MR. AMER) Page 2491

1 Q Let me ask you to look at page two and direct your
 2 attention to the e-mail actually begins on the bottom of page
 3 one and carries over to page two.
 4 That's an e-mail from you to Mr. Stone, correct?
 5 A Yes.
 6 Q And at this point in time, is Mr. Stone -- what was
 7 his title again at this point in time?
 8 A President.
 9 THE COURT: Mr. Amer, I think the microphone might
 10 work much better now.
 11 MS. GREENFIELD: He raised the volume if you want
 12 to try it.
 13 Q You wrote that you got a call from John Vanasco at AON.
 14 Who is John Vanasco?
 15 A He is a broker for Aon.
 16 Q What does that mean to be a broker?
 17 A So a broker would have a relationship with the
 18 companies that we're underwriting.
 19 Q And what role did you understand him to be playing in
 20 connection with the Trump Organization and the inquiry that he
 21 made?
 22 A I would have understood that he's the broker of record
 23 for the Trump Organization.
 24 Q I'm intrigued by the next line, so I'll just ask you
 25 what did you mean, "a nice, juicy one"?

M. HOLL - PLAINTIFF - DIRECT(MR. AMER) Page 2492

1 A I mean, Donald Trump had just been elected President of
 2 the United States, so it is not an opportunity you get to look
 3 at very often.
 4 Q What do you recall learning about this potential
 5 business opportunity from your conversation with Mr. Vanasco?
 6 A So my understanding from him was that they -- upon the
 7 election, they were looking for additional D&O cover. D&O is
 8 written in towers and they wanted more capacity.
 9 Q You write, "Currently, the primary 5 million is with
 10 Everest and those loss runs are clean." What did you mean by
 11 that?
 12 A Well, it means that Everest is the -- would be the
 13 only carrier on and is the primary carrier and that there are no
 14 losses. They haven't written any losses on any of the policies
 15 they've written for Trump Organization.
 16 Q The e-mail mentions a few lines down, "It is a 2/17,
 17 but they are looking for midterm additional limits (5x5) now."
 18 If you could decipher that for us.
 19 A It is referring to the expiration date. So this e-mail
 20 is in December. They're -- they're not looking just for the
 21 coverage once it renews on February 17th. They're looking to
 22 put additional capacity in place now and the 5x5 would be
 23 \$5 million in D&O limit over the five that Everest is providing.
 24 Q And that would be from the date of the -- in December
 25 until the renewal in February; is that right?

M. HOLL - PLAINTIFF - DIRECT(MR. AMER) Page 2493

1 A Yes. From whenever they choose to bind that coverage
2 up through that February 17th renewal date.
3 Q Your e-mail says, "Trump Organization Private Company,"
4 so you understood -- did you understand that the Trump
5 Organization was a private company as opposed to a public
6 company?
7 A Yes, I did.
8 Q I think you explained to us that there were
9 circumstances under which you in the public company group would
10 get asked to look at a private company placement. Is this one
11 of those circumstances?
12 A Yes, it is.
13 Q When you -- when this opportunity came to you from
14 Aon, did you believe you had the necessary background and
15 experience to handle assessing this risk from an underwriting
16 standpoint?
17 A I think so.
18 Q If we scroll up to the e-mail above this one, which is
19 from Mr. Stone to you, what did you understand Mr. Stone to be
20 conveying to you in this reply e-mail?
21 A He was basically giving approval to quote the
22 additional capacity they were looking for and the pricing for
23 that being \$40,000 and that to put a prior impending litigation
24 exclusion on it, "PP lit X."
25 Q So when he says, "I think a 5x5 on this until 2/17 is

M. HOLL - PLAINTIFF - DIRECT(MR. AMER) Page 2494

1 okay," what did you understand he was conveying to you in terms
2 of what HCC's line would be for this stub period?
3 A What our line would be? I don't know what you mean.
4 Q How much coverage was he conveying to you was okay for
5 HCC to write?
6 A Yeah. We were okay writing 5 million X of 5 million.
7 Q The very last line of Mr. Stone's e-mail says, "We will
8 need to review financials for the renewal."
9 What did you understand him to mean by that?
10 A That it's standard practice in any company we look at,
11 that we would want to see the financials that we're not going to
12 see them prior to the renewal, but that we're gonna want to see
13 them as of that February 17th renewal date rolled around.
14 Q Can you explain to us why that was standard practice?
15 A Why it's standard practice? I mean, every account that
16 we underwrite, we generally try to get a look at the financials
17 for those companies to understand what their financial situation
18 is.
19 Q Is that relevant to assessing risk?
20 A It is.
21 Q Why is that?
22 A It's relevant because you're trying to find out if
23 they're a successful company and if they're profitable and if
24 they are in debt, that they can't manage and what their overall
25 financial health is.

M. HOLL - PLAINTIFF - DIRECT(MR. AMER) Page 2495

1 Q If you could just explain to us how a company's
2 financial health bears on the D&O risk that you're underwriting?
3 A If they are a bankruptcy risk, there is a significant
4 increase in the likelihood of a D&O claim if a company goes
5 bankrupt.
6 Q Let's go to the top of the page, the top e-mail. You
7 write to a woman named Ava P-R-Z-Y-C-H-O-D-Z-E-N. Who is that
8 person?
9 A Ava was my underwriting assistant at the time.
10 Q What are you asking Ava to do in this e-mail?
11 A I'm asking her to draft a quote per the terms that Andy
12 was okay with.
13 Q The last line of your e-mail says, "Subjectivities
14 review of financials at renewal." What is a subjectivity?
15 A It's a line item put on a quote that says in order to
16 bind this, you have to abide by the agreed to, what we're
17 putting in front of you.
18 Q Did HCC, in fact, offer the quote reflected in your
19 e-mail?
20 A Yes.
21 MR. AMER: Let's go ahead and hand the witness
22 Exhibit 596.
23 Q Mr. Holl, do you recognize this document?
24 A I do, yes.
25 Q What is this document?

M. HOLL - PLAINTIFF - DIRECT(MR. AMER) Page 2496

1 A This is the quote per the terms that I spelled out to
2 Ava.
3 MR. AMER: Your Honor, I ask that this be admitted
4 into evidence.
5 THE COURT: Granted. It is in.
6 (Whereupon, the Document was marked in evidence as
7 Plaintiff's Exhibit 596.)
8 Q Let's turn to the second page and you'll see as part of
9 this quote, it says, "Contingencies review of financials at
10 renewal."
11 Is a contingency different from a subjectivity or is it
12 the same thing?
13 A Not in this case, no.
14 Q So what were you indicating in the quote by this
15 contingency?
16 A Same thing, that if we were going to consider the
17 renewal of the risk, we wanted to see financials.
18 Q Now, we've been discussing that this was a quote to get
19 to the renewal. Did there come a point in time where the D&O
20 coverage came up for renewal where you looked at whether you
21 would quote on the renewal?
22 A So I don't think that this extension was ever bound, so
23 it wouldn't have been a renewal if this quote wasn't bound. It
24 just would have been an inception of a new policy.
25 Q Do you recall participating in meetings -- in a meeting

M. HOLL - PLAINTIFF - DIRECT(MR. AMER) Page 2497

1 with other underwriters to look at whether you would participate
 2 at the annual renewal of this coverage?
 3 A Yes, I do.
 4 MR. AMER: I would like to mark as Exhibit 588 the
 5 next document. I'm told this was already in evidence. It
 6 was shown to Mr. Cohen and admitted during his testimony.
 7 THE COURT: Okay.
 8 Q Do you recognize this agenda, Mr. Holl, that is 588 in
 9 evidence?
 10 A Yes, I do.
 11 Q You'll see, Mr. Holl, down at the bottom portion of the
 12 page, your name is listed as an attendee on behalf of the HCC at
 13 the 11:00 a.m. to 12:00 a.m. time slot?
 14 A Yes.
 15 Q Do you recall attending this meeting?
 16 A Yes, I do.
 17 Q There are a number of individuals listed as attending
 18 on behalf of the Trump Organization; Allen Weisselberg, Matt
 19 Calamari, Michael Cohen, Ron Lieberman, George Sorial, Adam
 20 Rosen and Patrick Birney.
 21 Do you have a recollection of meeting with any of those
 22 individuals during this D&O underwriting meeting on
 23 January 10th?
 24 A Yes.
 25 Q Who do you recall meeting with?

M. HOLL - PLAINTIFF - DIRECT(MR. AMER) Page 2498

1 A Allen Weisselberg.
 2 Q And is it that you recall only meeting with him or is
 3 that -- or is it that he's the only one you specifically recall
 4 among these people?
 5 A He's the only one I specifically recall.
 6 Q But there were other people on behalf of the Trump
 7 Organization at the meeting?
 8 A Yes, there were.
 9 Q What did you understand Mr. Weisselberg's role to be at
 10 the meeting as you perceived it?
 11 A The chief financial officer of the Trump Organization.
 12 Q Did you take notes at this meeting?
 13 A I did.
 14 Q And did you report to your superiors, Mr. Pettit and
 15 Mr. Stone, about what transpired at the meeting after the
 16 meeting ended?
 17 A Yes, I did.
 18 MR. AMER: I'd like to hand up to the witness
 19 Exhibit 2985.
 20 Q This is an e-mail from you to Mr. Stone and Mr. Pettit.
 21 Do you recognize this e-mail?
 22 A Yes, I do.
 23 Q And what's the date of this e-mail?
 24 A January 10, 2017.
 25 Q So -- and this was sent at 1:19 p.m., so is this

M. HOLL - PLAINTIFF - DIRECT(MR. AMER) Page 2499

1 basically immediately after you left the meeting?
 2 A It is. It is on my train ride back to Connecticut.
 3 MR. AMER: Your Honor, I move to admit this into
 4 evidence.
 5 THE COURT: Granted. It is in evidence.
 6 (Whereupon, the Document was marked in evidence as
 7 Plaintiff's Exhibit 2985.)
 8 Q Was this e-mail prepared with the benefit of the notes
 9 you took during the meeting?
 10 A It is, yes.
 11 Q And what was the purpose for your preparing this e-mail
 12 to Mr. Stone and Mr. Pettit?
 13 A Just to provide all the information that I obtained
 14 during the meeting and provide some of my thoughts, insights or
 15 opinions.
 16 Q And do you consider this e-mail to be an accurate
 17 reflection of what transpired at the meeting?
 18 A Yes, I do.
 19 Q Just focusing your attention on the paragraph that
 20 begins "saw very few financials," do you see that?
 21 A Yes.
 22 Q You say in this portion, "Saw very few financials, but
 23 did see the balance sheet for year ends 2015. They assured me
 24 that the one being put together in a few weeks is better."
 25 When you say, "they assured me, "who, if you recall,

M. HOLL - PLAINTIFF - DIRECT(MR. AMER) Page 2500

1 specifically provided you that assurance?
 2 A I don't recall who specifically provided me that
 3 assurance.
 4 Q Was it somebody from the Trump Organization?
 5 A It was.
 6 Q And you go on to write, "They have total assets of 6.6
 7 billion, cash of 192 million, total debt of 519 million." Do
 8 you see that?
 9 A Yes.
 10 Q Why did you choose to specifically call out the 192
 11 million in cash figure in this e-mail to Mr. Stone and Mr.
 12 Pettit?
 13 A That's generally a meaningful, useful figure in
 14 financials for organizations we're looking at.
 15 Q And what did you consider that figure to reflect?
 16 A The amount of cash they had on the balance sheet.
 17 Q Did you view that as a figure that was a measure of
 18 liquidity for the company?
 19 A Yes.
 20 Q Directing your attention to the next paragraph, you say
 21 in the last sentence of this paragraph, "No material litigation
 22 or communications from anyone."
 23 What did you intend to reflect in that comment?
 24 A It's standard practice in meetings with the management
 25 to ask them if they are aware of something that's not public;

M. HOLL - PLAINTIFF - DIRECT(MR. AMER) Page 2501

1 that is, litigation or notices or communications that could lead
 2 to litigation that would implicate the D&O policy.
 3 Q What kind of notices or communications would you fit
 4 within that description?
 5 A I mean, any letter from a law firm making a threat or
 6 any notice from a regulatory agency, you know, advising them of
 7 concerns they may have, something like that.
 8 Q Did you, in fact, inquire about those items during the
 9 underwriting meeting?
 10 A I believe -- if I didn't, somebody did. I think I
 11 did.
 12 Q And what are you reflecting in your comment, "no
 13 material litigation or communications from anyone"?
 14 A What am I reflecting?
 15 Q Yes.
 16 A The response that I received to the inquiry.
 17 Q Did you review -- did you view the response that there
 18 was no material litigation or communications from anyone in a
 19 positive or negative light from an underwriting perspective?
 20 A Positive.
 21 Q In what way was it positive?
 22 A I mean, if they do have litigation or notices or
 23 letters that are of concern, that raises the risk of liability
 24 to the D&O policy.
 25 Q And based on this comment, you were told that there

M. HOLL - PLAINTIFF - DIRECT(MR. AMER) Page 2502

1 were -- there was no material litigation or communications from
 2 anyone; is that right?
 3 A Yes.
 4 Q So the facts that you --
 5 MR. KISE: Your Honor, I just want to -- maybe
 6 this will be connected up, but I just want to raise a
 7 relevance objection to this line of questioning. I mean,
 8 I've watched it, so I let --
 9 THE COURT: Overruled. I see relevance.
 10 MR. KISE: Okay.
 11 MR. AMER: Thank you, Your Honor.
 12 Q We are looking now at an e-mail that has certain factor
 13 information that you are sending to about this underwriting
 14 meeting to Mr. Stone and Mr. Pettit who are your superiors and
 15 who have authority to issue the policy. Why were you conveying
 16 the facts that you are conveying to them?
 17 A So they can start considering whether it's a risk that
 18 we want to provide directors and officers cover for.
 19 Q Did you consider the facts that you were putting into
 20 your e-mail to be relevant to their assessment?
 21 A Yes.
 22 Q Did HCC, in fact, put in a quote for this coverage
 23 following your participation in this underwriting meeting?
 24 A Yes, we did.
 25 MR. AMER: I'd like to hand the witness

M. HOLL - PLAINTIFF - DIRECT(MR. AMER) Page 2503

1 Exhibit 592.
 2 Q Mr. Holl, this is a letter you are sending to Mr.
 3 Vanasco on January 31, 2017. Do you recognize this document?
 4 A Yes, I do.
 5 Q And what is this?
 6 A This is a primary quote for D&O cover for what's now
 7 being referred to as the Donald Trump Revocable Trust.
 8 MR. AMER: Your Honor, I move this document into
 9 evidence.
 10 THE COURT: Granted. It is in.
 11 MR. KISE: Same objection, Your Honor, on relevance
 12 which I haven't explained. I know you overruled it, but I
 13 haven't explained it, but that's okay.
 14 THE COURT: You don't think it's relevant. I see
 15 the relevance, so I don't know that there is a point in
 16 debating it.
 17 (Whereupon, the Document was marked in evidence as
 18 Plaintiff's Exhibit 592.)
 19 Q Mr. Holl, does this reflect the terms that you were
 20 authorized to quote for the cover from Mr. Stone?
 21 A Yes.
 22 Q And what layer of coverage is HCC quoting?
 23 A The primary letter.
 24 Q And what is the premium being proposed for this quote?
 25 A \$295,000.

M. HOLL - PLAINTIFF - DIRECT(MR. AMER) Page 2504

1 Q Did the Trump Organization or the trust accept this
 2 proposal and bind coverage?
 3 A Yes, they did.
 4 Q Now, this indicates that the coverage was going to
 5 expire on January 30, 2018; is that right?
 6 A Yes.
 7 Q Did it, in fact, come up for renewal in January of
 8 2018?
 9 A Yes.
 10 MR. AMER: I'm going to hand the witness
 11 Exhibit 595.
 12 Q Mr. Holl, is this a letter you sent to Mr. Vanasco on
 13 February 9, 2018?
 14 A Yes.
 15 Q Does this relate to the renewal of the policy quote
 16 that we were just looking at?
 17 A Yes, it does.
 18 MR. AMER: Your Honor, I move this into evidence.
 19 MR. KISE: Same objection.
 20 THE COURT: Same ruling. It's in evidence.
 21 (Whereupon, the Document was marked in evidence as
 22 Plaintiff's Exhibit 595.)
 23 Q Just to clarify one thing, Mr. Holl, because we had
 24 looked at the expiration date being January 30, 2018. If you
 25 look at the first paragraph, it says, "With regard to the

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1 above-referenced account, Tokio Marine HCC D&O Group is pleased
 2 to bind a 12-month extension of the current aggregate of limited
 3 liability on behalf of U.S. Specialty Insurance Company from
 4 February 10, 2018 to February 10, 2019."
 5 Was there a short extension of the policy to get from
 6 January 30th to February 10th?
 7 A Yes, there was.
 8 Q So this is the quote to extend for a 12-month period
 9 the policy that had been bound in the prior year?
 10 A Yes, it is.
 11 (Continued on the next page.)
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M. Holl - Plaintiff - direct (Amer) Page 2506

1 Q And what is the premium amount being proposed for this
 2 12-month renewal?
 3 A 295,000.
 4 Q So is that at the same as the expiring premium?
 5 A Correct, yes.
 6 Q Did the Trust accept the renewal quote?
 7 A Yes, they did.
 8 Q I want to ask you about the renewal for the following
 9 year in 2019.
 10 Do you recall if HCC quoted a renewal for the following
 11 12-month period?
 12 A Yes.
 13 Q And did they?
 14 A Did we quote it, HCC, yes, we did.
 15 MR. AMER: Let me show the witness Exhibit 2989.
 16 Q Mr. Holl, do you recognize this e-mail from you to Ava?
 17 A Yes, I do.
 18 Q And does this relate to a renewal quote for 2019 to
 19 2020?
 20 A Yes, it does.
 21 MR. AMER: Yes, I move this exhibit into evidence.
 22 THE COURT: Granted. It's in evidence.
 23 (Whereupon, the item previously referred to is
 24 received and marked Plaintiff's Exhibit Number 2989 in
 25 evidence.)

M. Holl - Plaintiff - direct (Amer) Page 2507

1 MR. KISE: Same objection, relevance.
 2 Q Now, we had looked at the prior two renewal quotes,
 3 which were for \$295,000 for the annual premium.
 4 This renewal, what is the proposed premium here?
 5 A 1.6 million.
 6 Q And can you explain to us why the premium quote is
 7 being increased from \$295,000 to 1.6 million?
 8 A Because our assessment of the risk changed and we
 9 believed that the risk was significantly more risky than our
 10 initial assessments.
 11 Q And it looks like there is an alternative option being
 12 proposed which was to remove entity cover and then the premium
 13 would be 950,000; is that right?
 14 A Yes.
 15 Q Did the Trump Organization or the Trust renew the
 16 policy for this increased premium, either option?
 17 A No, they did not.
 18 MR. AMER: That's all I have, Your Honor.
 19 THE COURT: Okay. Any cross examination?
 20 MR. FIELDS: Yes, Your Honor.
 21 MR. KISE: Your Honor, can we have a short break as
 22 you suggested?
 23 THE COURT: Sure. About how long you're thinking?
 24 MR. KISE: Ten minutes.
 25 THE COURT: Sure.

M. Holl - Plaintiff - direct (Amer) Page 2508

1 (Whereupon, there is a recess in the proceedings.)
 2 THE COURT OFFICER: All rise. Part 37 is back in
 3 session. Please be seated and come to order.
 4 THE COURT: Mr. Kise, have you had -- is there a
 5 reasonable chance under the circumstances to review the
 6 direct testimony and prepare for cross examination?
 7 MR. KISE: I would say we're prepared to proceed
 8 now with some cross examination. I don't know I would call
 9 it reasonable under the circumstances, but we are prepared
 10 and we will make every effort to not have to call the
 11 witness back. I don't know that that will be necessary, but
 12 I don't want to waive any rights on behalf of my clients or
 13 anyone else for that matter, but we are going to proceed and
 14 try and move on with it.
 15 MR. AMER: I'm just going to note for the record we
 16 advised Ms. Habba the order of the witnesses, so we think by
 17 providing notice to Ms. Habba, we provided notice to all
 18 defendants.
 19 MR. KISE: I'm not sure what he's arguing about. I
 20 just said -- but in the event that something comes up,
 21 documents or things that we aren't aware of, we'll present
 22 that to the Court. But I certainly think as we have done
 23 with all the witnesses we're entitled to call them in our
 24 case if we need to. But we're not going to burden anyone
 25 with a reappearance. We've all been here far too long.

M. Holl - Plaintiff - direct (Amer) Page 2509

1 THE COURT: Okay. I appreciate that you are
2 willing to go forward at this point reserving whatever
3 rights. I have -- well, let me ask one other question. I
4 know you're doing what we're just referring to. Did you get
5 a chance to see the written decision I wrote this morning?
6 MR. KISE: I have not, Your Honor, but I will on
7 the next break. I will.
8 THE COURT: Might ruin your lunch.
9 MR. KISE: No, no.
10 THE COURT: But in any event, I have reconsidered
11 the \$10,000 penalty and I am adhering to that decision. I
12 have looked at the video of what Mr. Trump said outside and
13 of course I've taken into consideration your argument that
14 he must have been referring to Michael Cohen because that's
15 what he talked about. There was a clear, brief, but clear
16 transition. I think he might have an ooh, ahhh, whatever,
17 but he said "we are doing very well, it's going well."
18 He's a -- that was, to me, a clear transition from
19 one person to another and I think the original -- the person
20 originally referred to is very clear and that's the fact I
21 found and that's the penalty I levied, so let's move ahead.
22 Okay. Let's get the witness back.
23 THE COURT OFFICER: Witness entering.
24 (Whereupon, the witness enters the courtroom and
25 approaches the witness stand.)

M. Holl - Plaintiff - cross (Fields) Page 2510

1 THE COURT: Okay.
2 MR. FIELDS: With the Court's permission, may I
3 examine the witness? It should be exceedingly brief.
4 THE COURT: Absolutely.
5 CROSS EXAMINATION
6 BY MR. FIELDS:
7 Q Good morning, Mr. Holl. I represent -- I'm going to
8 ask you a couple questions, if that's okay?
9 A Yes, okay.
10 Q I notice you're wearing an American flag pin and I like
11 that, so thank you.
12 Mr. Holl, you were shown Plaintiff's Exhibit 587 by
13 Counsel for the government. As you'll recall, I think there was
14 a comment there where you said, "a nice, juicy one." Do you
15 generally recall that?
16 A Yes.
17 Q Would it be fair to say in December 2016 you were
18 excited about the prospect of insuring the Trump Organization or
19 various of its subsidiaries?
20 A Yes.
21 Q And that's because there was -- at that point Donald
22 Trump had just been elected president and was the
23 president-elect; correct?
24 A Correct.
25 Q And you believed that that could help your personal

M. Holl - Plaintiff - cross (Fields) Page 2511

1 business. Is that fair?
2 MR. AMER: Objection to "personal business."
3 Q You originate business at HCC, Mr. Holl?
4 A Yes.
5 Q And did -- Donald Trump being elected president and
6 being a potential client of yours, did you believe that that
7 could help your business?
8 A No.
9 Q You did not believe that doing business with the
10 president-elect of the United States was going to help your
11 personal business at HCC?
12 A No.
13 Q So you did not plan to tell anybody that you were
14 insuring the president-elect's trust. Is that fair?
15 A That's fair. We don't discuss who our insureds are.
16 Q But nevertheless you were excited?
17 A Yes.
18 Q At the time that you -- withdrawn.
19 Just so that I'm clear, there were several policies
20 that you discussed with Mr. Amer and I want to make sure I
21 understand them all.
22 There was the initial policy that was to sit above the
23 adverse policy that was bound in approximately December of 2016?
24 MR. AMER: I'm going to object. I think the
25 witness's testimony was he didn't think that was bound.

M. Holl - Plaintiff - cross (Fields) Page 2512

1 THE COURT: You can ask.
2 Q Was the December 6, 2016 policy bound?
3 A I don't believe that extension was -- or that 5X5 was
4 bound.
5 Q Okay. So then would it be fair to say then that the
6 first policy that HCC bound under your direction was the
7 January 2017 D&O policy?
8 MR. AMER: Objection to "under your direction."
9 THE COURT: Sustained. His testimony was somewhat
10 different.
11 MR. FIELDS: Okay.
12 THE COURT: "Direction" is the wrong word.
13 Q Open-ended question.
14 While you were working at HCC what was the first policy
15 that you bound for the Trump Trust?
16 A Yes.
17 MR. AMER: Can I just object to "bound?"
18 THE COURT: Yes, objection sustained.
19 Q Sir, do you work at HCC?
20 A Yes, I do.
21 Q Did you work at HCC in January of 2017?
22 A Yes.
23 Q Okay, great.
24 So now my question is what was the first policy at HCC
25 while you were working there found for the Trump Trust?

M. Holl - Plaintiff - cross (Fields) Page 2513

1 A Yes, that January 30th policy.
 2 Q All right.
 3 A The primary policy.
 4 Q The January 30, 2017 policy?
 5 A Correct.
 6 Q And then there was a renewal of that in January --
 7 approximately January 30th of 2018. Is that fair?
 8 A So technically, it didn't renew. It got extended, so
 9 it came up for renewal and it was then extended instead.
 10 Q Okay. And then in 2019 there was no renewal or
 11 extension; correct?
 12 A Correct.
 13 Q So then would you agree that there were two relevant
 14 policies while you were working at HCC that you discussed with
 15 Mr. Amer that were actually bound?
 16 A There was only one policy that was bound. There was
 17 one bound policy number with an extension.
 18 Q And one of them was in 2017 and it was extended in
 19 2018?
 20 A Correct, same policy number.
 21 Q Okay. In December of 2016, when you were first
 22 approached by AON with the possibility of working -- binding --
 23 or HCC binding coverage for the Trump Trust, you were aware that
 24 the Trump Organization, I'll use that term broadly, was
 25 concerned about potential exposure now that Donald Trump had

M. Holl - Plaintiff - cross (Fields) Page 2514

1 been elected president; correct?
 2 A Correct.
 3 Q So you were aware that was a reason why they were
 4 seeking additional coverage; correct?
 5 A I was aware that they thought that they would be a
 6 higher -- they would have higher exposure and that's why they
 7 were seeking additional cover.
 8 Q And the first time that you reviewed any financials for
 9 the Trump Organization was in January of 2019?
 10 A Yes.
 11 Q And that was the underwriting meeting that you
 12 discussed with Counsel for the government, believe it was
 13 January 10th of 2017?
 14 A I think so, yes.
 15 MR. FIELDS: Can we pull up Plaintiff's 588,
 16 please? And if we can enlarge the list of attendees under
 17 the Trump Organization?
 18 Q Just to make sure I understand your testimony, I
 19 believe you testified that you generally recall Allen
 20 Weisselberg being there, but you don't have a clear recollection
 21 about some of the other individuals that are listed there?
 22 A Yes, yes.
 23 Q Okay. And I believe your testimony was that there was
 24 a balance sheet that you reviewed; is that correct?
 25 A That's correct.

M. Holl - Plaintiff - cross (Fields) Page 2515

1 Q And I think -- I believe the balance sheet had
 2 \$192 million in cash listed. Is that fair?
 3 A That's correct.
 4 Q The balance sheet that you reviewed, was it a piece of
 5 paper, was it a PDF, an Excel spreadsheet? What did it look
 6 like?
 7 A It was a piece of paper.
 8 Q And do you recall where the piece of paper was while
 9 you were in the room; on the table, somebody hand it to you?
 10 A It was handed around amongst the underwriters.
 11 Q Do you recall who handed it to you?
 12 A I don't recall who handed it to me.
 13 Q And would it be fair to say, Mr. Holl, that the --
 14 withdrawn.
 15 Are you familiar with what a retention is in an
 16 insurance policy?
 17 A Yes, I am.
 18 Q And for the uninitiated, what is a retention generally?
 19 A It's a deductible.
 20 Q It works similarly to a deductible in an insurance --
 21 health insurance policy, for instance?
 22 A It's what the insured's responsible for before the
 23 policy would start.
 24 Q And would you agree with me that the purpose of an
 25 insurance underwriter's review of financials of a private

M. Holl - Plaintiff - cross (Fields) Page 2516

1 company seeking D&O coverage is to ensure that the potential
 2 insured has the financial wherewithal to cover the retention?
 3 A Yes.
 4 Q And in this case I believe your testimony was that the
 5 retention was approximately \$2.5 million throughout the life of
 6 these -- the policy and the extension?
 7 A Yes.
 8 Q Okay. So just so I'm clear as an underwriter, when you
 9 went to Trump Tower that day to review the financials, would you
 10 agree with me that your primary concern was to ensure that the
 11 Trump Organization could meet its requirements to pay the
 12 retention if needed?
 13 A Yes. And that they were not a bankruptcy risk.
 14 Q Fair. But in this case as you just said the retention
 15 was \$2.5 million; correct?
 16 A Correct.
 17 Q And so, for instance, if -- withdrawn.
 18 And there was \$192 million in cash on the balance sheet
 19 that you saw; correct?
 20 A Yes.
 21 Q So if the Trump Organization had identified, let's say,
 22 \$25 million in cash on the balance sheet, ten times the
 23 retention, you wouldn't have been concerned; correct?
 24 MR. AMER: Objection. Calls for speculation.
 25 THE COURT: Overruled.

M. Holl - Plaintiff - cross (Fields) Page 2517

1 A So can you repeat that? Sorry.
 2 MR. FIELDS: May I have a read back, Your Honor?
 3 THE COURT: Read back, please.
 4 (Whereupon, the requested portion of the
 5 proceedings was read back by the court reporter.)
 6 A So I think it would depend on the debt as well, right,
 7 and whether they had -- so it's not as simple as a yes or no.
 8 If they had debt on the balance sheet coming due and that debt
 9 amount was larger than the cash that they had on the balance
 10 sheet, then yes, but correct. If they had 25 million and a two
 11 and a half million dollar retention there would be enough on the
 12 balance sheet to cover their retention.
 13 Q Were you at all concerned with any of the debt you saw
 14 on the balance sheet that day?
 15 A I was not.
 16 Q Did you ask to see any bank statements, Mr. Holl?
 17 A Bank statements, no.
 18 Q And just to be clear, you were binding a policy on
 19 behalf of the Donald J. Trump Revocable Trust; correct?
 20 MR. AMER: Objection, Your Honor. It lacks
 21 foundation. This witness didn't bind anything. He had no
 22 underwriting authority.
 23 THE COURT: You want to just -- withdrawn.
 24 Q Did HCC bind a D&O policy on behalf of the
 25 Donald J. Trump Revocable Trust on or about January 30th of

M. Holl - Plaintiff - cross (Fields) Page 2518

1 2017?
 2 A Yes.
 3 Q And you were involved in that process; correct?
 4 A I was.
 5 MR. FIELDS: All right. I'm going to show the
 6 witness what's been premarked as Plaintiff's 597.
 7 And, Your Honor, I don't intend to really examine
 8 the witness much about the document. I apologize. I don't
 9 have extra copies, but it was a little bit short trying to
 10 print them.
 11 THE COURT: I'm sure that will work.
 12 Q Mr. Holl, I'll just ask you, if you could, to take a
 13 look at this document. Let me know if you recognize it.
 14 THE COURT: Do you recognize it?
 15 THE WITNESS: Was there a question?
 16 Q Do you recognize the document?
 17 A Yes.
 18 Q What is it?
 19 A That is the policy that we wrote on January 30, 2017.
 20 Q And just to be clear, did you -- were you able to page
 21 through some of the documents to ensure that it's -- appears to
 22 be the entire policy that HCC wrote in 2017?
 23 A It appears to be.
 24 Q Fair enough.
 25 MR. FIELDS: Move to admit Plaintiff's 597.

M. Holl - Plaintiff - cross (Fields) Page 2519

1 MR. AMER: No objection.
 2 THE COURT: It's in evidence.
 3 Q Mr. Holl, you were asked by Counsel for the government
 4 about some representations that were made during the
 5 underwriting meeting at Trump Tower in 2017 regarding -- and I
 6 use the wrong terminology, but prior pending litigation or
 7 notices of any potential claims. Do you generally recall that?
 8 A Yes.
 9 Q And I believe your testimony was -- and please correct
 10 me if I'm wrong -- that there was a disclosure to you that there
 11 was no potential claims known to somebody that told you that
 12 statement. Is that an accurate representation of your
 13 testimony?
 14 A Yes.
 15 Q And I believe you also testified that you're not sure
 16 if you asked, but somebody else may have asked that question?
 17 A Correct.
 18 Q And do you recall who it is that made that statement to
 19 you -- withdrawn.
 20 Do you recall who made the statement about no known
 21 claims?
 22 A I don't recall.
 23 MR. AMER: Your Honor, just so the record is clear
 24 that does mischaracterize the testimony. There was no
 25 material litigation and no communications from anyone.

M. Holl - Plaintiff - cross (Fields) Page 2520

1 THE COURT: Are you relying on the specific
 2 language? Is that what you're looking to correct?
 3 MR. AMER: Yes, as opposed to no known claims that
 4 was never part of the testimony or the document.
 5 THE COURT: Right.
 6 MR. FIELDS: Your Honor, I apologize. I had a
 7 couple of minutes to prepare this, so please forgive me.
 8 THE COURT: All right. The record should be
 9 considered changed to reflect the exact wording.
 10 MR. FIELDS: One moment, please.
 11 THE COURT: Sure.
 12 MR. FIELDS: Thank you. I want to make sure I use
 13 the right terminology.
 14 Q So with regard to the statement that there was no
 15 material litigation or communication from anyone, if at some
 16 point you, HCC, had determined that there was information that
 17 was not known to them that should have been made to them or
 18 disclosed to them, isn't it true that HCC has the ability to
 19 rescind the policy?
 20 A I would have to look at the specific policy to see if
 21 we had the ability to rescind or not.
 22 Q Do you have any reason to doubt that this policy does
 23 not contain a right to rescind by the insurer?
 24 A I don't know what -- I don't know one way or the other.
 25 Sometimes we have language on there that says that the insurer

M. Holl - Plaintiff - cross (Fields) Page 2521

1 has no right to rescind.
 2 Q But be that as it may, if there is a right to rescind,
 3 the insurer has the right to rescind the policy; correct?
 4 A Correct.
 5 MR. AMER: Object to the form of the question.
 6 MR. FIELDS: It's cross examination, but it's okay.
 7 THE COURT: Overruled.
 8 Q In addition, the insurer maintains the right to
 9 disclaim coverage as well; correct?
 10 A Meaning deny coverage for something submitted?
 11 Q Sure.
 12 A Yes.
 13 Q Do you know if this policy contains a right for the
 14 insurer to deny coverage if they did not believe that it was
 15 covered under the policy?
 16 A I mean, it doesn't specifically contain language that
 17 says that. It's that if the language doesn't provide coverage,
 18 it doesn't provide coverage.
 19 Q Did you ever meet with Donald J. Trump by any chance,
 20 Mr. Holl?
 21 A No, I did not.
 22 Q All right. And at some point you determined that you
 23 had made a mistake and underpriced the risk in approximately
 24 2019; correct?
 25 A I wouldn't say we made a mistake. I'd just say that

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1 MR. KISE: On redirect they can read the rest of
 2 the answer.
 3 MR. AMER: I think when you read the question you
 4 should read the whole question and the whole answer.
 5 MR. KISE: That would be nice if you had done that
 6 the entirety of this case, but you haven't.
 7 THE COURT: Sometimes yes, sometimes no.
 8 In an abundance of caution, I'll ask that the
 9 entire answer be read back.
 10 Q All right, beginning at line six --
 11 MR. FIELDS: I'll withdraw the question, Your
 12 Honor.
 13 Transcript continues on the following page....
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M. Holl - Plaintiff - cross (Fields) Page 2522

1 that newest quote number reflected what we perceived to be the
 2 going-forward risk.
 3 Q Did you underprice the risk?
 4 A I don't know how to answer that.
 5 MR. FIELDS: Let's pull up --
 6 Q Mr. Holl, you were interviewed by the Attorney
 7 General's Office in February of 2022; correct?
 8 A Okay. I was.
 9 Q Were you?
 10 A Yes.
 11 MR. FIELDS: All right. Let's pull up page 145,
 12 line six. We'll start at line two.
 13 Q All right. The question is:
 14 "And what was the basis for increasing the premium for
 15 the same extension period to such a significant extent?
 16 "ANSWER: It was clear to us that we had
 17 underpriced this risk and that there was significant
 18 exposure to us."
 19 Is that what you answered in February of 2022?
 20 MR. AMER: Can we read the whole answer so we have
 21 a context?
 22 THE COURT: Well, if you think it matters, yes; if
 23 you're just saying it because it's only part of the answer,
 24 no.
 25 MR. AMER: Well, I think it does matter.

M. HOLL - PLAINTIFF - REDIRECT(MR. AMER) Page 2524

1 THE COURT: It's a lot of reading.
 2 MR. KISE: Exactly. It is a lot of reading.
 3 MR. FIELDS: Thank you. That's all, Your Honor.
 4 THE COURT: Any re-direct?
 5 MR. AMER: I do. I just want to make sure is that
 6 side done?
 7 MR. ROBERT: Subject to our reservation of calling
 8 the witness back on our case.
 9 THE COURT: Okay.
 10 MR. AMER: I just have a few questions. So if I
 11 could do it from here, Your Honor, if that's all right.
 12 THE COURT: Of course.
 13 RE-CROSS EXAMINATION
 14 BY MR. AMER:
 15 Q I want to ask you about Mr. Fields's questions
 16 concerning the hypothetical that instead of telling you it was
 17 192 million in cash, they instead had told you it was 25 million
 18 in cash or ten times the retention. Do you recall those
 19 questions?
 20 A I do.
 21 Q Okay. Now, the 192 cash number is the number that you
 22 forwarded on to Mr. Stone and Mr. Pettit, correct?
 23 A Yes.
 24 Q And at the time, you didn't have any authority to
 25 underwrite the business; is that right?

M. HOLL - PLAINTIFF - REDIRECT(MR. AMER) Page 2525

1 MR. KISE: Objection; leading.
2 MR. AMER: I think it is summarizing testimony he
3 already --
4 MR. KISE: Leading question.
5 THE COURT: Well, it might be simpler if you just
6 ask it. Although, it might still be leading, but I will
7 allow it if you just ask it in the abstract.
8 MR. AMER: I think he already testified to it, so
9 I'm just trying to bring us back.
10 Q Did you have authority to underwrite this risk at that
11 point in time yourself? Did you have underwriting authority?
12 A I don't have under -- I don't have authority, correct.
13 Q And if they had told you it was 25 million in cash,
14 would that have been the number that you conveyed as opposed to
15 192 million in cash?
16 A Yes.
17 Q And as you sit here today, you don't know what they
18 would have done in response to getting that different dollar
19 figure, do you?
20 A That's fair, yes.
21 MR. AMER: That's all I have, Your Honor.
22 THE COURT: Any re-cross?
23 MR. KISE: Not at this time subject to the
24 reservation, no. Thank you.
25 THE COURT: Okay. Let's take a break until noon

S. DILLON - PLAINTIFF - DIRECT(MR. SOLOMON) Page 2526

1 and the witness is excused. Thank you. We will have Ms.
2 Dillon, right?
3 MR. SOLOMON: Yes, Your Honor.
4 THE COURT: Break until noon and then we will have
5 Ms. Dillon.
6 (Witness excused.)
7 (Whereupon, a recess was taken.)
8 THE OFFICER: All rise. Part 37 is back in
9 session. Be seated and come to order.
10 THE COURT: Mr. Solomon, would you like to call
11 your next witness?
12 MR. SOLOMON: I would, Your Honor. Thank you. The
13 People call Sheri Dillon.
14 THE COURT OFFICER: Witness entering.
15 S H E R I D I L L O N, a witness called by the Plaintiff,
16 after having been first duly sworn by the Clerk of the Court,
17 took the witness stand and testified as follows:
18 THE COURT OFFICER: Please state your name and
19 either home or business address on the record.
20 THE WITNESS: Sheri Dillon. 1111 Pennsylvania
21 Avenue, N.W. Washington, DC. Zip code 20004.
22 THE COURT: Please proceed.
23 MR. SOLOMON: Thank you, Your Honor.
24 DIRECT EXAMINATION
25 MR. SOLOMON:

S. DILLON - PLAINTIFF - DIRECT(MR. SOLOMON) Page 2527

1 Q Good afternoon, Ms. Dillon. Can you, please, briefly
2 describe your post high school education?
3 A I attended college, University of Missouri. Graduated
4 in four years with a bachelor's degree and I then went on to a
5 masters program. I have a masters in public policy and several
6 years after that, I went to law school at Georgetown Law.
7 Q Abdomen when did you graduate from Georgetown Law?
8 A 1999.
9 Q And are you admitted to any bars?
10 A Yes, D.C. and Georgia.
11 Q Thank you. Could you, please, briefly describe your
12 work experience after your admission to the bar?
13 A I began my career at McGee Nelson as -- no, I'm sorry.
14 I actually began my career at King & Spalding for just a short
15 period of time and then the tax group at McGee -- no. King and
16 Spalding largely broke off, started their own firm McGee Nelson.
17 I joined McGee Nelson which was eventually merged into Bingham &
18 McCutchen, L.L.P. Following that, I left for a year and went to
19 Vinson & Elkins. And after that, I rejoined my prior colleagues
20 from Bingham who had been merged in Morgan Lewis and that was in
21 2015.
22 Q You said you worked at Vinson & Elkins for one year.
23 So that was roughly 2014 to 2015.
24 A That would be correct and it is roughly one year.
25 Q And when were you at Bingham?

S. DILLON - PLAINTIFF - DIRECT(MR. SOLOMON) Page 2528

1 A That would be roughly 2009 to 2014 is the best of my
2 recollection. I'm not quite sure on those dates.
3 Q Approximate dates are okay. Thank you.
4 When you were at Bingham, were you a partner?
5 A I began my career at Bingham, yes, I would have been a
6 partner.
7 Q Were you in a particular group at Bingham?
8 A The tax group. I've always practiced tax law as my
9 primary practice. Although, I advise on other things as well.
10 Q And when you moved to Vinson Elkins, you were also a
11 partner?
12 A Yes, I was also a partner in the tax group.
13 Q When you rejoined certain of your colleagues in Morgan
14 Lewis in 2015, were you a partner?
15 A Yes.
16 Q Are you currently at Morgan Lewis?
17 A Yes.
18 Q Are you currently a partner there?
19 A I am currently a partner at Morgan Lewis.
20 Q Did there come a time that you in your professional
21 capacity began doing work for the Trump Organization?
22 A Yes.
23 Q When was that?
24 A That would have been began more or less in 2005.
25 Q And was the Trump Organization your client?

S. DILLON - PLAINTIFF - DIRECT(MR. SOLOMON) Page 2529

1 A It was a firm client.
 2 Q And when you joined Bingham in or about 2009, did you
 3 bring the Trump Organization work with you?
 4 A Yes, the Trump Organization continued with us.
 5 Q You said "us." I'm talking about you. You continued
 6 doing work for the Trump Organization, correct?
 7 A Yes, I continued doing work for the Trump Organization.
 8 Q And when you moved to Vinson & Elkins in or about 2014,
 9 did the Trump Organization continue to use your services?
 10 A Yes, they did.
 11 Q And when you moved to Morgan Lewis in 2015, did the
 12 Trump Organization come with you?
 13 A Yes, the Trump Organization continued to.
 14 Q Do you currently do work for the Trump Organization?
 15 A No.
 16 Q When did you cease doing work for the Trump
 17 Organization?
 18 A That would have been 2020, some point in 2020.
 19 Q Do you recall when in 2020?
 20 A I do not. It would have been in the spring or early
 21 summer.
 22 Q Was there some precipitating event that caused you to
 23 cease doing work for the Trump Organization?
 24 A No, not any one event.
 25 Q Were there several events that caused you to cease

S. DILLON - PLAINTIFF - DIRECT(MR. SOLOMON) Page 2530

1 doing work for the Trump Organization?
 2 A There just came a time when it was mutually agreed with
 3 the client that it was no longer in their best interest for me
 4 to be representing the Trump Organization.
 5 Q Keeping this at a high level, can you describe the type
 6 of work you've done for the Trump Organization over the years?
 7 A Predominantly providing tax advice and advice related
 8 to the tax advice as well as other projects from time to time as
 9 requested by my client.
 10 Q What would those other projects be?
 11 A Assisting reviewing contracts from time to time,
 12 helping with forming entities and things of that nature.
 13 Q Did you ever do any work responding to government
 14 investigations?
 15 A Yes. From time to time, I would help with government
 16 investigations or other government inquiries.
 17 Q Anything else you can recall?
 18 A I assisted in the preparation of their work with Office
 19 of Government Ethics, helping with the disclosure requirements.
 20 Q Did you work on what's known as the OGE form the Office
 21 of Government Ethics form that's filed?
 22 A I did provide legal advice with respect to OGE form
 23 278.
 24 Q You mentioned you provided tax advice. What
 25 were -- again, at a high level. I'm not asking for specific

S. DILLON - PLAINTIFF - DIRECT(MR. SOLOMON) Page 2531

1 information, but at a high level, what was the -- what were the
 2 general areas of tax advice that you provided to the Trump
 3 Organization?
 4 A The general high areas of tax advice would be related
 5 to one, assisting with IRS examinations, working through that
 6 process as well as for Ava right of Trump entities as well as
 7 assisting with tax planning, looking at the tax aspects of
 8 various transactions as they came along over the years.
 9 Q Would tax planning include providing advice with
 10 respect to donations of potential easements?
 11 A Donations of potential easements would be I would
 12 provide tax advice with respect to donations, legal advice
 13 relating to tax relating to conservation easement.
 14 THE COURT: Potential conservation easement,
 15 potential transactions?
 16 THE WITNESS: Yes, both potential and lots of
 17 potential transactions across the board as well as actual
 18 transactions that occurred.
 19 Q In connection with either potential or actual donations
 20 of conservation easements, would you interact with third-party
 21 professionals such as appraisers?
 22 A I would interact with lots of _ professionals,
 23 appraisers, environmentalists, a whole -- engineers, architects,
 24 all sorts of folks, yes.
 25 Q During your time providing services to the Trump

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1 Organization, with whom did you interact?
 2 A Is there a specific period you're looking for?
 3 Q Let's put the period 2011 to present. Withdrawn.
 4 Excuse me. Withdrawn, please.
 5 Let's put the period as 2011 to when you ceased
 6 providing services in or about 2020.
 7 A I worked with a lot of people at the Trump
 8 Organization. It would have been -- gosh. Jason Greenblatt,
 9 Jaclyn Maranes, Alan Garten. I'm sorry. I'm going through
 10 departments. As well as Jeff McConney, Allen Weisselberg, Mark
 11 Hawthorn. Gosh. Just a host of people, a variety right of
 12 folks.
 13 Q Let's throw out some names to see if we can jog your
 14 memory.
 15 A Sure.
 16 Q Donald Trump?
 17 A Sr. or --
 18 Q Sr. When I refer to Donald Trump today, I will be
 19 referring to Sr. If I am referring to Jr., I will add Jr., so
 20 the record is clear.
 21 A That would be very helpful. Thank you.
 22 Q Did you interact with Donald J. Trump between the 2011
 23 through the termination of the relationship?
 24 A To some degree, yes.
 25 Q What do you mean by "to some degree?"

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1 A I did interact, but it wasn't -- he was pretty high on
 2 the food chain. That's not who I spent most of my time with.
 3 Q Understood. Not as often as some of the other people
 4 you just mentioned?
 5 A Yes.
 6 Q Fair enough. Donald Trump Jr.?
 7 A From time to time.
 8 Q Eric Trump?
 9 A Yes, from time to time on certain projects.
 10 Q More often than you interacted with Donald J. Trump?
 11 A It would depend on the project.
 12 Q Ivanka Trump?
 13 A Yes.
 14 Q Patrick Birney?
 15 A Yes.
 16 Q Jill Martin?
 17 A Yes.
 18 Q Anyone else you can think of now that I've given you a
 19 couple of names from various departments?
 20 A There are others that were in the general counsel's
 21 office and I'm sorry. I'm just not remembering their names
 22 right now. Adam, his last name I'm not remembering. David
 23 Cohen and I know there are others that -- yeah. If you have
 24 others to ask me about -- I'm sorry. It has been a while.
 25 Q I appreciate the effort to try to remember. We will

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1 focus on some documents and that may refresh your recollection
 2 later on.
 3 A Great.
 4 Q Sure.
 5 Do you recall working on donations or potential
 6 donations of conservation easements relating to TNGCLA also
 7 known as Trump National Golf Club LA?
 8 A Yes.
 9 Q Do you recall working on a potential donation of a
 10 conservation easement at Briarcliff Development?
 11 A Yes.
 12 Q That's the Briarcliff Golf Course located in
 13 Westchester County in New York, correct?
 14 A That's my understanding.
 15 Q And do you recall working on a potential donation of a
 16 conservation easement relating to Seven Springs?
 17 A Yes.
 18 Q And Seven Springs, that's the property located in
 19 Westchester in the Towns of Bedford, New Castle and North
 20 Castle, correct?
 21 A That is correct.
 22 Q So let's focus on those and if there are differences
 23 between them, I'd like you to point it out.
 24 When you worked on those potential donations, what did
 25 that work entail?

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1 A That work would entail coming to an understanding of
 2 the property. It would come to an understanding most
 3 importantly the key element when thinking about a conservation
 4 easement is that an easement is something that is going to be
 5 granted in perpetuity and my perspective, to back up for a
 6 second, is from a tax law perspective. So I want to be clear on
 7 that.
 8 So the tax law requires that it be granted and most
 9 easements are granted in perpetuity and perpetuity means
 10 forever. As we all know from our property class back in law,
 11 perpetuities, so you go back to that and so when you're granting
 12 an easement, it is a big decision. And a conservation easement,
 13 what that means is you retain the land and you put in
 14 conservation easement on it which is restricting the uses of the
 15 land. And so there's a lot of different decisions that have to
 16 be made with that and that's where I would spend a lot of my
 17 time in coming to understand the property, coming to understand
 18 what you want to do with it or not do with it, and it would be
 19 the choices of which parts of the property do you want to
 20 restrict and which parts do you not want to restrict and what
 21 will those restrictions be.
 22 And then once you determine that, I would work with the
 23 client to help them implement that, working with the
 24 environmentalists. There's all kinds of environmental reports
 25 that have to be done, baseline documentation, working on the

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1 conservation easement deed, that makes the grant of the
 2 easement, working with the appraisers to determine the value of
 3 the easement working with engineers to some degree.
 4 Although, it was generally the other professionals who
 5 would work with the engineers, but it was just that whole
 6 collection of people and every piece of property is unique, so
 7 these are sort of some of the common elements sometimes there
 8 would be others who needed to be involved depending on what the
 9 project was and what the land looks like. But it would also be
 10 making sure that all of these things are laid out in the tax
 11 code and all of these various requirements, what does baseline
 12 documentation of the environmental aspects of the property, what
 13 does that mean, what's required for that, what's required for
 14 the appraisal. It needs to have qualified appraisers and a
 15 qualified appraisal. So there's all kinds of hosts of legal
 16 requirements that need to be satisfied. So that's the work I
 17 would do.
 18 Q I think it was implied in your answer, but so the
 19 record is clear, you mentioned legal requirements. Were these
 20 requirements, to your understanding, to enable the donor obtain
 21 a tax deduction for the value of a donation?
 22 A Some of them were. Some of them were requirements that
 23 are other sorts of requirements. Again, we would want to have a
 24 deed that would be respected, that could be recorded. That
 25 would be legal requirements outside of the tax code, but a lot

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1 of them are legal requirements that are set forth in the tax
 2 codes, so that Congress provided incentives encouraging folks to
 3 conserve land. Restrict your rights. Don't build on it. Let's
 4 keep public parks. Let's keep rivers. Let's keep beautiful
 5 forests. Let's keep all of that. And to do that, they
 6 did -- they created an incentive, a charitable deduction for
 7 tax purposes and that -- so in order to secure the deduction,
 8 you would have to follow a lot of very stringent and lengthy
 9 legal requirements that are set out in the tax code in a host of
 10 treasury regulations. I think there's probably 50 pages of
 11 these regulations, IRS guidance that even further explains the
 12 code and the regulations and a huge body of case law that's
 13 developed on conservation easements as well as other donations
 14 of charitable property.

15 Q You mentioned in an earlier answer, an appraisal. I
 16 think the term that I've seen is a qualified appraisal. Have
 17 you seen that term?

18 A Yes.

19 Q A qualified appraisal, does that have a different
 20 meaning to you than an appraisal?

21 A A qualified appraisal is an appraisal that is described
 22 in the tax code and in order to secure it, a deduction, the
 23 appraisal that you have has to meet the requirements of a
 24 qualified appraisal.

25 Q And the appraisal is an appraisal of the value of the

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1 easement that is being donated; is that correct?

2 A It is the value of what you have given up in your
 3 easement, the economic value of the rights and restrictions that
 4 you have given up.

5 Q And you mentioned that you've worked on several of
 6 these. Do you know how that value is determined by an
 7 appraiser?

8 A There are different methods for determining that value.
 9 The treasury regulations lay out the methods that may be used.
 10 The primary method, I think my recollection is -- I don't have
 11 the regs in front of me right now, but I believe the principal
 12 method is to find sales of comparable conservation easements.
 13 Those rarely exist, so the treasury regulations have an
 14 alternative way to measure the value of a conservation easement
 15 and that is called the before and after method.

16 Q And in the before and after method, does the appraiser
 17 determine the value of the property before placement of the
 18 easement, the value of the property after the placement of the
 19 easement, subtract the latter from the former to come up with
 20 that value of the easement itself?

21 A So, yes, the appraiser, if I understood this, first
 22 determines --

23 Q If my question wasn't clear, please tell me and explain
 24 it in your own words.

25 A The appraiser values the entire property unrestricted

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1 meaning with no restriction.

2 THE COURT: You left out the word "first" which was
 3 included in your first answer.

4 THE WITNESS: I will try to speak slower. So yeah,
 5 we first start with the entire property. You value that.
 6 So in my example, we'll say that's worth a hundred. You
 7 then value the property after the restrictions have been
 8 placed on, taking into the characteristics of the property
 9 as it would then exist with the conservation easement. So
 10 the after-value would generally be less.

11 So let's say started off of 100. Your after-value
 12 is ten. The appraiser then would say, well, the easement is
 13 the difference between the entire value of the property
 14 unrestricted and the value of the property restricted. So
 15 in my example, it would be 100 minus ten, would be 90 the
 16 value of the property.

17 There would then need to be other considerations
 18 taken into account which would have to do with does the
 19 property owner have contiguous property that surrounds or is
 20 in the nearby area of the property that's been restricted.

21 Q And if there is an enhancement to the value of the
 22 contiguous property, that would be deducted from the value of
 23 the donation, correct?

24 A That is correct.

25 Q We'll come back to easements in more detail as we go

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1 on, but I would like to turn to something you mentioned about
 2 doing work in connection with government investigations for the
 3 Trump Organization.

4 Do you recall in or about September of 2016
 5 communicating with the New York Attorney General's Office with
 6 respect to an inquiry that the office was conducting?

7 A I know I have responded to lots of things. So again,
 8 if you could give me a little more background, that might help
 9 me.

10 Q I will show you a document, ma'am, and see if it
 11 refreshes your recollection.

12 MR. SOLOMON: If we could, please, pull up PX 1001
 13 and may I hand this up to the witness.

14 Q Ma'am, this is a letter dated September 27, 2016 sent
 15 by electronic mail and certified mail return receipt requested
 16 to you at Morgan Lewis. You were at Morgan Lewis in 2016,
 17 correct?

18 A Yes, I was at Morgan Lewis then.

19 Q This is from the State of New York Office of the
 20 Attorney General from the Charities Bureau, correct?

21 A Yes, the letter is from the Charities Bureau.

22 Q Did you receive this on or about September 27, 2016?

23 A Yes, I did.

24 MR. SOLOMON: We offer this in evidence.

25 THE COURT: Granted. It is in.

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1 (Whereupon, the Document was marked in evidence as
2 Plaintiffs Exhibit 1001.)
3 Q Does this refresh your recollection to at least one
4 matter that you were handling for the Trump Organization in
5 connection with a government inquiry?
6 A Yes, it does.
7 Q What can you tell me if you -- withdrawn.
8 At a high level, what was your understanding of this
9 inquiry that was being conducted in or about September of 2016?
10 MR. ROBERT: I appreciate the way Mr. Solomon has
11 worded the question, "at a high level." I just want to make
12 sure there is no waiver of attorney-client privilege here
13 and I don't think that's what Mr. Solomon is getting at. I
14 just wanted the record clear. Do you agree, Mr. Solomon,
15 you are not trying to --
16 MR. SOLOMON: We are not asking the witness to
17 waive privilege. We just want to know the witness'
18 understanding of what the investigation concerned.
19 MR. ROBERT: From a high level, not conversations
20 with any of her clients?
21 MR. SOLOMON: My question did not ask for
22 conversations with the client.
23 MR. ROBERT: I didn't think you were and --
24 MR. SOLOMON: Also to be clear for the record, this
25 witness received the letter. So this information came to

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1 the witness, not from the client, but from the Attorney
2 General's office.
3 MR. ROBERT: I hear what you're saying. I just
4 wanted the record to be clear. Got it.
5 MR. SOLOMON: No issue.
6 THE COURT: Please continue.
7 Q Does this letter refresh your recollection about
8 a -- about this inquiry?
9 A Yes, it does.
10 Q When you received this letter and read this letter, did
11 you have an understanding as to what the inquiry concerned?
12 A Yes.
13 Q What was that understanding?
14 A My understanding was the Charities Bureau was taking a
15 look at whether the Trump Foundation had complied with New York
16 State law in connection with its activities.
17 Q I only want the names. I'm not asking what you
18 discussed. So let's be clear. Did you discuss this request for
19 information with anyone from the Trump Organization?
20 A Yes.
21 Q With whom did you discuss it?
22 A That would have been Jason Greenblatt.
23 Q Anyone else?
24 A Certainly at some point President Trump. Probably at
25 some point a variety of the in-house lawyers at Trump when I was

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1 trying to understand it. I would have talked to Jeff McConney.
2 I would have talked with Allen Weisselberg. I would have talked
3 with Debra whose last name is escaping me right now. She is one
4 of the internal bookkeepers at the organization.
5 THE COURT: I have to ask about "would have." Does
6 this mean you remember you did or does this mean you think
7 generally looking back, "Yeah, that's probably who I spoke
8 to"?
9 THE WITNESS: I would have spoken to them. Yes, I
10 spoke to them. I'm sorry. Got me there. Yeah, I would
11 have spoken to them.
12 THE COURT: Thanks.
13 THE WITNESS: I did speak to them to clarify.
14 THE COURT: We are very precise.
15 THE WITNESS: At some point in time, not with
16 everything in this letter, but in general in connection with
17 the investigation.
18 Q When you had these conversations, were you ever made
19 aware of a prior communication from the Attorney General's
20 office directed to Mr. Weisselberg concerning a contribution in
21 the amount of \$25,000 made by the Donald J. Trump Foundation to
22 an organization known as And Justice For All?
23 MR. ROBERT: Objection. If the knowledge came from
24 a conversation with any of the clients, it would be
25 privileged. So if the question is "did the witness learn

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1 from any source other than her client", that's a fair
2 question. But just a general question "did she become
3 aware," she may have become aware of it from her client and
4 the mere fact that she says that would be an invasion of the
5 privilege.
6 THE COURT: I'm not sure that that's right. The
7 fact that there was some discussion doesn't mean that that
8 was advice asked or advice given, but we might be able to
9 avoid that issue by --
10 MR. SOLOMON: That's all I was asking, was she made
11 aware. I am not asking what was said. I'm not asking
12 advice that was given. Was she made aware of the prior
13 communication from the Attorney General's office? May I
14 finish, please? I don't think that's privileged. The mere
15 fact of the existence of prior communications is not
16 privileged.
17 MR. ROBERT: Your Honor, any fact that a lawyer
18 learns from his or her client during the scope of their
19 representation is governed by attorney-client privilege.
20 That's why if the question is "did you learn a fact from
21 someone other than the client," that's a fair question. But
22 once we get into "were you made aware of something," then
23 becomes the issue of who made you aware of it and that
24 conversation is absolutely privileged.
25 THE COURT: I disagree. It is not advice.

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1 MR. SOLOMON: And also, Your Honor, not every fact
2 you learn from your counsel or from the client would be
3 privileged. If a client told me, "today is Thursday," that
4 doesn't make that communication privileged.
5 MR. ROBERT: It would make it confidential if it's
6 absent an order directing an attorney to provide it. It
7 would be a problem, but here, the judge made his ruling.
8 THE COURT: So objection noted, understood, but
9 overruled.
10 Q Simple question. Did you become aware of a prior
11 communication from the Attorney General's office relating to the
12 contribution that I described?
13 A At some -- I'm sorry. Of a prior communication from
14 the Attorney General to?
15 Q To the Trump Organization relating to a \$25,000
16 contribution made by the Donald J. Trump Foundation to an
17 organization known as And Justice For All?
18 A I believe I was aware of that communication. I don't
19 recall the details.
20 (Continued on the next page.)
21
22
23
24
25

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1 Q And were you made aware that the Donald J. Trump
2 Foundation responded to the Attorney General's Office? It's a
3 yes or no.
4 A I believe I was aware of that, too, yes.
5 MR. SOLOMON: Okay. Could we please mark as PX
6 1000 for identification?
7 Q Ma'am, while you're reviewing it, I'll just identify
8 for the record that this is or appears to be a letter on the
9 Donald J. Trump Foundation letterhead dated June 28, 2016
10 addressed to someone at the New York State Attorney General's
11 Office.
12 MR. KISE: Your Honor?
13 THE COURT: Yes.
14 MR. KISE: I'm just going to impose yet another
15 objection. What does this have to do with anything in this
16 case? I mean, maybe Mr. Solomon is going to connect it up,
17 but this is 2016 and it's a completely separate
18 investigation of an entity that's not a defendant here. It
19 has no connection to these proceedings of an investigation
20 in a matter that's long since been over, so I know we're all
21 interested in moving this along, I just don't see what
22 connection this has to these proceedings.
23 THE COURT: Mr. Solomon?
24 MR. SOLOMON: I think Your Honor heard earlier
25 today from the prior witness that representations were made

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1 to potential insurance carriers that there were no
2 outstanding investigations, inquiries and the like. I don't
3 remember the exact language. I know we had to go back to
4 find the exact language, but in the vernacular there are no
5 outstanding claims asserted or unasserted and that
6 representation was made to HCC and what we're doing now is
7 just establishing whether there were --
8 MR. KISE: Right, but again -- well, as you know,
9 on the insurance matter, I had basically the same objection,
10 which is what does that have to do with a 6312 violation? I
11 mean, all of those matters between the insurance company and
12 the client are subsumed within the policy as we heard the
13 witness -- I'm not going to go off on that.
14 Anyway, we're now taking to a second degree of
15 relevance. We first had something that I objected to, you
16 overruled as marginally relevant -- not relevant in my
17 opinion, but marginally relevant and now we're taking yet
18 another step away from the core issues in the case because
19 I'm not sure what this has to do with anything in the case.
20 What count does it relate to in the case?
21 MR. AMER: Can I just say I didn't hear the word
22 "marginal" when Your Honor overruled --
23 MR. KISE: That was my description, as I just said.
24 THE COURT: As I told the witness, we are very
25 precise around here. One word or the other could make a big

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1 difference.
2 MR. SOLOMON: Your Honor, an omission in seeking
3 insurance coverage is relevant. And if we show that there
4 was knowledge at the Trump Organization at the highest
5 levels of the existence of this inquiry and we actually are
6 going to get to an actual Notice of Violation that was sent
7 to the Trump Organization. The failure to disclose that, if
8 intentional, absolutely goes to the existing claims in this
9 case in the 6312 violations that we've alleged.
10 MR. KISE: Okay, Your Honor, the 6312 violations
11 relate to financial statements and the submission and use of
12 those financial statements in the course of obtaining loans
13 and insurance. They -- the case as pled and as tried
14 doesn't have to do with every single communication or
15 representation that was made to anyone at anytime by this is
16 the Donald J. Trump Foundation, again, a non-defendant,
17 nonparty. At some level there really needs to be some
18 containment of what we're doing here. This has gotten
19 pretty far afield. So, respectfully, the issue in the case
20 and the claims asserted again relate to statements of
21 financial condition that were inflated, not inflated,
22 whether they were used to obtain insurance, whether they
23 were used to obtain loans, but anything to do with
24 representations to anyone we'll be here until 2025.
25 MR. SOLOMON: We'll only be here that long, Your

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1 Honor, if there that many fraudulent misrepresentations or
2 omissions. I have another five or ten minutes on this line.
3 It's not going to take that long. We're going to establish
4 that they knew about these inquiries, they knew about the
5 Notice of Violation, and as you heard earlier today in open
6 court, they did not disclose it to HCC.
7 MR. KISE: Okay. So, again, the case is about
8 statements of financial condition.
9 THE COURT: That's a banned word.
10 MR. KISE: I know it is, but I have to say it in
11 response. I realize that the case is about statements of
12 financial condition and the use of those -- I mean, we can
13 pull out the complaint and look at the claims, so -- and
14 whether or not the insurance company was notified properly
15 or not notified properly about something is as the witness
16 has testified and is clear for the policy subsumed within
17 the policy. The insurance company and the insured and the
18 insurer work that out. If there is something that wasn't
19 disclosed, then they don't cover it.
20 MR. ROBERT: In addition, Your Honor, they keep
21 using the phrase "they knew." Who knew what and when
22 because there is a policy of insurance that's in evidence.
23 There is specific provisions in that policy as to who is --
24 who has to have notice in order to have a disclosure. So at
25 some point there has to be some connection of the dots as to

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1 who knew what at one time. They're uniform. They knew,
2 they knew. Respectfully, it's inappropriate here because
3 there are multiple defendants.
4 THE COURT: I certainly see that and understand
5 that as an issue. The record will show who knew, who didn't
6 know. So that will be a consideration.
7 But let me make a general statement that might
8 foreclose or deter other objections. To me, this case is
9 not just about financial statements being submitted to
10 insurance companies. It's about whether or not the
11 defendants were committing fraud, persistent and whatever
12 the pervasive -- whatever the other wording is. And it's
13 also about what the -- what any alleged, of course, any
14 remedies will be. If it seems to me in taking Mr. Solomon's
15 -- building on what Mr. Solomon said, if the evidence shows
16 that a certain defendant was consistently acting
17 fraudulently if, if, if, then the law provides that there
18 can be all sorts of equitable relief. So I think this is
19 completely relevant. I understand it's not maybe the heart
20 of the case, but it is in the case.
21 MR. KISE: But, Your Honor, the equitable relief
22 being sought, the equitable relief that can be granted is
23 limited by what they're requesting and the equitable relief
24 cannot be just stop committing fraud generally. It has to
25 be specific. And so here the case is about don't issue

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1 false financial statements anymore. That's their claim.
2 That's what they're seeking. That's part of their
3 injunctive relief is stop doing that.
4 THE COURT: Part of.
5 MR. KISE: But it can't be just stop committing
6 fraud generally. I mean, there is no provision in the law
7 for that. So any allegation of any claim of any kind that
8 they say is fraudulent is going to come in as evidence of
9 some pattern? I mean, it has to -- everything has to
10 connect back to the case that's been pled and is being
11 proven. Otherwise, there is absolutely no limits on what
12 comes in. It's just anything that they decide to look at
13 and say okay, this is fraud, that's fraud. How are you even
14 supposed to fashion relief in that regard? Stop committing
15 fraud generally? That's a prohibited order.
16 THE COURT: I have various ideas about how to do
17 that if it comes to it.
18 MR. KISE: But the point is there has to be some
19 connection to the claims. Otherwise, it's just adrift.
20 THE COURT: We're going around in circles. The
21 objection is overruled for the reasons I said and that
22 Mr. Solomon said. Let's move on.
23 MR. SOLOMON: Thank you, Your Honor.
24 THE COURT: We'll break at five minutes to 1:00.
25 MR. SOLOMON: Okay. Thank you.

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1 Q Ms. Dillon, have you had an opportunity to review what
2 is PX 1000?
3 A I did not read it word for word, but I looked at it
4 when you asked me to look at it before, but no, I did not
5 re-review it during the exchange.
6 THE COURT: You were riveted by the exchange?
7 THE WITNESS: As a lawyer I was riveted by the
8 exchange.
9 THE COURT: I was just going to say as a lawyer.
10 Q Ma'am, if you see on the second page there is a
11 signature above the printed name "Allen Weisselberg."
12 Would you recognize Mr. Weisselberg's signature if you
13 saw it?
14 A No, not necessarily.
15 Q Were you aware that the Donald J. Trump Foundation had
16 communicated in or about June of 2016 with the New York State
17 Attorney General's Office concerning the contribution described
18 in this letter?
19 A Isn't the letter the communication? I'm -- I didn't
20 maybe understand your question. Was I aware of this letter?
21 Q Yes, ma'am.
22 A Yes, I was aware of this letter.
23 Q Okay. When did you become aware of it?
24 A Contemporaneous with the letter.
25 Q Okay.

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1 MR. SOLOMON: We offer the letter in evidence.
 2 THE COURT: Granted. It's in evidence.
 3 (Whereupon, the item previously referred to is
 4 received and marked Plaintiff's Exhibit Number 1000 in
 5 evidence.)
 6 MR. ROBERT: Objection to relevance. It's a
 7 continuing objection.
 8 THE COURT: I understand. Objection noted.
 9 Overruled.
 10 MR. SOLOMON: If we could show the witness PX 1002?
 11 Thank you, sir.
 12 Q And PX 1002 is a letter on State of New York Office of
 13 the Attorney General letterhead directed to you, Ms. Dillon, at
 14 Morgan Lewis. Do you see that?
 15 A Yes, I do.
 16 Q And the "re:" is the "Donald J. Trump Foundation;"
 17 correct?
 18 A Yes.
 19 Q And the title in the center of the first page is
 20 "Notice of Violation?"
 21 A I see that.
 22 Q Okay. Did you receive this letter in or about
 23 September of 2016?
 24 A Yes, I did.
 25 MR. SOLOMON: We move PX 1002 into evidence.

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1 THE COURT: Granted. It's in.
 2 MR. ROBERT: Same objection.
 3 (Whereupon, the item previously referred to is
 4 received and marked Plaintiff's Exhibit Number 1002 in
 5 evidence.)
 6 Q Just a yes or no, ma'am, did you discuss this letter
 7 with anyone at The Trump Organization?
 8 A Yes.
 9 Q Okay. Just the names of the persons with whom you
 10 discussed this letter?
 11 A Jason Greenblatt. I don't recall if there were others
 12 that I discussed the contents of the letter with.
 13 Q So you don't recall if you discussed the contents of
 14 this letter with Mr. Allen Weisselberg?
 15 A Of this letter in particular, no. I'm not sure if I
 16 did or not.
 17 Q Did you discuss the subject matter of this letter, the
 18 Notice of Violation, if not the particular letter with
 19 Mr. Weisselberg?
 20 A I believe I did, yes.
 21 Q Okay. Let's go then to the subject matter of the
 22 letter, if not the letter itself.
 23 With whom at the Trump Organization did you discuss the
 24 subject matter of the letter?
 25 A That would have been as mentioned, Mr. Greenblatt,

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1 Mr. Weisselberg and Mr. McConney.
 2 Q Anyone else you can recall?
 3 A I don't believe so. I could be wrong. There was a lot
 4 going on at that time, but I think that's the list.
 5 Q Okay. Did you provide a copy of this letter to your
 6 client?
 7 A Yes.
 8 Q Okay. And at that time who did you understand your
 9 client to be?
 10 A The Trump Foundation, The Donald J. Trump Foundation.
 11 Q So who at the Donald J. Trump Foundation did you
 12 provide the letter to?
 13 A I don't recall who I gave it to. Certainly I would
 14 have given it to Mr. Greenblatt and he would have handled that.
 15 Would be my -- again, this is a would be. That is my -- yes, to
 16 the best of my recollection, it would have been Mr. Greenblatt
 17 that I would have provided the letter to.
 18 Q But in your practice, ma'am, if you received a letter
 19 from a governmental authority titled, "Notice of Violation," you
 20 would have sent it on to the client? Do you have any doubt of
 21 that?
 22 A I have no doubt that it would have gotten to the
 23 clients, but it would have been through client's counsel.
 24 Q In-house counsel?
 25 A In-house counsel, yes.

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1 MR. SOLOMON: Can we please mark as PX 1003 for
 2 identification?
 3 And while you're looking at this letter I will
 4 identify for the record it is a letter on Morgan Lewis
 5 letterhead. It appears to be your letterhead, in fact,
 6 dated October 7, 2016.
 7 Q Ma'am, is that your signature on the second page of
 8 this letter?
 9 A Yes, it is.
 10 Q And did you send it to Mr. Sheehan at the Charities
 11 Bureau at the New York State Attorney General's Office on or
 12 about October 7, 2016?
 13 A Yes.
 14 MR. SOLOMON: We offer PX 1003 in evidence.
 15 THE COURT: Granted. It's in evidence.
 16 MR. ROBERT: Same objection.
 17 (Whereupon, the item previously referred to is
 18 received and marked Plaintiff's Exhibit Number 1003 in
 19 evidence.)
 20 Q The first line of this indicates that it is -- excuse
 21 me -- that "you are in receipt" -- "we are in receipt of your
 22 letter dated September 30, 2016."
 23 And that's the letter we saw a moment ago, PX 1002;
 24 correct?
 25 A Yes.

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1 Q Again, without discussing the substance, with whom did
2 you discuss this response prior to sending it to the New York
3 State Attorney General's Office?
4 A I don't recall who all I've discussed the response
5 with.
6 Q Do you recall anyone? When you say you all?
7 A Again, this would have certainly been Mr. Greenblatt.
8 It's -- I'm just not sure who I talked to about it. It was a
9 long time ago.
10 Q Okay. Would you have sent it -- in your practice,
11 would you have sent it to the client for review before sending
12 it on to the Attorney General's office?
13 A Generally I would send things, yes, to the client for
14 review. Again, meaning to in-house counsel at the Trump
15 Organization.
16 Q So is it fair to say by no later than October 2016 you
17 as outside counsel and The Donald J. Trump Foundation were aware
18 that the New York Attorney General's Office had issued a Notice
19 of Violation and that you were gathering information to respond
20 to that notice?
21 A I was certainly aware of it and certainly the Trump
22 Organization -- or the Donald J. Trump Foundation was aware of
23 this, yes.
24 Q Were you at that time gathering information to provide
25 to the New York State Attorney General's Office? When I say

S. Dillon - Plaintiff - direct (Solomon) Page 2558

1 "you," I mean you or someone at your direction?
2 A Yes, we would have been gathering information.
3 Q Do you know if this Notice of Violation or the need to
4 respond to the request for information were disclosed to the
5 Trump Organization's insurance carriers prior to soliciting
6 either a renewal or issuance of a new insurance policy?
7 A I don't know.
8 MR. SOLOMON: Your Honor, I'd be moving on to a
9 completely different area. I can start or we can --
10 THE COURT: I can tell you want a break now. We'll
11 break now until 2:15.
12 MR. SOLOMON: Thank you, Your Honor.
13 (Whereupon, there is a recess in the proceedings.)
14 A F T E R N O O N S E S S I O N
15 THE COURT OFFICER: All rise. Part 37 is back in
16 session. The Honorable Judge Arthur Engoron presiding.
17 Please be seated and come to order.
18 THE COURT: Let's get the witness.
19 MR. KISE: Judge, while we're waiting on that, just
20 two very brief points. Can I ask the Court to so order -- I
21 believe it's the October 3rd transcript, which contains the
22 original gag order? Because I don't think that was ever
23 memorialized. The first violation last week was
24 memorialized and then, of course, yesterday you entered your
25 order, but the gag order itself was on the transcript. So

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1 in order for that to be appealable, then we would need to so
2 order that transcript for October 3rd.
3 THE COURT: I will take care of that. I agree with
4 you.
5 MR. KISE: Okay. And then at some point --
6 THE COURT: One second.
7 MR. KISE: Yes, sir.
8 THE COURT: I'll take care of that or I'll get back
9 to you, if there is any issue or problem.
10 MR. KISE: The other thing, at the appropriate time
11 when the courtroom is empty, a photo of the bench empty so
12 we can lay out what adjoins next to and all that is because
13 I do think that is a matter of interpretation.
14 THE COURT: Okay. Let me just -- you are -- you
15 want to take a photo of the bench so --
16 MR. KISE: For the record, yes, Your Honor.
17 THE COURT: I would suggest, it's up to you, a
18 photo with me here, with you there and I haven't discussed
19 that.
20 MR. KISE: I don't.
21 THE COURT: -- or some other person I think it will
22 show if there are people sitting in actual chairs.
23 MR. KISE: However you would like me to proceed,
24 although --
25 THE COURT: We can do both.

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1 MR. KISE: Okay. I'll do that.
2 THE COURT: Okay. Good. Okay.
3 And Mr. Kise, you are about Michael Cohen's size.
4 Maybe you should sit there and I'll sit here.
5 MR. KISE: I'm not nearly as photogenic as you
6 might think. I'll stay back here.
7 THE COURT OFFICER: Witness entering.
8 (Whereupon, the witness enters the courtroom and
9 approaches the witness stand.)
10 THE COURT: I'll remind the witness, as I always
11 do, that she is under oath.
12 And let's continue with the direct examination of
13 Sheri Dillon.
14 MR. SOLOMON: Thank you, Your Honor.
15 CONTINUED DIRECT EXAMINATION
16 BY MR. SOLOMON:
17 Q Good afternoon, Ms. Dillon.
18 A Good afternoon.
19 Q Let's turn to conservation easements of particular
20 properties. We talked earlier about Trump National Golf Club
21 LA. Do you recall that?
22 A Yes.
23 Q Can I refer to that as TNGC LA?
24 A Yes, I'll know what you mean.
25 Q Okay. Do you recall the owner of that property is VH

S. Dillon - Plaintiff - direct (Solomon) Page 2561

1 Property Corp?
 2 A I don't recall that, but I recall a name similar to
 3 that, so.
 4 Q We could -- we'll see a document later that has that in
 5 there. We'll see if it refreshes your recollection.
 6 Did there come a time that the owner of TNGC LA
 7 contemplated donating a conservation easement over a portion of
 8 its property?
 9 A Yes, there was a time that was contemplated.
 10 Q Okay. In my questioning today when I use the term
 11 "communication" and I'm doing this because we had a little bit
 12 of a misunderstanding with another witness another day, but when
 13 I say "communications" I mean, all written, any other form of
 14 transmitting or receiving information, okay?
 15 A Okay.
 16 Q Thank you.
 17 Do you recall being involved in communications in the
 18 second half of -- excuse me.
 19 Do you recall being involved in communications in the
 20 second half of 2012 relating to the potential donation of a
 21 conservation easement over a portion of TNGC LA?
 22 A I do recall during a general time frame being involved
 23 in potential conversations. I'm not sure of the exact dates,
 24 but.
 25 Q Okay. Sure. Let's see if we can refresh your

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1 recollection and put a time frame on this.
 2 MR. SOLOMON: Ask to mark PX 1446 for
 3 identification. For the record, this is a -- the top e-mail
 4 chain is from Donald Trump, Jr..
 5 Q The date is 11/16/2012 to Josh Seidner to -- cc's to
 6 Allen Weisselberg, Sheri Dillon, Andrew Weiss at the Trump
 7 Organization and Jill Martin at TrumpNational.com?
 8 Does this e-mail chain refresh your recollection that
 9 it was in or about November 2012 that there were discussions
 10 relating to a potential conservation easement over TNGC -- a
 11 portion of TNGC LA?
 12 A I see from the e-mail that it was being talked about in
 13 November of 2012.
 14 Q Okay. And the e-mail chain, you are cc'd on it;
 15 correct?
 16 A If you give me a second to look through it.
 17 Q Of course. Whatever time you need, ma'am.
 18 A I'm sorry, what was your question?
 19 MR. SOLOMON: Your Honor, may I have a read back of
 20 my question?
 21 THE COURT: A read back, please.
 22 (Whereupon, the requested portion of the
 23 proceedings was read back by the court reporter.)
 24 A Yes.
 25 Q Okay. And did you receive it in or about November of

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1 2012?
 2 A Yes, I would have received it on or about November 16,
 3 2012.
 4 Q Thank you.
 5 MR. SOLOMON: We offer this in evidence.
 6 MR. ROBERT: Objection. Statute of limitations.
 7 THE COURT: Overruled. Granted. It's in evidence.
 8 I understand the objection.
 9 Q Okay. You've read through the e-mail chain; correct?
 10 A Yes, I quickly did.
 11 Q Okay. You'll see that this e-mail chain at the top,
 12 the most recent one from November 16th, Mr. Donald Trump, Jr.
 13 indicates: "That's great. I'm glad the plans I had in
 14 Westchester could be of use." Do you see that?
 15 A I see that statement, yes.
 16 Q Okay. And the "re:" just so we could clarify something
 17 is the TIGC LA? Do you see that?
 18 A I see the re: says TIGC LA.
 19 Q Do people refer to the TNGC LA golf course sometimes as
 20 TIGC LA Trump International Golf Course LA?
 21 A Presumably so.
 22 Q When you received this did you understand this e-mail
 23 chain was referring to TIGC LA?
 24 A I don't know what I thought because it seems to mix and
 25 match conversations about Westchester as well as LA, so I'm not

S. Dillon - Plaintiff - direct (Solomon) Page 2564

1 really too sure about that.
 2 Q Sure. Turn to page two of three. It's from Allen
 3 Weisselberg to Josh Seidner and you are cc'd. Do you see that?
 4 A Yes.
 5 Q Okay. "I understand you are working on the
 6 conservation easement project for the above-captioned property."
 7 The above-captioned property is TIGC LA; correct?
 8 A That is what it says that Allen wrote and that's where
 9 it starts, but rest of the e-mail provides for a lack of
 10 clarity.
 11 Q Okay. Did you have an understanding, however, that one
 12 of the issues in this e-mail was TNGC LA?
 13 A I don't know if it was an issue, but there is a
 14 discussion about it from the re: line or appears to be a
 15 discussion about it.
 16 MR. SOLOMON: Okay. Let's mark PX 1412, please.
 17 Q Ma'am, you see that PX 1412 is actually an offshoot of
 18 the earlier e-mail chain we were just looking at, PX 1466. Do
 19 you see that?
 20 A I'm still looking at it. Give me just a second,
 21 please.
 22 All right. Could I have the question again, please.
 23 Q Sure. Do you see that this e-mail chain is an offshoot
 24 of the earlier e-mail chain we were just looking at, PX 1466?
 25 A It looks to be a continuation or it looks to be

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1 responding to that prior e-mail chain.
 2 Q Okay. On the first page you send an e-mail to Josh
 3 Seidner and Allen Weisselberg with ccs; correct?
 4 A Yes.
 5 Q And the re: is still TIGC LA. Do you see that?
 6 A Yes.
 7 Q And you suggested at the bottom of your e-mail that
 8 your colleague, "Bob Leonard, worked extensively with our
 9 engineer on another project." Do you see that?
 10 A I do.
 11 Q Did Bob Leonard work on the TNGC LA potential donation
 12 of a conservation easement?
 13 A I don't recall. That was a long time ago back in 2012
 14 whether Bob helped me on that or not.
 15 Q Okay. If you go up one on the e-mail chain, 11/26/2012
 16 from Josh Seidner to you with a cc to the same people, Donald
 17 Trump, Jr., Donald Bender, Allen Weisselberg, Andrew Weiss, Jill
 18 Martin, and now Bob Leonard has been added as a cc. Do you see
 19 that?
 20 A I do.
 21 Q And Mr. Seidner says to you -- writes to you, excuse
 22 me: "Hi, Sheri. I hope all is well. Attached please find the
 23 proposed master plan layout for LA."
 24 Does that refresh your recollection that this relates
 25 to TNGC LA?

S. Dillon - Plaintiff - direct (Solomon) Page 2566

1 A This part of the e-mail certainly relates to LA, yes.
 2 Q Okay. So you agree with me then in or about November
 3 of 2012 the owner of TNGC LA was contemplating or discussing a
 4 potential conservation easement over a portion of the TNGC LA
 5 property; right?
 6 A The owner of TNGC or TIGC LA, whichever it might be,
 7 appears to have been contemplating one in November 2012.
 8 THE COURT: Well, wait a minute. You say
 9 "whichever it might be." I'd like to figure out whether
 10 it's one property with two names or two properties with
 11 their own name. I have my own opinion, but I'd rather hear
 12 from the witness based on everything that's been in front of
 13 you, everything you remember, everything you've ever seen.
 14 Are they the same property or is it two different
 15 properties?
 16 THE WITNESS: There is one property that I'm aware
 17 of in LA that's a golf course.
 18 THE COURT: Which is?
 19 THE WITNESS: I just don't recall if it's a TN or a
 20 TI.
 21 THE COURT: Yes, but it's the same property?
 22 THE WITNESS: It's the same property.
 23 THE COURT: Thank you.
 24 Q You'll see in properties later on it's referred to as
 25 TNGC LA. Thank you for confirming. One property may be

S. Dillon - Plaintiff - direct (Solomon) Page 2567

1 referred to two different ways?
 2 A Correct.
 3 Q Thank you.
 4 On this e-mail -- and when I refer to this e-mail, I am
 5 still referring to PX 1412, the one from Josh Seidner to you
 6 with the ccs, second line, "Mr. Trump has reviewed this layout
 7 and thought it can work for our purposes." Do you see that?
 8 A I do.
 9 Q Did you have an understanding as to which Mr. Trump
 10 that was referring to?
 11 A I may have at the time, but I don't know.
 12 Q Was Donald Trump involved in the potential donation of
 13 a conservation easement over a portion of TNGC LA?
 14 A I don't recall whether he was involved or not.
 15 Q Was Donald Trump, Jr. involved in the potential
 16 donation of a conservation easement over TNGC LA?
 17 A I similarly don't recall as to whether he was involved.
 18 Q Same question for Eric Trump.
 19 A I don't recall whether Eric was involved. And part of
 20 this might be I don't know what you mean by "involved." Aware
 21 of?
 22 Q Let's take a step back.
 23 Donald Trump Senior, to your knowledge, did he review
 24 the layout for the constraints map and existing conditions?
 25 A I am -- sitting here today I don't know which Mr. Trump

S. Dillon - Plaintiff - direct (Solomon) Page 2568

1 that's referring to.
 2 Q Okay.
 3 THE COURT: But that didn't answer the question.
 4 MR. SOLOMON: Thank you.
 5 May I have a read back, Your Honor?
 6 THE COURT: Read back, please.
 7 And listen carefully. It's a very specific
 8 question.
 9 (Whereupon, the requested portion of the
 10 proceedings was read back by the court reporter.)
 11 A I have no knowledge of that one way or the other.
 12 Q Same question for Donald Trump, Jr.?
 13 A Same answer. I have no knowledge of that one way or
 14 the other.
 15 Q Same question for Mr. Eric Trump?
 16 A I have no knowledge of that one way or the other.
 17 Q You'll see how I wrote "cc" on this for Mr. Seidner is
 18 to Donald Trump, Jr.?
 19 A I do.
 20 Q Does that refresh your recollection as to which
 21 Mr. Trump you understood this to refer to at that time?
 22 A I'm sorry. That was 11 years ago, 12 years ago. I
 23 just don't recall which Mr. Trump that was referring to.
 24 Q And your e-mail ccs Mr. Donald Trump, Jr.. And as you
 25 sit here today, you still don't have a recollection as to which

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1 Mr. Trump was referred to in this e-mail chain?
 2 A I do not have a -- I don't remember. Yes, I can
 3 speculate for you, but I don't remember.
 4 Q Speculate for us.
 5 MR. ROBERT: Objection.
 6 THE COURT: Sustained. Speculation is not allowed
 7 in court.
 8 MR. SOLOMON: She offered, Your Honor.
 9 Transcript continues on the following page....
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S. DILLON - PLAINTIFF - DIRECT(MR. SOLOMON)
 1 Q You then forward his e-mail on to Jill Martin. Do you
 2 see that, in the middle?
 3 A I do.
 4 Q First sentence, "Yesterday, we had a call with Donald
 5 re valuation of the 16 lots." Do you see that?
 6 A I do.
 7 Q Does that refresh your recollection as to which Mr.
 8 Trump was involved in the TNGCLA project?
 9 A Yes.
 10 Q Which Mr. Trump was involved in the TNGCLA project?
 11 A It refreshes my recollection on who this call was with.
 12 It doesn't refresh my recollection on who was involved because I
 13 believe both -- I certainly know Don or I don't know. I'm not
 14 sure who was involved, but I know who
 15 this -- I believe I know who this call was.
 16 Q Who was the call with?
 17 A That would be with Sr.
 18 Q And during the call -- next sentence, I'm reading,
 19 ma'am. "During the call, we understood Donald to indicate that
 20 the 16 lots (and I believe the rest of the "Phase 2" lots) had a
 21 different zip code than the Phase 1 lots" and then it goes on.
 22 Do you see that?
 23 A I do.
 24 Q Was it Donald Trump, Sr. that indicated during the call
 25 that the 16 lots had a different zip code and then the

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S. DILLON - PLAINTIFF - DIRECT(MR. SOLOMON)
 1 Q Did you understand that the potential easement that was
 2 being referred to or considered at that time covered all or a
 3 portion of the driving range at TNGCLA?
 4 A Yes.
 5 MR. SOLOMON: Could we, please, mark PX 1460.
 6 Before we do that, Your Honor, I move into evidence PX 1412.
 7 MR. ROBERT: Objection. Statute of limitations.
 8 THE COURT: Overruled. It is in evidence.
 9 (Whereupon, the Document was marked in evidence as
 10 Plaintiff's Exhibit 1412.)
 11 Q Ma'am, you will see this is an e-mail chain, the most
 12 recent on this chain, meaning the first one, is Jill Martin sent
 13 October 9, 2014 to you. Do you see that?
 14 A I'm sorry. Yes.
 15 Q Did the project or the consideration of potential
 16 easement in 2012 cease for a period of time and then was
 17 restarted in or about 2014?
 18 A Yes, that's correct.
 19 Q You'll see the bottom e-mail is from Brian Curry to
 20 you, the one dated October 9th? Do you see that? 1:25 p.m.?
 21 A Yes.
 22 Q Who is Brian Curry?
 23 A He was the appraiser retained to work on that project.
 24 Q The TNGCLA project?
 25 A Correct.

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S. DILLON - PLAINTIFF - DIRECT(MR. SOLOMON)
 1 additional information you provide in this e-mail?
 2 A I'm getting a little uncomfortable here with some of my
 3 ethical obligations are privileged since we seem to be getting
 4 into conversations I had with my client.
 5 MR. SOLOMON: Several things. First off, the
 6 privilege belongs to your client, so it is for them to
 7 object to privilege, not the witness, as I think you
 8 instructed the witness we had here yesterday, Your Honor.
 9 Second, second, if I may, this is an e-mail that
 10 was produced in this litigation. Your Honor has already
 11 ruled that communications governing valuations and
 12 appraisals are not privileged.
 13 THE COURT: Because they involve business, not
 14 legal advice; is that right?
 15 MR. SOLOMON: Correct.
 16 MR. ROBERT: Your Honor, first of all, when we get
 17 up too soon, we get criticized for objecting too soon by the
 18 government and when we wait too long, they criticize we
 19 waited too long. Ms. Dillon is appropriately setting forth
 20 as a currently licensed attorney and a former attorney for
 21 our clients. If she feels uncomfortable, I think it is
 22 incumbent upon her and I commend her for making the
 23 objection the way she did or at least making it an issue.
 24 We do believe that any conversations, as I said
 25 earlier this afternoon, between Ms. Dillon and her former

S. DILLON - PLAINTIFF - DIRECT(MR. SOLOMON) Page 2573

1 clients are privileged. Again, we weren't directly involved
 2 in the special proceeding. I do know the Court made certain
 3 rules as to what documents were in or not, but when we
 4 address the issue with some previous witnesses, the fact
 5 that the Court may have ordered a document to be turned over
 6 previously in our view, especially since many of the
 7 defendants in this case were not defendants in that case
 8 were given an opportunity to assert privilege in that case.
 9 But once again, we asserted attorney-client privilege in any
 10 communication that Ms. Dillon had with those clients is
 11 privilege and not the proper subject of inquiry.
 12 THE COURT: Well, I'd rather not because I don't
 13 need to address the question of who can object. I see your
 14 point. Let's just go to the substance of it. Let me take a
 15 very careful read-through of this. I understand
 16 that -- not -- you as attorneys were not involved in the
 17 special proceeding. I also realize that certain of the
 18 defendants were not involved in the special proceedings
 19 investigation phase we'll call it. Let me just look at this
 20 for a minute.
 21 MR. ROBERT: Yes, sir.
 22 (Whereupon, there was a pause in the proceedings.)
 23 THE COURT: Can I get a readback of the exact
 24 question?
 25 (Whereupon, the requested portion of the record was

S. DILLON - PLAINTIFF - DIRECT(MR. SOLOMON) Page 2574

1 read back.)
 2 THE COURT: I guess I have to rule now. I rule
 3 that this is business information or advice, not legal
 4 advice. I direct the witness to answer. You are not
 5 prejudiced to where any other objections depending upon what
 6 the other questions are.
 7 A Could you read back the question one more time?
 8 THE COURT: Please. My fault.
 9 (Whereupon, the requested portion of the record was
 10 read back.)
 11 A I'm not sure if it was Don, Sr. or Don, Jr.
 12 Q Is the fact that you're unable to distinguish between
 13 Don, Sr. and Don, Jr. with respect to the TNGCLA project because
 14 they were both involved in it?
 15 A It is because I saw from an e-mail that you showed me
 16 and my recollection Don, Jr. was involved in a lot of things.
 17 His father was involved in very few things, but was aware of a
 18 lot of things. And it's unclear to me who I was talking to then
 19 and confirming that Don, Jr. was potentially involved was the
 20 fact who was on those prior e-mails. So it is just a little bit
 21 confusing to me and it was a long time ago.
 22 Q I understand it was a long time ago, but my question
 23 was just a little bit different. Is the reason you can't
 24 distinguish who was involved in conversations relating to TNGCLA
 25 because both Don, Jr., Donald Trump, Jr. and Donald Trump Sr.

S. DILLON - PLAINTIFF - DIRECT(MR. SOLOMON) Page 2575

1 were both involved in the project?
 2 MR. ROBERT: Objection; leading.
 3 THE COURT: Overruled.
 4 A And my answer I think remains the same. One, I don't
 5 know what you mean by involved. I would certainly agree that
 6 Don, Sr. was aware. I don't think he was necessarily involved.
 7 He was the highest level executive at the company and involved
 8 is -- seems to suggest more to me as -- that seems to be more
 9 of a day-to-day thing as opposed to aware of having a general
 10 awareness. So that's the distinction I make.
 11 As far as Don, Jr., I can't remember if he was involved
 12 or also aware and whether it was the staff at the Trump Org who
 13 was running the show. I just don't recall.
 14 Q I appreciate, ma'am, your distinction between involved
 15 and aware of. So when you say "involved," that's day-to-day and
 16 when you say "aware," you mean aware of; is that fair?
 17 A I would say there's two spectrums, right, and I would
 18 say it is not every single detail every day to be involved, but
 19 there's also a general awareness which can be a high level
 20 awareness on the other hand and there is a spectrum there. So I
 21 just want to be clear that I don't know what you exactly mean by
 22 involved, but I don't think -- I don't -- in my view, neither
 23 of them were involved as I would use the word "involved."
 24 Q Okay. When I say "involved" and I asked you questions
 25 using the word "involved," give me anyone on that spectrum you

S. DILLON - PLAINTIFF - DIRECT(MR. SOLOMON) Page 2576

1 just described and feel free to tell me where you think they are
 2 on that spectrum. Is that fair?
 3 A I think at a high level, Don, Sr. was aware. I think
 4 Don, Jr. may have been more aware.
 5 Q That's fair. I appreciate the differentiation between
 6 the two and I thank you for that. I want to make clear when I
 7 use the word "involved" today, I want you to understand it means
 8 anywhere on that spectrum that you just described and if you
 9 need to explain your answer to tell me where it falls. Feel
 10 free to do so, but it would include someone if they're anywhere
 11 on the spectrum you described, okay?
 12 A Sure.
 13 THE COURT: No. No. If we are going to refer to a
 14 spectrum from aware to involve, I guess it's -- it is
 15 involved to aware. Let's not call it the aware spectrum.
 16 Let's call it the aware/involved spectrum.
 17 MR. SOLOMON: Very fair enough, Your Honor. I will
 18 be guided by that suggestion.
 19 THE COURT: Or some other way, just so we're not
 20 saying one end of the spectrum to refer to the whole
 21 spectrum.
 22 MR. SOLOMON: How about I use the term "a role in"
 23 and then the witness can tell me where it falls between
 24 aware and day-to-day involvement? Does that work?
 25 MR. ROBERT: Your Honor, I think this is an

S. DILLON - PLAINTIFF - DIRECT(MR. SOLOMON) Page 2577

1 important distinction if he asks a question and the witness
 2 needs clarification. It is direct examination. The witness
 3 will say, "I can't answer it that way" and explain it her
 4 way. I think using a define term will create confusion.
 5 MR. SOLOMON: I'm inviting the witness to explain.
 6 THE COURT: A role in -- I would say being aware
 7 of something is not necessarily, depending upon your view of
 8 language, to have a role in. I'm sure you're creative
 9 enough to come up some way to ask the question that doesn't
 10 imply the answer and that the witness can explain if she
 11 needs to.
 12 MR. SOLOMON: Thank you, Your Honor. We move PX
 13 1460 into evidence.
 14 THE COURT: Granted. It is in evidence.
 15 (Whereupon, the Document was marked in evidence as
 16 Plaintiff's Exhibit 1460.)
 17 MR. ROBERT: Statute of limitations.
 18 THE COURT: Overruled.
 19 MR. SOLOMON: Could we, please, mark PX 944 for
 20 identification.
 21 Q Ma'am, this is an e-mail chain between you and Brian
 22 Curry with Rick Zbranek as a cc. Do you see that?
 23 A Yes.
 24 Q Who is Mr. Zbranek?
 25 A Mr. Zbranek was another appraiser at Cushman &

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1 Wakefield.
 2 Q And was he working on the TNGCLA project, to your
 3 knowledge?
 4 A Yes, he was.
 5 Q In the top e-mail from Mr. Curry to you on October 16,
 6 2014, Mr. Curry writes, "Sheri, I revisited pricing in both lots
 7 and home sales scenarios. Numbers come in around 27 to 28
 8 million "-- "MM for the driving range property. That is about
 9 1.7 to 1.75 MM per lot "as is" condition (not if yet fully
 10 entitled before land development, time and risk, et cetera.)"
 11 Do you see that?
 12 A I do.
 13 Q Did you understand that Mr. Curry was advising you that
 14 the driving range property was worth approximately 27 to
 15 \$28 million?
 16 A That seemed to be his preliminary view at that point in
 17 time.
 18 Q His preliminary estimate of the value of the driving
 19 range property, right?
 20 A I think it speaks for itself. He said the numbers come
 21 in around 27 to 28, I understood "MM" to be million, for the
 22 driving range property and at that point in time.
 23 Q At that point in time. That's all we're asking. At
 24 that point in time, the driving range property was the property
 25 that was being considered for the potential donation of the

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1 conservation easement, right?
 2 A The conservation easement was considered -- the
 3 easement that was being considered would be placed over part or
 4 all of the driving range property.
 5 Q So if it's over all of the driving range property, it
 6 would be somewhere around 27 to 28 million, right?
 7 A At this point, I don't recall whether it was all of the
 8 driving range property that was being considered. It's been a
 9 long time since I looked at these appraisals, so I don't want to
 10 commit to something that I don't know if it is true or not.
 11 Q It says for the driving range property. It doesn't say
 12 for a portion of it, does it?
 13 A Doesn't say for all of it either.
 14 Q But it says for the driving range property, right?
 15 A I find that to be sort of an imprecise and it also
 16 isn't talking about the conservation easement. It is not
 17 talking about a lot of things and if you have more documents,
 18 that would be really helpful. I could take a look at them and
 19 understand it, but --
 20 Q We will get to more documents, ma'am, but I want to
 21 know your understanding at various points in time.
 22 A At this point in time, he was suggesting that numbers
 23 come in around 27 to 28 million for the driving range property,
 24 whatever he means by that.
 25 THE COURT: Just a second. I learned in junior

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1 high school or high school that if you refer to something,
 2 you mean the whole thing unless there's some indication you
 3 only mean part of it. Now, obviously, I don't know what Mr.
 4 Curry was thinking at the time, but -- and there is no jury
 5 here. I wouldn't be saying this, but I take the driving
 6 range to mean the whole driving range. But, you know, if
 7 there's an indication that less than that is meant, fine.
 8 And I'm not sure that's what he meant, but that's how I
 9 interpret it.
 10 MR. KISE: Respectfully, Your Honor, we're back to
 11 a little bit to where we were yesterday. It is a matter of
 12 interpretation. I think the witness has to testify as to
 13 what she can relate. Understanding your view, but she can
 14 only testify to what she can testify to.
 15 THE COURT: I agree. Thank you. You're right.
 16 THE WITNESS: And I'm not trying to be difficult
 17 here. It is just there's a lot of different pieces to a
 18 driving range property. There's things beyond just the
 19 driving range and the lots. Does it include the putting
 20 range? I don't know. Does it include the huts? I don't
 21 know. There's a lot to it, so that's what's complicating
 22 this. There's a lot of shorthand and abbreviations used in
 23 e-mails that make them very hard to understand.
 24 Q Is that why you at one point in time you instructed
 25 your associate not to send e-mails to avoid creating discovery?

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1 A I have routinely throughout my practice, through all of
 2 years of practice, I was taught by lots of folks when anything
 3 is complicated pick, up the phone. Don't use shorthand. Don't
 4 use abbreviations. You will end up with 40 e-mails that make no
 5 sense and no one understands even at the time or later, so pick
 6 up the phone and give them a call.
 7 Q Do you recall that the driving range was comprised of
 8 16 lots?
 9 A The driving range was a driving range with balls and
 10 driving range on it.
 11 Q Wasn't my question. Later in the process of the
 12 analysis for the donation or potential donation of the
 13 conservation easement, the appraiser determined that you could
 14 do 16 lots on the driving range property. Do you recall that?
 15 A The driving range property when it was being considered
 16 for a conservation easement, one of the plans of a hypothetical
 17 subdivision showed 16 lots.
 18 Q Okay. 16 lots times he determined roughly 1.7 to 1.75
 19 million per lot, right? You see that in the e-mail?
 20 A I see the numbers 1. --
 21 Q When we multiply 16 lots times 1.7 million, we've done
 22 this before.
 23 MR. SOLOMON: I ask the Court to take judicial
 24 notice that I think that's \$27.2 million.
 25 THE COURT: I'm not surprised. I take judicial

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1 notice.
 2 Q Sound about right?
 3 MR. ROBERT: Objection.
 4 THE COURT: What's the ground of the objection?
 5 MR. ROBERT: He's leading and turning this into a
 6 cross-examination. It is a direct examination of a witness
 7 they called. Is not "is this right," "is that right." Ask
 8 open-ended questions and get answers.
 9 MR. SOLOMON: Your Honor, this witness was counsel
 10 for the Trump Organization and many entities as she
 11 testified. She was an agent. We actually have the right to
 12 treat her as a hostile witness and lead on it.
 13 THE COURT: I would agree she can be considered a
 14 hostile witness.
 15 MR. ROBERT: This witness has demonstrated no
 16 evidence of that at all. She's been incredibly forthright
 17 and the fact that a question may be inarticulately phrased,
 18 no offense to Mr. Solomon, the witness is being very careful
 19 in the words she is using as a careful lawyer. So the fact
 20 she may not understand one of his questions or she thinks he
 21 is being combative is not what the record demonstrates. She
 22 is not an adverse witness and she is not a hostile witness.
 23 The government has to continue to treat her and do a normal
 24 direct examination.
 25 MR. SOLOMON: Your Honor, the standard isn't how

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1 the witness is answering the questions. The standard is the
 2 witness' status as a former attorney and as a former agent
 3 for the Trump Organization and various entities as she
 4 testified to. We have a right to treat her as a hostile
 5 witness. The word 'hostile' doesn't mean 'antagonistic'
 6 necessarily. It is a legal term. We all know that.
 7 MR. ROBERT: The key is former, no longer current
 8 attorney. Ms. Dillon is not our current agent. She was a
 9 former attorney for our clients. Again, proceed as we have
 10 been with other witnesses and so far, things have been going
 11 well until the last few questions.
 12 THE COURT: I want to make clear to the witness
 13 that by deeming her hostile or adverse, I'm not criticizing
 14 her. It is really more of a status situation. Whether or
 15 not the answers have also indicated maybe a little bit of
 16 body language one way or the other, you could argue that.
 17 In any event, objection overruled. I direct the witness to
 18 answer.
 19 Do you need a readback or you want to just ask
 20 again --
 21 A Are you asking me to confirm your math?
 22 Q I am just asking you if that sounds reasonable to you
 23 that --
 24 A 1 --
 25 Q If it sounds reasonable to you that the 1.7 to 1.75

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1 million times 16 lots comes out to in the ballpark of 27 to
 2 \$28 million as referenced in this e-mail?
 3 THE COURT: We must have 50 calculators in this
 4 room.
 5 A 1.7 million for 10 of them. For six of them
 6 at -- probably around that number, but --
 7 Q Thank you.
 8 THE COURT: That answers the question.
 9 THE WITNESS: I use my Apple calculator all the
 10 time.
 11 THE COURT: We all do.
 12 THE WITNESS: I haven't done multiplication in a
 13 while.
 14 MR. SOLOMON: Your Honor, we offer this in evidence
 15 if I have not already.
 16 MR. ROBERT: Statute of limitations and relevance.
 17 THE COURT: Overruled. Overruled. Granted. It's
 18 in evidence.
 19 (Whereupon, the Document were marked in evidence as
 20 Plaintiff's Exhibit 944.)
 21 MR. SOLOMON: Can we, please, mark PX 1402 for
 22 identification.
 23 Q Do you recognize this as an e-mail chain with respect
 24 to the potential conservation easement donation for TNGCLA?
 25 A Yes.

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1 Q And you are on this e-mail chain, correct?

2 A Yes.

3 Q And the top message, the most recent on the first page

4 is from Jill Martin. Do you see that?

5 A I to.

6 Q Did you understand that on or about November 2014 she

7 was the assistant general counsel for the Trump Organization?

8 A Yes.

9 Q Brian Curry, we've discussed. Selim Sawaya, do you see

10 Mr. Sawaya is a cc on this?

11 A I do.

12 Q Do you know who Mr. Sawaya is?

13 A Yes.

14 Q Who is he?

15 A He was an engineer.

16 Q Did he work on the TNGCLA project?

17 A Yes, he did.

18 Q What was Jill Martin's role involvement or awareness on

19 this project, to your knowledge?

20 A Jill Martin was in-house counsel for the Trump

21 Organization in LA. She was providing legal advice and

22 assisting one of my primary contacts in connection with the

23 conservation easement.

24 MR. SOLOMON: We offer PX 1402 in evidence.

25 MR. ROBERT: Objection; statute of limitations.

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1 THE COURT: Overruled. It is in evidence.

2 (Whereupon, the Document was marked in evidence as

3 Plaintiff's Exhibit 1402.)

4 MR. SOLOMON: Can we, please, mark PX 1472 for

5 identification.

6 Q 1472 is an e-mail chain. At the bottom is from Brian

7 Curry to you with a cc back to Brian Curry and Rick Zbrank.

8 You see "attached"?

9 A Yes.

10 Q Shortly thereafter on December 12th, you forward it on

11 to Samuel Guthrie. Do you see that?

12 A Yes.

13 Q Who is Samuel Guthrie?

14 A He was an associate who worked with me.

15 Q The e-mail from Mr. Curry, the subject is

16 "attorney-client confidential work product." Do you see that?

17 A Yes.

18 Q When you forwarded on -- withdrawn.

19 And it just simply says, "see attached," right?

20 A Yes, that's what Brian Curry says.

21 Q Right. When you forwarded on, however, the forward on

22 subject "FW: Attorney-client confidential work product," right?

23 A I see that.

24 Q And now there is a line added that says "attachments."

25 Do you see that?

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1 A I do.

2 Q "trumpvalueconclusions.pdf," correct?

3 A I see those words.

4 Q Did you add that description for the attachment?

5 A I don't believe so. I don't know. I have no idea.

6 MR. ROBERT: Your Honor, it looks like the e-mail

7 from Mr. Curry already has "attorney-client confidential

8 work product" in the subject line.

9 THE COURT: We understand that.

10 MR. SOLOMON: Yes, I wasn't questioning that.

11 That's forwarded. The next line, however, where it says

12 "attachments," "trumpvalueconclusions" is not in the e-mail

13 from Mr. Curry to Ms. Dillon.

14 MR. ROBERT: Correct. That's why this whole

15 document should not be in evidence because it is

16 attorney-client privilege. That makes our point. It

17 was -- the attorney forwarding the document doesn't undo it

18 and you're correct, sir. There is an additional document

19 that is privileged.

20 THE COURT: Let me try to get to the --

21 MR. SOLOMON: Your Honor, if you look at the second

22 page, the additional document is "Trump Estates Conservation

23 Easement Valuation." The Court has ruled repeatedly that

24 valuation numbers are not privileged. The appraisal process

25 to get to valuation numbers is not privileged. Only

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1 attorney work product privilege does not make it attorney

2 work product or privileged.

3 MR. ROBERT: I understand that there is a

4 distinction between business and legal. I think we all get

5 that. Where things get a little blurry is when you have

6 lawyers that need to understand business aspects of a

7 transaction to give legal advice. Here, it is abundantly

8 clear that the information that's in this attachment, while

9 nobody's going to dispute that it is numbers, it is not a

10 legal opinion of an interpretation of a brief or a statute

11 is clearly designed in the process of obtaining information

12 to give legal advice. Therefore, it's privileged. Just

13 because it is a business item doesn't mean that now it's not

14 something that's subject and covered by attorney-client

15 privilege.

16 MR. KISE: It's also, Your Honor -- it's attorney

17 work product. Attorneys hire all sorts of consultants and

18 experts all day long whether in litigation or outside of

19 litigation. If your client has an issue and you need to

20 understand an issue, you can hire a subject matter expert.

21 It may be a business issue. It might be an accounting

22 issue. You would hire an accountant to provide information

23 that evaluates numbers.

24 So just because it's numbers and just because it

25 relates to business doesn't mean that it's not valid

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1 attorney work product. That's what attorneys do all day
 2 long. I mean, if we're waiving work product protections and
 3 privilege protections simply because there are numbers in
 4 the document, that eviscerates the attorney work product
 5 privilege and attorney-client privilege in the case.
 6 THE COURT: I have not seen any requests for legal
 7 advice or legal advice. Work product, I would be happy to
 8 discuss what's your definition or would you like to find the
 9 definition of what attorney work product is? Or I know it
 10 is not a privilege, what do they call it, the doctrine?
 11 MR. KISE: I don't have to define it. The law
 12 defines it and so --
 13 THE COURT: What is the legal definition?
 14 MR. KISE: Attorneys is work product, work product
 15 gathered in the course of rendering legal advice. I mean,
 16 it's very simple. So if an attorney hires someone to give
 17 them information and input in the course of their rendering
 18 legal advice, the product itself doesn't have to contain
 19 legal advice. It doesn't have to contain a legal opinion.
 20 It's something gathered during the course of their work.
 21 THE COURT: Okay. Let's hear -- let's hear from
 22 the other side.
 23 (Continued on the next page.)
 24
 25

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1 THE COURT: Why isn't this attorney work product?
 2 What is attorney work product?
 3 MR. SOLOMON: The work of the appraiser in
 4 determining the valuations contained on the second page of
 5 this exhibit. I assume that's all we're arguing over; is
 6 that correct? The first page no one is claiming it is
 7 privileged.
 8 So the second page of this exhibit, Your Honor, is
 9 work done by an appraiser. It is then forwarded on. The
 10 original work done by the appraiser is not privileged merely
 11 because the appraiser then sends it to the attorney does not
 12 make it attorney work product.
 13 THE COURT: Some of these points are clear. The
 14 fact that they label it something, that doesn't make it
 15 privilege. The fact that it's forwarded, doesn't make it --
 16 well, it could be waived.
 17 MR. ROBERT: Mr. Solomon is conflating. I think
 18 the appropriate inquiry is if you ask the witness was this
 19 information obtained by you in the furtherance of you
 20 providing legal advice to the client. If the answer is no,
 21 then it's free inquiry; if the answer is yes, it would be
 22 subject to attorney work product.
 23 It's not up to Mr. Solomon at this point to say
 24 what Ms. Dillon needed or didn't need in 2014 to help her
 25 render legal advice to her client. That's up to her as the

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1 lawyer.
 2 THE COURT: I think one thing I remember clearly
 3 about work product is the purpose is that other people can't
 4 say oh, this is what the attorney is thinking, this is what
 5 the attorney is doing, this is not what the attorney is
 6 thinking or doing. This is, what, somebody from Cushman &
 7 Wakefield, right?
 8 MR. ROBERT: Who is hired to assist the attorney in
 9 providing legal advice.
 10 THE COURT: Overruled. It's not the attorney work
 11 product. It's the Cushman & Wakefield work product.
 12 MR. KISE: But it's gathered in the course of the
 13 attorney's duties and I believe that at least some of these
 14 engagements, if not this one, I don't have it here, that
 15 Cushman was engaged by the lawyers.
 16 THE COURT: I understand.
 17 MR. KISE: So if I engage as a lawyer and I hire an
 18 expert to help me, by definition that's work product. Just
 19 because the expert is an appraiser by definition that's work
 20 product. That's -- the purpose I'm engaging him is to
 21 assist me to render legal advice. I'm not engaging them to
 22 assist in facilitating a transaction. If I share that work
 23 product later with non-privileged individuals, that's a
 24 different story, but we're not there yet.
 25 THE COURT: I believe, again, that I remember the

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1 language some cases discussing work product. The attorney's
 2 thoughts, impressions. This not the attorney's thoughts and
 3 impression. Overruled. It's in.
 4 Any questions you want to ask about it, go ahead.
 5 It may also be law of the case at this point.
 6 MR. SOLOMON: I was going to cite Your Honor to
 7 your September 23, 2020 decision in which the Court said,
 8 "Part of the opinion is this Court orders Respondent Morgan
 9 Lewis & Bockius to turn over by October 2, 2020 all
 10 documents that they have" -- excuse me -- "identified as
 11 settlement privilege." It goes on.
 12 "The Court reflects the applicability of any
 13 settlement privilege" and then continues with "Morgan Lewis
 14 to produce to petitioner by October 2, 2020 all documents
 15 related to the," quote, 'preliminary valuations' closed
 16 quote, "of the Seven Springs easement as documents related
 17 to a preliminary valuation are of a business and not of a
 18 legal nature."
 19 THE COURT: Well, that's the privilege. That's not
 20 work product. By the way, I made a ruling. It was either
 21 not appealed or affirmed. I'll change my mind if I think I
 22 was wrong, but I don't think I was wrong.
 23 MR. KISE: Again, Your Honor, I know Your Honor
 24 loves that phrase, but as Your Honor's already pointed out,
 25 work product and privilege are two different things.

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1 Second, it's not that -- if individuals or entities
2 that were not parties to that proceeding are here now, their
3 privilege isn't waived. I mean, it's not possible to waive
4 in perpetuity a privilege for some stranger to a proceeding.
5 And so those individuals and entities are entitled to assert
6 the privilege and they're entitled to assert work product
7 protection at this stage because they wouldn't have had any
8 opportunity at the prior stage.
9 THE COURT: I understand.
10 MR. KISE: There would be no waiver based on that.
11 So while I appreciate Mr. Solomon read, I'm sure, accurately
12 from the prior determination, that would have no bearing on
13 individuals or entities that were not participants in that
14 process.
15 THE COURT: Yes, I understand waiver is a partial
16 and fallback argument, but I don't think -- it's certainly
17 not privileged. I don't believe it's work product either.
18 So let's proceed.
19 MR. SOLOMON: Can we have it offered into evidence?
20 THE COURT: Over objection, it's admitted into
21 evidence.
22 Q Please look at the second page, ma'am.
23 Did you understand this to be the value conclusions
24 from Mr. Curry for the potential conservation easement over the
25 demonstrative driving range at TNGC LA?

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1 A Looking at this document today I don't know if this is
2 the document that was attached to the e-mail you've got.
3 Assuming that it is, I assume this to be some sort of
4 preliminary value conclusion. I don't know if it's a final
5 conclusion. I don't know what it is in isolation, but it is
6 something that shows some valuation numbers. I don't know in
7 what context. If you had other documents -- the final ones are
8 in the appraisal. I know what those are, but these I don't
9 know.
10 Q I understand, ma'am, but I want to establish the
11 knowledge that you had at various points in time, okay?
12 I understand there is a -- you think there is a final
13 appraisal. We'll get to it whatever you think it might be. My
14 point is different. At this point in time, you had received
15 Trump Estates Conservation Easement Valuation from the person at
16 Cushman & Wakefield that was tasked with appraising the value of
17 the potential donation of a conservation easement at TNGC LA;
18 correct?
19 A And, again, I'm sorry, I'm a lawyer. I'm precise.
20 That's what I do. I get paid to be precise. I get paid a lot
21 to be precise, so my problem is if you want me to assume this
22 was attached to that e-mail, I can't coordinate these dates for
23 you because there is no date on what I'm looking at, so I don't
24 know what point in time. I agree at some point in time this
25 appears to be prepared. It doesn't say Cushman & Wakefield on

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1 it. I don't know who prepared it. This looks like lots of
2 things I've seen. I've seen many, many, many of these and I'm
3 sure you have, too, by now so I can't connect those dots for
4 you. I would like to. I'm not trying to be -- I prefer to go
5 home instead of sit here, so I'm not trying to delay this. I
6 just can't give you what you want.
7 Q See if we can approach this another way.
8 This is how it was produced to us, these pages
9 together, number one.
10 Number two, "VE" on the bottom, Vincent & Elkins, it
11 was produced by your prior firm, okay? I am making that
12 representation to you that that's who it came from and that's
13 how it was produced as one document. That was in fact an
14 attachment to the December 2014 e-mail, okay? Can you accept
15 that? Can you accept that representation?
16 A I didn't produce the document, so yes, I'll accept --
17 I'm not trying to quibble with you. All I'm trying to say is
18 this has no date on it. I don't know. It's an e-mail on that
19 date. I'll agree with that it had an attachment of some sort.
20 Is this what was attached to that e-mail? If you say so, all
21 right.
22 Q Okay. Let's go based upon that, please?
23 A Okay. So your testimony is that this --
24 Q No. My representation to you, ma'am?
25 A My representation.

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1 THE COURT: We agreed to be precise.
2 Q So this second page, if you see note one is before
3 condition. On the top line, "development and golf course
4 property value before condition note one;" right?
5 A Yes, I see that.
6 Q And if you look down bottom, the note says, "60 lots
7 and golf course without driving range;" right?
8 A Yes.
9 Q Okay. "Less development and golf course property value
10 after condition." That's note two; right?
11 A Yes.
12 Q And note two is "44 lots and golf course without
13 driving range;" right?
14 A Yes.
15 Q Okay. You don't need to grab a calculator. 60 minus
16 44 is 16? That's the 16 lots I made the representation to you
17 about earlier when I asked you to do the math and we did the
18 math together; right, 16 lots?
19 A I don't think we did math on 16 lots. We did math on
20 the value.
21 Q Yes. 16 lots times approximately 1.7 million per lot.
22 Do you recall that?
23 A Yes, but we weren't -- yes, but the question wasn't 16
24 lots. It was what was the value. That's what we were doing
25 before was the math.

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1 Q You questioned whether there were 16 lots on the
2 driving range and I told you I was going to show you later that
3 there were in fact 16 lots on the driving range and that's what
4 I'm doing here. Do you see that the before and after show a
5 difference of 16 lots?
6 A I see 16 lots here, but my memory tells me there are
7 many -- there are different configurations at various points in
8 time and it wasn't always 16.
9 Q Is it 16 here?
10 A It's 16 on this document, yes.
11 Q Thank you.
12 So reading this now and assuming this was the
13 attachment to the e-mail cover, okay, Mr. Curry comes up with a
14 valuation for the development and golf course property before
15 the condition of 108 million; right?
16 A 108 million. I see that on the page, yes.
17 Q Okay. And then the value after the condition is 82
18 million. Do you see that?
19 A I see the total value after is 82 million.
20 Q Okay. So by no later than December of 2014 you had
21 received information that the value of the golf course according
22 to Mr. Curry before the condition was 108 million; right?
23 A Yes, if this document was attached to the December 12th
24 e-mail, then yes, this shows the 108 million.
25 MR. SOLOMON: Okay. Let's mark PX 1464 for

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1 identification.
2 THE COURT: Five-minute warning.
3 MR. SOLOMON: Yes, Your Honor.
4 Q Do you recognize what's been marked as Exhibit PX 1464?
5 A I recognize -- I don't specifically recognize it, but
6 yes. It's an appraisal report.
7 Q Okay. And you'll see that on the page five of 160 it's
8 signed by Brian Curry?
9 A Yes.
10 Q And also by Richard Zbrank?
11 A Yes.
12 Q Did you receive this appraisal report on or about
13 March 12, 2015?
14 A I'm not sure when I received it, but it is dated
15 March 4, 2015 in the cover letter and it was sent to Ms. Jill
16 Martin. So I don't know when I got it, but somewhere around
17 that time frame.
18 Q Go back to the first page of the exhibit.
19 A Okay.
20 Q E-mail?
21 A The e-mail.
22 Q Yes, ma'am. Thank you.
23 You'll see that it was originally sent to Sam Guthrie
24 and on March 12th -- Samuel was -- is a he?
25 A Yes.

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1 Q He forwards it on to you on March 12, 2015; right?
2 A Yes.
3 Q Okay. So by no later than March 12, 2015 you had this
4 appraisal; correct?
5 A Yes.
6 Q Okay.
7 MR. SOLOMON: We'll offer this into evidence.
8 MR. ROBERT: Objection. Statute of limitations and
9 the appraisal itself is hearsay.
10 THE COURT: I assume it's notice not for the truth
11 of its contents. Objection overruled. And it's introduced
12 solely for notice, not the truth of its contents.
13 MR. KISE: Notice to whom? To Ms. Dillon?
14 THE COURT: Plaintiff, you're claiming notice to
15 anyone else?
16 MR. SOLOMON: The interior letter on the appraisal
17 itself is directed to Ms. Jill Martin as the witness
18 testified.
19 MR. KISE: I'm looking at the top of the e-mail,
20 that's fine. If that's the case, I want to be clear.
21 THE COURT: So just Jill Martin.
22 MR. SOLOMON: Jill Martin originally and it was
23 forwarded to Samuel Guthrie who was --
24 THE COURT: Two people?
25 MR. SOLOMON: At a minimum.

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1 THE COURT: Deal.
2 MR. KISE: As reflected in this exhibit, that's who
3 is the notice, not at a minimum, if they're not in here.
4 THE COURT: It could have been shown to other
5 people.
6 MR. KISE: It could have been --
7 THE COURT: I understand just for purpose of notice
8 to those three people.
9 MR. KISE: Correct.
10 THE COURT: I told you we understand each other.
11 MR. SOLOMON: Your Honor, before I go into this in
12 depth, you have given me a five-minute warning.
13 THE COURT: About four minutes ago, so let's take a
14 break now. 15-minute break and I'm starting again in
15 15 minutes.
16 (Whereupon, there is a recess in the proceedings.)
17 THE COURT OFFICER: All rise. Part 37 is back in
18 session. Please be seated and come to order.
19 THE COURT: Notice that Rock & Roll song, "Can I
20 get a witness?" "Can I get a witness, witness, witness?"
21 THE COURT OFFICER: Witness entering.
22 (Whereupon, the witness enters the courtroom and
23 approaches the witness stand.)
24 THE COURT: Please continue.
25 MR. SOLOMON: Thank you, Your Honor.

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1 CONTINUED DIRECT EXAMINATION
 2 BY MR. SOLOMON:
 3 Q Ms. Dillon, can we turn to the appraisal which has been
 4 marked as PX 1464?
 5 A Yes.
 6 Q You'll see on the cover of the appraisal itself, it's
 7 dated as of December 16, 2014; correct?
 8 A Correct.
 9 Q And that is the valuation date; right?
 10 A I believe so, yes.
 11 Q Okay.
 12 A I'd have to confirm it on the inside.
 13 Q Please take a moment. I'm sorry if I misspoke. It's
 14 December 26, 2014 is the date on the cover.
 15 A Yes, and that is the valuation date.
 16 Q Okay. The fourth page is the letter addressed to Jill
 17 Martin. Do you see that?
 18 A I do.
 19 Q And I had mentioned to you an entity VH Property Corp
 20 as one of the owners. If you look at the fifth line down there
 21 is a reference to property owned by VH Property Corp and VHPS
 22 LLC (collectively, the "Donor") and "donor" is in quotes.
 23 Do you see that?
 24 A I do.
 25 Q Does that refresh your recollection that the owner of

S. Dillon - Plaintiff - direct (Solomon) Page 2602

1 the property were those entities?
 2 A Yes, to a degree.
 3 Q What do you mean by "to a degree?"
 4 A Well, I'm not sure if it was VHPS LLC that directly
 5 owned it or if it was Property Corp, but it was in a structure
 6 and those were the ultimate -- I think one owned through the
 7 other. I just can't quite remember the setup.
 8 Q Do you have any reason to believe the information
 9 contained in this cover letter is inaccurate in any way with
 10 respect to the owner of the property?
 11 A No. It's just a little unclear, perhaps.
 12 Q Turn to the next page. You'll see there is a chart
 13 Valuation Summary. Similar to what you saw in that attachment
 14 to your e-mail; right?
 15 A Yes.
 16 Q Has the before condition property as note one; right?
 17 A Yes.
 18 Q \$107 million; right?
 19 A That's what it says.
 20 Q Okay. And is that your understanding of Mr. Curry and
 21 Mr. Zbranek's conclusion as to the value of the TNGC LA property
 22 before the condition?
 23 A It is my understanding that is the before condition of
 24 the property they valued as 107 million.
 25 Q Okay. And the after condition, 82 million; right?

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1 A That is what it says.
 2 Q And that gives you -- I think you explained the math
 3 and how it is -- the value of the easement would be \$25 million?
 4 A Well, unless there are some other adjustments, but that
 5 appears to be what they valued the easement as.
 6 Q So the next line is 25 million?
 7 A Yes.
 8 Q And then they didn't have to make any adjustments, N/A?
 9 A They did not make any adjustments.
 10 Q I'm sorry. Please finish your answer.
 11 A Yes, it said "not applicable" so there are no
 12 adjustments. There is a difference. It's not zero. It's not
 13 applicable.
 14 THE COURT: Make sure she's completely finished and
 15 try not to keep saying okay, okay, okay. Just ask your next
 16 question.
 17 Q Line E, which is "C-D, conservation easement 25
 18 million." Do you see that?
 19 A I do see that.
 20 Q Did you understand that to be the conclusion of the
 21 valuation of the conservation easement?
 22 A I understood that to be the estimated fair market value
 23 of the conservation easement as of December 26, 2014.
 24 Q If I could ask you to turn to page 156 of 160 in the
 25 exhibit.

S. Dillon - Plaintiff - direct (Solomon) Page 2604

1 A 156, did you say?
 2 Q Yes, of 160. You'll see there are small numbers on the
 3 bottom of each page.
 4 A Yes, give me a second. I'm on the wrong --
 5 Q Of course.
 6 A Yes, I'm there.
 7 Q Do you see the chart in the middle of the page, "Sales
 8 Price Per Hole Value Estimate?"
 9 A I do.
 10 Q And the sale price per hole conclusion is \$15,800,000.
 11 Do you see that?
 12 A Yes.
 13 Q What understanding, if any, did you have or do you have
 14 as to what that number represents?
 15 A It has been a long time since I've looked at this, so I
 16 need to read around it to better understand it. I have no
 17 recollection sitting here today it was another way of valuing
 18 things. I just don't recall what it was doing. This is a
 19 backup for their work product.
 20 Q If you look at the top of page 156, the title is "Price
 21 Her Hole." Do you see that?
 22 A I see that. If you want me to read this, then maybe I
 23 can help you, but it's going to take me a minute to get there.
 24 It's been years since I've read this valuation and it was
 25 complicated because of the golf course property, the driving

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1 range property, and the concept, the hypothetical subdivision,
2 and lot.

3 THE COURT: Wait. Just to try to save time. If he
4 asks you if you see the title of a paragraph, just yes or
5 no. You don't have to say that you haven't read it. We
6 understand that.

7 THE WITNESS: Okay. So if all he wants me to do is
8 verify the words, yes, I see price per hole, yes.

9 Q Do you have any understanding as to whether that
10 \$15.8 million number is the estimated value for the golf course
11 property?

12 A No, I don't have an understanding without having read
13 some of this.

14 Q Let's go back to the earlier chart that we were looking
15 at where the number was, if I recall correctly, \$107 million.
16 And that's on page five of 160?

17 A Ma'am, it is --

18 Q Ma'am, it's up on the screen, if that helps you.

19 A Not really. Okay, yes.

20 Q Did you ever discuss with anyone at the Trump
21 Organization the Valuation Summary that valued the before
22 condition of the property at \$107 million?

23 A My discussions with my --

24 Q Yes. It's a yes-or-no question.

25 MR. ROBERT: Objection.

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1 THE COURT: It's a yes-or-no question, isn't it?

2 MR. ROBERT: I think we're getting into issues of
3 attorney/client privilege. He's now asking the substance of
4 a conversation.

5 THE COURT: No, I think he asked her did she ever
6 discuss it with anybody at the Trump Organization.

7 Let's have a read back of the question.

8 (Whereupon, the requested portion of the
9 proceedings was read back by the court reporter.)

10 MR. ROBERT: That would be in consultation with
11 providing legal advice. The questions that --

12 THE COURT: But it's not the advice. He's allowed
13 to ask that question, no doubt about it.

14 Answer the question, please.

15 A I don't remember whether I discussed specifically the
16 -- did you say the before condition of the property of 107
17 million?

18 Q That was my first question.

19 A Yes, I don't recall if I discussed the before condition
20 of the property at 107 million.

21 Q Did you discuss with anyone at the Trump Organization
22 any of the information contained on the Valuation Summary?

23 MR. ROBERT: I'll just have a continuing objection
24 to this line, Your Honor.

25 THE COURT: Okay. Understood. Overruled.

S. Dillon - Plaintiff - direct (Solomon) Page 2607

1 A Not sure what you mean by "discussion," but I certainly
2 -- Jill Martin had the conservation easement showing it was
3 valued at \$25 million, so I'm sure at some point I shared that
4 information with her and perhaps with others that this was the
5 final value conclusion so that they could make a decision as to
6 what they were going to do.

7 Q You say "perhaps others," which others?

8 A Again, we had a long list of people that might have
9 been involved in the project, so I'm not sure who was steering
10 the project besides Jill Martin. It might just have been Jill
11 Martin, it might have been any of the others that I talked to.

12 Q Okay. I wasn't asking who was steering the project. I
13 asked with whom you discussed any of the information on the
14 Valuation Summary.

15 A I do not remember who I would have spoken to some ten
16 years ago.

17 Q And let me be clear. Do you recall any communications
18 -- and remember I gave you that very broad definition of
19 communications earlier today? Orally, written or any other form
20 of transmitting or receiving information.

21 Did you have any communications with anyone at the
22 Trump Organization concerning any of the information on the
23 Valuation Summary?

24 A Sitting here today, I am confident I would have had
25 some communications about valuation with some people at the

S. Dillon - Plaintiff - direct (Solomon) Page 2608

1 Trump Organization. Sitting here today, ten years later, I
2 don't recall who that would have been with other than Jill
3 Martin.

4 Q Did you send a copy of this appraisal to anyone at the
5 Trump Organization at anytime?

6 A I can't recall sitting here today whether I did or not.
7 Jill had it, so I'm not sure if I was transmitting anything or
8 if they were getting it from Jill. I don't remember.

9 Transcript continues on the following page....

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S. DILLON - PLAINTIFF - DIRECT(MR. SOLOMON) Page 2609

1 Q Who would be getting it from Jill? Who are you
2 referencing in that last answer?
3 A It would be whoever she would send it to. I don't
4 know. Yeah, they would have needed it at the Trump
5 Organization.
6 Q What do you mean by "needed it at the Trump
7 Organization"?

8 A They would have needed documentation to know what they
9 did.

10 Q So who at the Trump Organization would need that
11 documentation to know what they did?

12 MR. KISE: Objection. Calls for speculation.
13 THE COURT: Without speculating, who, if any, would
14 have received this?

15 A And so who do I think Jill would have sent it to if I
16 don't recall who I sent it to? Is that the question?

17 MR. SOLOMON: That was not the question, Your
18 Honor. May I ask for a readback?
19 THE COURT: Readback, please.
20 (Whereupon, the requested portion of the record was
21 read back.)
22 MR. KISE: Again, Your Honor, that's just -- now
23 that I see it read back, it's just complete speculation.
24 How would she know anything about internal affairs of the
25 Trump Organization?

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1 THE COURT: Well, she dealt with them.
2 MR. KISE: It doesn't appear that the witness
3 remembers who she sent it to herself much less who in the
4 Trump Organization might have received it. It appears to
5 call for complete speculation.
6 MR. SOLOMON: Question wasn't who might have
7 received it. The witness testified she understood it would
8 have been sent to whoever at the Trump Organization needed
9 it. And my question was specifically tailored to that last
10 answer as to who she was referring to when she said who at
11 the Trump Organization might have needed it.
12 MR. KISE: I don't think she was referring to
13 anyone. I think she was just simply saying when you say I
14 don't --
15 MR. SOLOMON: Counsel, your thinking of who she
16 might have been referring to is not relevant. The witness'
17 stated who would have needed it. I asked her who that was.
18 MR. KISE: She said whoever might have needed it
19 would get it.
20 MR. SOLOMON: I'm entitled to ask who she was
21 referring to.
22 MR. KISE: I'm entitled to say it is calling for
23 speculation because I don't know if this witness is capable
24 of knowing that.
25 THE COURT: Overruled. If she doesn't know, she

S. DILLON - PLAINTIFF - DIRECT(MR. SOLOMON) Page 2611

1 doesn't. If she can tell us, she'll tell us.
2 A Could we have the question again, please?
3 THE COURT: For a third time, yes. Let's have it
4 read back.
5 (Whereupon, the requested portion of the record was
6 read back.)
7 A And it -- to the extent anyone wanted to use it to
8 support a charitable deduction on a tax return, the people that
9 would need it would be the accountants and most importantly, the
10 outside accountant who prepared the returns which would be
11 Donald Bender.
12 Q You said 'the accountants' and then differentiated "the
13 outside accountants." The first accountant, were you referring
14 to the inside accountants at the Trump Organization?
15 A Yes.
16 Q Okay. Who were those people?
17 A The person that probably would have needed it would
18 have been Jeff McConney.
19 THE COURT: Try not to say, "okay."
20 MR. SOLOMON: I'm sorry, Your Honor.
21 THE COURT: That's okay.
22 MR. SOLOMON: Could we, please, pull up PX 731
23 native which is in evidence and go to lines 381 -- let's
24 start at the top of the document first.
25 Q This previously has been identified as what's known as

S. DILLON - PLAINTIFF - DIRECT(MR. SOLOMON) Page 2612

1 Jeff Supporting Data or the Supporting Data for the Donald J.
2 Trump Annual Statement of Financial Condition and this is the
3 one for June 30, 2015.
4 MR. SOLOMON: Could we, please, go to lines 38
5 through 404.
6 Q You'll see that for the year ending 6/30/2014, the
7 total valuation for Trump National Golf Club LA is \$213,690,642.
8 Do you see that?
9 MR. ROBERT: Objection.
10 THE COURT: Grounds?
11 MR. ROBERT: There is no foundation this witness
12 even knows what this document is. He's just asking her if
13 she sees something on a page up on a screen.
14 THE COURT: Okay.
15 MR. SOLOMON: I'm getting there, Your Honor. I'm
16 just asking if she saw that number on the screen.
17 THE COURT: Objection sustained. I think we need
18 to know context of what this document is.
19 Q You mentioned Jeff McConney --
20 MR. SOLOMON: Sorry. Your Honor, we need to know?
21 THE COURT: What this document is and the witness
22 certainly might need to know what this document is.
23 MR. SOLOMON: And I represented that this is Jeff
24 McConney Supporting Data. That's why we went to the top,
25 the June 30, 2015 Statement of Financial Condition of Donald

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1 J. Trump.
 2 THE COURT: All right.
 3 MR. SOLOMON: It is in evidence, Your Honor.
 4 THE COURT: Okay. And maybe I should have --
 5 MR. SOLOMON: I understand the witness may not have
 6 seen this document before. That's not what I'm asking.
 7 THE COURT: That's what I want to get into.
 8 Q What I want to show the witness is as you see as of
 9 June 30, 2015 the valuation for TNGCLA according to this
 10 document is \$140,710,895. Do you see that?
 11 MR. ROBERT: Objection.
 12 THE COURT: Overruled. Maybe the question
 13 was -- I don't know whether the question was proper before
 14 or after, but now it is proper. It has been identified and
 15 he's just asking if she sees the number on the document.
 16 Overruled.
 17 Q And you recall --
 18 THE COURT: Did we get an answer? Did we get an
 19 answer that she saw the number?
 20 Q Do you see that, ma'am?
 21 A I see the number sitting here right now in this
 22 courtroom on that screen.
 23 Q Thank you. And you recall the appraisal that we just
 24 saw had valued the entire property at 107 million before the
 25 donation of the conservation easement? Do you recall that?

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1 A I -- I want to take a step back first. I think --
 2 Q Ma'am, my question was do you recall that the appraisal
 3 that we saw earlier on the chart on page 5 of 160 valued the
 4 property as you agreed at \$107 million before the easement
 5 donation? It is a yes or no.
 6 MR. KISE: Objection, Your Honor. Mr. Solomon is
 7 using this witness to make some sort of closing argument.
 8 He's trying to get the witness to close the loop on
 9 connections between documents, one of which the witness
 10 hasn't even seen before today and she's just -- the only
 11 answer she's given is, "Yes, I can see" like I could give
 12 that answer, "Yes, I see the number on the screen says 213
 13 million;" but there's no foundation for her to go ahead and
 14 now extrapolate, "I see this appraisal," "I see Jeff
 15 McConney's spreadsheet" and somehow there is an
 16 interconnectivity there. There is no foundation at all for
 17 this. It is totally improper to question this witness about
 18 something she knows nothing about.
 19 MR. SOLOMON: Your Honor, I haven't asked her to
 20 extrapolate anything. I asked her if she saw the number on
 21 the screen and I asked her if she remembers a number on a
 22 document that she identified that is in evidence for notice.
 23 THE COURT: I don't think that proves much
 24 necessarily.
 25 MR. KISE: Notice to whom? We are back to that.

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1 We established before that the only people that was
 2 introduced for notice for did not include Mr. McConney, that
 3 I'm aware of. It was the people that were on the e-mail.
 4 That was what was agreed to when we introduced the document.
 5 THE COURT: You're objecting to the question or the
 6 number's different? Is one number A and one number is B?
 7 MR. KISE: If that's all he is asking, does this
 8 number on that page says this, and this number on this page
 9 says that.
 10 MR. SOLOMON: So the record is clear, the witness
 11 also said that since this was on the tax return as a
 12 deduction, it would have been sent to Jeff McConney.
 13 MR. KISE: No. No, Your Honor. She did not say
 14 that. She said who might need it, might need it, but she
 15 didn't testify that that's exactly who it was sent to. She
 16 can't possibly do that because she doesn't know who it was
 17 sent to. He is now putting words in her mouth which is the
 18 danger of going down these lines of questioning.
 19 MR. SOLOMON: Your Honor, I will stand on the
 20 record transcript as to what the witness testified to with
 21 respect to Mr. McConney in receiving what I'm assuming this
 22 appraisal.
 23 MR. KISE: Your Honor, she didn't testify that Mr.
 24 McConney received it because she can't probably do that.
 25 THE COURT: You know, one thing that even though

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1 I've been judge for over 20 years, I feel like I'm learning
 2 more in this case than others, which is we don't deal
 3 with -- we don't deal with speculation, the court system.
 4 We don't deal with speculation, but we don't deal with
 5 certainties either. If somebody says, "Well, I think this
 6 person could have" or "I would have" or "This is how I
 7 normally did things," it is up to the trier of fact to
 8 decide whether it happened or not.
 9 MR. KISE: I would respectfully disagree
 10 particularly when it comes to things like intent of a
 11 criminal statute. You can't just assume that someone
 12 received a document and then ignored it which is exactly
 13 what the Attorney General is asking. That's where they're
 14 going with this is they're trying to establish through a
 15 witness who would have absolutely no knowledge whether Mr.
 16 McConney actually received something from Jill Martin.
 17 The right witness to ask is Jill Martin or Mr.
 18 McConney, but certainly not this witness. We can't skip
 19 over the part where we establish that Mr. McConney actually
 20 had a copy of this document and, therefore, would have acted
 21 or not acted in a particular way. That's clearly what
 22 they're trying to establish, to just back-door here
 23 knowledge, actual knowledge and, therefore, intent which
 24 they'll argue later that Mr. McConney acted in a certain way
 25 or failed to act in a certain way. They can't presume that

S. DILLON - PLAINTIFF - DIRECT(MR. SOLOMON) Page 2617

1 based on a witness who has absolutely no basis to conclude
2 one way or the other whether or not Mr. McConney would have
3 received this document.
4 THE COURT: We have a fundamental difference about
5 that. Let me ask you a hypothetical. What if there's
6 proof, solid proof that this witness, and this is a
7 hypothetical, had mailed it to Mr. McConney? We
8 don't -- but we don't have Mr. McConney saying, "Yes, I
9 received it." Could the trier of fact conclude that yes, he
10 received it?
11 MR. KISE: We don't have that evidence. Your
12 hypothetical assumes facts not in evidence. So if they were
13 to establish that -- if they were to establish, for example,
14 that this witness actually e-mailed it to Mr. McConney, yes,
15 then they would be able to establish that, in fact, this
16 witness would have a basis to know or it would be reasonable
17 for her to conclude that Mr. McConney received it because of
18 the fact of sending.
19 We have none of that here. What we have is a
20 witness who has been more or less forced to speculate as to
21 who might need it within the organization based on her
22 knowledge and now they're taking that to mean that Mr.
23 McConney, in fact, received it and they're comparing it to
24 Mr. McConney's spreadsheet which the witness has never seen
25 before today it would appear and doesn't have any ability to

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1 testify about what any of these numbers on the page mean and
2 connecting the dots.
3 THE COURT: The number says what it means.
4 MR. KISE: Well -- but there's a lot of different
5 numbers on here than when you compare them on the valuation
6 and the appraisal. They're oversimplifying and conflating
7 communications, oversimplifying comparison and conflating
8 the communications with a witness who, again, has no basis
9 to know what, in fact, was actually sent or received. If
10 she said it, that's a different story. If they would like
11 to establish that, then okay, then establish that; but they
12 haven't established that.
13 THE COURT: Mr. Solomon, who goes first, me or you?
14 MR. SOLOMON: Your Honor, I've learned if you're
15 going to rule in my favor, to sit down, grab my briefcase
16 and leave the courtroom.
17 THE COURT: Mr. Kise, have we established that we
18 don't need the alleged recipient to say, yes, I received it?
19 There are other ways that a trier of fact can conclude that
20 somebody received something.
21 MR. KISE: There is, but you have to actually do
22 that. I mean, of course, there are other ways. Again, you
23 pointed out if this witness were to testify "I e-mailed it
24 to Mr. McConney," if this witness testified, "I Federal
25 Expressed it to Mr. McConney," if this witness testified, "I

S. DILLON - PLAINTIFF - DIRECT(MR. SOLOMON) Page 2619

1 mailed it to Mr. McConney," that would suffice. But what
2 you have here is a witness speculating on who might need it
3 within the organization, "might" being the operative word,
4 and no indication from this witness who is being examined
5 about this at this moment, whether or not Mr. McConney, in
6 fact, received it one way or the other. There's no indicia.
7 I don't think the witness could possibly tell you whether or
8 not it was even sent to him. All she has testified to is
9 what she thinks might have happened. That's not sufficient
10 to establish receipt or even delivery.
11 THE COURT: We're talking preponderance standard
12 here, 51 percent.
13 Mr. Solomon, would you explain as specifically as
14 you can what you think the witness has testified to that
15 would indicate in any way that Mr. McConney had received
16 the -- this, whatever we're calling it, origin document.
17 MR. SOLOMON: The fact -- number one, the fact the
18 witness testified that it was used for tax deduction and
19 that she would have to send it or the recipient would have
20 to be the accountant and the outside accountants. I asked
21 her who. She differentiated between inside and outside.
22 The inside was she identified Mr. McConney, but I didn't
23 want to interrupt Mr. Kise and I think, Your Honor, we can
24 settle this in one quick and easy moment. If the Court
25 looks at line 393 on Mr. McConney's spreadsheet, "per

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1 appraisal."
2 MR. KISE: Right. Which appraisal? That's a
3 different -- that's yet a different number. Again, I'm not
4 sure exactly what Mr. Solomon -- he's smarter than this. I
5 don't know what he's trying to establish. I mean, truly,
6 you can't have this witness testify about who would have
7 received something, maybe might. It's not possible. And
8 it's not possible to connect up -- if they -- if they want
9 to call Ms. Martin to testify, if they want to call Mr.
10 McConney and ask him about it. I mean, while we're at it,
11 she said that Mr. Bender -- she said that Mr. Bender might
12 have received it or would have received it as well. Is that
13 then to mean Mr. Bender -- we can assume in evidence now
14 that Mr. Bender, in fact, received it?
15 THE COURT: I don't think it is a question of
16 assumption. It is an issue of fact. I think they raise
17 that issue.
18 MR. KISE: So then we are to say here that Mr.
19 Bender, in fact, received this appraisal as well. Based on
20 that testimony, she said Mr. Bender and Mr. McConney. So if
21 the sauce for the goose is sauce for the gander as you say,
22 so if, in fact, we're going to presume now that based on
23 this witness' testimony, which is speculation, that Mr.
24 McConney received it, well, then -- then the same fact has
25 to be assumed with respect to Mr. Bender. I don't think

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1 either makes any sense, frankly, but if you're going to
2 allow one, then you have to allow that it is a fact now
3 established in the record that Mr. Bender --
4 THE COURT: If you want to try to bring that out on
5 any sort of questioning, feel free. I'm not going to go
6 there now.
7 MR. KISE: But there's no way to do one without the
8 other respectfully.
9 THE COURT: I made my ruling. Enough. I made my
10 ruling.
11 Mr. Solomon, where are we? I would like to know
12 how we know what -- how we connect that 50 million and
13 change number to a particular appraisal if we can or you can
14 just withdraw that point.
15 MR. SOLOMON: No. I was just pointing out to Your
16 Honor that the spreadsheet said "per appraisal" as to the
17 question with respect to Mr. McConney. The number I was
18 focusing the witness on is the line on 404 and I don't mean
19 404 error, I mean line 404 on the spreadsheet value as of
20 6/30/2015 is 140 million and I --
21 THE COURT: I know what number you're trying to get
22 to.
23 MR. SOLOMON: Right. I'm sorry.
24 THE COURT: I think you were trying to show that
25 Mr. McConney must have seen the appraisal because it says

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1 "per appraisal," but it doesn't say which appraisal. But if
2 the number is the same, then I'll, as the trier of fact,
3 could say, "Oh, that's the appraisal that the number came
4 from."
5 MR. KISE: But it isn't the same number.
6 THE COURT: Okay. So I'm not reading anything into
7 that because we don't know what appraisal it was, but
8 everything else stands.
9 Q Ma'am, before today, were you ever aware that as of
10 June 30, 2015, the Trump Organization valued TNGCLA property at
11 \$140 million?
12 A I was not aware of -- I've never seen this document.
13 Everyone seems to accept that, so I don't even know what this
14 is. I don't know what it's valuing. I don't know what it's
15 doing, so I don't know what the \$140 million -- I've never been
16 aware of what they, otherwise, valued Seven Springs at in -- at
17 that time. I've certainly seen things in the news since that
18 time.
19 Q Okay. I think that was just a mistake in your answer
20 and let me clarify for the record. You said Seven Springs?
21 A Oh, I'm sorry. California.
22 Q It is a simple yes or no. Prior to today, were you
23 aware whether the Trump Organization valued TNGCLA as of
24 June 30, 2015 at \$140 million? It is a yes or no.
25 THE COURT: That's a yes or no.

S. DILLON - PLAINTIFF - DIRECT(MR. SOLOMON) Page 2623

1 THE WITNESS: You all think this is simple, Your
2 Honor. Respectfully, there's been so much in the news about
3 this, I don't know if I've heard this before or not. Am I
4 aware? Do I have personal knowledge of it? No. Have I
5 heard it in the last? I don't know. Two years since this
6 case has been going on, probably. I've heard various
7 numbers at various times that there's a value disparity
8 supposedly, allegedly and I, you know -- was I aware of any
9 of this realtime? No, if that's your question.
10 Q Sure. Let's talk about prior -- you said realtime so,
11 that may only be at one point in time.
12 Prior to the filing of this action, were you aware that
13 the Trump Organization valued TNGCLA at \$140 million as of
14 June 30, 2015?
15 A I was not aware of the spreadsheet. I'm not sure what
16 they did with that number, so I don't know. Nothing to do with
17 the spreadsheet? Is that your question?
18 Q Yes, nothing to do with the spreadsheet. And ma'am,
19 let's be very clear. I'm just asking if prior to commencement
20 of this action, were you aware that the Trump Organization
21 valued TNGCLA at \$140 million as of June 30, 2015; yes-or-no
22 question?
23 A No.
24 Q Did you ever discuss with Jeff McConney in form or
25 substance how he should value TNGCLA?

S. DILLON - PLAINTIFF - DIRECT(MR. SOLOMON) Page 2624

1 MR. ROBERT: Objection. You are now getting into
2 legal advice that would have been given to a client.
3 THE COURT: That's business advice, not legal
4 advice.
5 MR. ROBERT: They're consulting their attorney who
6 is a tax attorney to give them tax advice. This is not a
7 business consultant. They're not talking to the appraiser.
8 The question was did you ever talk with Jeffrey McConney in
9 form or substance how he should value.
10 THE COURT: It is not asking for the substance.
11 Did they ever discuss? Overruled. They are allowed to ask
12 what was discussed. When it comes to a business advice
13 request, that's something else. So we're getting close to
14 that maybe, but we're not there yet.
15 Q It is a yes-or-no question.
16 A Could you read it back, please?
17 THE COURT: Read back.
18 (Whereupon, the requested portion of the record was
19 read back.)
20 A No.
21 Q Did you ever discuss with anyone at the Trump
22 Organization how they should value TNGCLA for purposes of the
23 Statement of Financial Condition?
24 A Not to my recollection other than -- let me correct
25 that. I did discuss how it was valued for tax purposes and

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1 for, you know -- I made -- when we had the appraisal, so
 2 certainly again -- are we including Donald Bender in the Trump
 3 Organization or is he an agent? I don't know where he fits in.
 4 Q Let's include him for the moment.
 5 A I would have discussed it with Donald Bender because he
 6 has to attach the appraisal to the tax return, so I would have
 7 sent him the appraisal and discussed it with him and explained
 8 the appraisal to him, so he would have known the value to report
 9 on the tax return.
 10 Q Other than Mr. Bender, did you discuss the valuation of
 11 TNGCLA with anyone at the Trump Organization in connection with
 12 the Statements of Financial Condition?
 13 A I do not believe so, no.
 14 Q Did you ever discuss with anyone at the Trump
 15 Organization, and let's exclude Mr. Bender for the moment,
 16 anyone at the Trump Organization the valuation of TNGCLA?
 17 A I don't -- I don't recall. Over the years, I'm sure
 18 it may have come up at some point in time, but I don't recall
 19 any specific conversations about that.
 20 Q Do you recall any general conversations?
 21 A I don't recall whether we ever had any or not.
 22 Q Did you ever discuss with anyone at the Trump
 23 Organization? And for purposes of this --
 24 A Can I correct my last answer?
 25 Q Please.

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1 A I certainly would have had conversations with Jill
 2 Martin when we were doing the appraisal for the federal income
 3 tax purposes which is a very unique kind of appraisal.
 4 Q Anyone else?
 5 A I'm trying to think and remember.
 6 Q Please.
 7 A I don't believe so.
 8 Q Would you have discussed it with Mr. Weisselberg since
 9 this had to do with tax planning purposes? And I mean Allen
 10 Weisselberg.
 11 A I don't believe so, but people would have been aware
 12 and I would have -- the bottom line, would have been discussed,
 13 the value of the conservation easement is what would have been a
 14 topic.
 15 Q What about the valuation of the property?
 16 A The valuation of the property as a whole? I don't
 17 recall having conversations about that.
 18 Q Let's turn to Briarcliff Manor.
 19 A Yes.
 20 Q Do you recall that property?
 21 A Yes.
 22 Q That's the property located in Westchester?
 23 A I believe it is located in Westchester. It's been a
 24 while since I've been there.
 25 Q That's owned by Briarcliff Manor, LLC, right?

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1 A I would have to look at a chart. If you want to
 2 represent that, I'll -- I accept your representation.
 3 Q We'll get to it in a document later on. I don't need
 4 to represent that, ma'am.
 5 Did there come a time that you were consulted in
 6 connection with the donation of a potential conservation
 7 easement over a portion of that development?
 8 A Yes.
 9 MR. SOLOMON: Could we look at PX 157, which I
 10 believe is in evidence already.
 11 Q Ma'am, feel free to look at whatever you need to answer
 12 my question, but I'm going to start with is that your signature
 13 on page 9 of 11?
 14 A Yes.
 15 Q If you look at page 4 of 11 and look at "intended use,"
 16 "To estimate the value of 71 hypothetical residential units
 17 located at Trump National Golf Club Westchester, 1 Shadow Tree
 18 Lane, Briarcliff Manor, New York, (the "property"). Do you see
 19 that?
 20 A Yes.
 21 Q Do you now -- withdrawn.
 22 Do you recall that the task for the Briarcliff property
 23 was to determine the value of a potential donation of a
 24 conservation easement over 71 hypothetical residential units?
 25 A I'm sorry. I was looking at this. I didn't quite

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1 catch the question. I was trying to take a look at the
 2 engagement letter.
 3 Q In looking at the engagement letter, do you have an
 4 understanding as to why Cushman & Wakefield was being engaged?
 5 A It was an engagement that we were exploring
 6 whether -- the Trump Organization was exploring whether or not
 7 to donate a conservation easement and restrict certain of its
 8 land.
 9 Q That would be over 71 hypothetical residential units,
 10 right?
 11 A Yes, it would be to prohibit the building of 71
 12 hypothetical residential units.
 13 Q Let's remember the number 71 because that's going to
 14 come up later.
 15 MR. SOLOMON: If we can, please, can we mark PX
 16 3197 for identification. It is already in evidence. If can
 17 we look at PX 3197, please.
 18 Q Ma'am, do you recognize this document?
 19 A I see that it is an e-mail that I was copied on, but I
 20 don't have any particular recollection of it.
 21 Q Is it fair to say, though, in or about October of 2013,
 22 you were aware that Cushman & Wakefield was ready to move
 23 forward with a written report?
 24 A I see that's what it says.
 25 Q And that's Trump Westchester. Is that a reference to

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1 Trump Briarcliff?
 2 A Sitting here today, I think so, but there are a variety
 3 of Trump properties that were located in Westchester.
 4 Q But sitting here today, you do believe this is a
 5 reference to Briarcliff, right?
 6 A Hopefully, that's what Mr. McArdle told you.
 7 Q That wasn't my question.
 8 Sitting here today, is it your understanding that that
 9 is a reference to Briarcliff, Trump Briarcliff?
 10 A It is a reference to Trump Westchester. I don't have
 11 an understanding one way or the other that it says Trump
 12 Westchester. Again, if you have materials, I'm happy to look at
 13 things that say "Trump Briarcliff."
 14 Q Maybe we'll get to those. Do you recall if you moved
 15 forward with a written report for Trump Briarcliff on or about
 16 October of 2013?
 17 A What I recall is there was never a -- a donation was
 18 never made. The project was explored on and on for a long
 19 period of time. I don't recall the fits and starts and timeline
 20 of it all.
 21 MR. SOLOMON: If we can, please, mark for
 22 identification PX 3201. Sorry. It's been corrected. It's
 23 already been moved in evidence.
 24 (Continued on the next page.)
 25

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1 Q PX 3201 is an e-mail chain. Top line is from David
 2 McArdle to Eric Trump with a cc to you. Do you see that?
 3 A Yes.
 4 Q "David per my conversation with Sheri, cc'd, please
 5 finish but hold off on sending the appraisal until further
 6 notice." Do you see that?
 7 A I do.
 8 Q Was Eric Trump involved in the consideration of the
 9 potential easement donation for Briarcliff?
 10 A He was aware. I'm not sure if I'd say he was involved.
 11 I mean, he was involved. I just don't know what level of
 12 involvement you have. But yes, he was more than aware of it.
 13 He was more than aware and I don't know what you mean by
 14 "involved."
 15 Q Were you running all relevant material decisions past
 16 him before moving forward?
 17 A I would have run decisions by representatives of the
 18 Trump Organization, not necessarily always Eric.
 19 Q Did you run decisions past Eric in connection with the
 20 Trump Briarcliff potential donation?
 21 A You're making me uncomfortable again with privilege.
 22 Q It's a yes or no. Not asking what the decisions were,
 23 ma'am, and I'm not asking the substance of the decisions. I'm
 24 simply asking if you ran the decisions past him before moving
 25 forward.

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1 A Some decisions, yes; not all decisions.
 2 Q Do you recall why a decision was made to hold off on
 3 sending the appraisal until further notice at that time?
 4 MR. ROBERT: Objection. Attorney/client privilege.
 5 Why something was done or not done is clearly in the course
 6 of acting as the attorney for the organization.
 7 MR. SOLOMON: My question, Your Honor, was not why.
 8 It's do you recall whether the decision was made. If I
 9 misspoke, I will rephrase it.
 10 MR. ROBERT: Question was do you recall why a
 11 decision was made to hold off.
 12 MR. SOLOMON: What I'm saying is yes or no. I
 13 wasn't asking what the reasons were.
 14 MR. ROBERT: But I would respectfully submit when
 15 you're talking about an issue here that is clearly one of
 16 attorney/client privilege even the question of if you know
 17 why a decision was made, even the mere knowledge that the
 18 attorney has it is covered by privilege.
 19 THE COURT: Rephrase or read back, either way I
 20 don't care, one other the other.
 21 MR. SOLOMON: Your Honor, I can withdraw the
 22 question?
 23 THE COURT: Okay.
 24 MR. SOLOMON: We'll fight on other fights.
 25 MR. ROBERT: That I agree with.

S. Dillon - Plaintiff - direct (Solomon) Page 2632

1 MR. SOLOMON: Your Honor, I'm going to ask to put
 2 in front of the witness PX 1465, which I understand is
 3 already in evidence.
 4 THE COURT: Six-minute warning. Break at 4:30.
 5 Mr. Kise, was that your saved by the bell gesture?
 6 MR. KISE: Ready to be done for today.
 7 Q Ma'am, the court officer has put in front of you PX
 8 1465, which is in evidence. Do you recognize this e-mail chain?
 9 A I can read it now and see there is the e-mail chain
 10 that I was drafting and receiving. Do I have a specific
 11 recognition of it, no.
 12 Q Or recollection of it?
 13 A Or recollection of it, no.
 14 Q Okay. If you turn to the second page of the exhibit,
 15 the e-mail from you to David McArdle?
 16 A Yes.
 17 Q Okay. "I spoke to Eric and he is aware that the more
 18 supportable value at this point is around \$45 million." Do you
 19 see that?
 20 A I do.
 21 Q Was that the value of the hypothetical easement
 22 donation -- withdrawn.
 23 Was that the value of the potential easement donation
 24 for the 71 hypothetical units?
 25 A I'm not sure if it was of the 71 units because one of

S. Dillon - Plaintiff - direct (Solomon) Page 2633

1 the things that happens as you're going through this process is
 2 you sometime -- you change what may or may not be donated, what
 3 may or may not be restricted, whatever the case may be.
 4 What I do see is that there was a value of around 45
 5 million for whatever precisely it was that was being valued.
 6 Whether or not -- I don't know if it was 70 units, I don't know
 7 if it was determined there were really 75. I can't remember if
 8 there were 65. I know there was some confusion around that
 9 point, but it was -- the value of a potential donation was
 10 around 65 million for IRS purposes under the IRS appraisal
 11 standards as compared to other appraisal standards.
 12 Q And you'll see that Mr. McArdle responds to you:
 13 "Thanks, Sheri. That is a great summary of where we stand and
 14 glad we are aligned here. I will speak with Eric." Do you see
 15 that?
 16 A Yes.
 17 Q Let me take a step back. I didn't ask you. Your
 18 e-mail that started with "I spoke to Eric," is that an accurate
 19 summary of your conversation with Eric Trump?
 20 MR. ROBERT: Objection. The document is one
 21 sentence. There is a conversation with Eric Trump. That
 22 one sentence is what's there. This question is saying is
 23 that a -- let me have it right -- "Is that an accurate
 24 summary of your conversation?" If you want to talk about
 25 that -- whether that one sentence was said since that

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1 document is now in evidence, that's a fair question, but to
 2 talk about the conversation itself, I would say is
 3 privileged, Your Honor.
 4 MR. SOLOMON: Is a response necessary? We're
 5 talking about valuations in an appraisal.
 6 MR. ROBERT: You're talking about legal advice in a
 7 conversation between a tax attorney and her client. This
 8 can be nothing more fundamentally --
 9 MR. SOLOMON: Which is disclosed in an e-mail
 10 that's been produced.
 11 MR. ROBERT: One sentence was produced that says "I
 12 spoke to Eric and he is aware." If you want to say is that
 13 statement accurate, that's one thing, but this is not a
 14 waiver of the conversation that Ms. Dillon had with
 15 Mr. Trump.
 16 THE COURT: How is it not a waiver if it was turned
 17 over?
 18 MR. ROBERT: Well, first of all, let me just see.
 19 This was produced by -- pursuant to a court order and
 20 nonetheless the document itself may be provided, but the
 21 underlying substance of the communication is not waived.
 22 There is no waiver that's associated with that.
 23 MR. SOLOMON: My question was if this was an
 24 accurate summary.
 25 THE COURT: I'll -- as I often do, I'll make the

S. Dillon - Plaintiff - direct (Solomon) Page 2635

1 simple ruling. Is this an accurate summary? That's a fair
 2 question for document that's already in evidence, is that --
 3 MR. SOLOMON: Yes, Your Honor.
 4 THE COURT: Overruled. But again, we may be close,
 5 but just is that a fair summary. That's a fair question, of
 6 course to someone who says "I spoke to Eric." You mean is
 7 that a fair summary of, what, the whole paragraph?
 8 MR. SOLOMON: Of the portion that recite what she
 9 said to Eric or you said, ma'am, to Eric. I don't mean
 10 to --
 11 MR. KISE: But again, Your Honor, if he's asking
 12 the witness if what's in here is accurate does it say that,
 13 did you write that communication and is that -- what's in
 14 there accurate, that's one thing. But to ask what you --
 15 THE COURT: That's all he asked.
 16 MR. KISE: If that's what he's asking, but he's not
 17 asking it quite that way.
 18 MR. SOLOMON: Mr. Kise is trying to parse this in
 19 what is not acceptable. I'm asking if what she wrote is an
 20 accurate summary of what she told Eric Trump on the phone
 21 call. I'm not asking if what she wrote -- this document is
 22 accurate as to what she wrote. There is no question the
 23 document is authentic. No one is challenging that. I'm
 24 asking if this is an accurate summary of what she said to
 25 Eric Trump in or about October 2013.

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1 MR. KISE: And that then calls for direct
 2 attorney/client communication about the matters to which she
 3 was engaged to represent him on and represent the
 4 organization on, tax matters. That calls for just a direct
 5 communication. They have this evidence. They can argue
 6 whatever they want from this evidence, but to ask this
 7 witness is this specifically what you told your client in a
 8 privileged conversation, there is no waiver here of the
 9 privilege. This doesn't waive that privilege. It's not
 10 possible to waive that privilege just because you wrote in
 11 here something to a third party and made a summary.
 12 If what's in there is accurate then they can argue
 13 what they want, but the idea that there is a waiver of
 14 privilege based on a document -- this document is
 15 nonstarter.
 16 THE COURT: Just a side point, it's to David
 17 McArdle. He is --
 18 MR. ROBERT: So, Your Honor, the point is if the
 19 question is did you tell Eric Trump and is he aware and you
 20 want to say that first sentence, is it true that you spoke
 21 to Eric Trump and did you tell him that the more supportable
 22 value at the point is around 45 million, that's a fair
 23 question. But to discuss that whether this e-mail is a fair
 24 summary of the entire conversation that Ms. Dillon had with
 25 Mr. Trump would constitute a waiver of attorney/client

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1 privilege. So the document that was produced is talking
2 about that one sentence or what is contained in that
3 paragraph. Therefore asking about if that sentence was
4 discussed in the conversation is fair game, but once you go
5 beyond that -- this e-mail wasn't designed to summarize the
6 contents of the conversation between Ms. Dillon and
7 Mr. Trump.

8 THE COURT: Well, whether it was or wasn't
9 intended, I don't want to take more time on this. You can
10 object. All I understand the question to mean is asking
11 this witness who wrote that paragraph that starts with "I
12 spoke to Eric" and I think summarize -- a summary of the
13 conversation question is is that an accurate summary of the
14 conversation, is that what you're asking --

15 MR. SOLOMON: I could not have phrased it better
16 myself, Your Honor.

17 THE COURT: I direct the witness to answer is that
18 one paragraph, one summary of the conversation? Blame me if
19 you have to.

20 A Let me give this a try.

21 MR. KISE: Same objection.

22 A Let me give this a try.

23 MR. SOLOMON: It's a yes-or-no question.

24 THE COURT: It's a yes-or-no question is that a
25 fair summary of your discussion with Eric?

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1 THE COURT: We'll bill you for that. Let me -- I
2 order the witness not to talk about in this case or your
3 testimony or anything related to anybody until your
4 testimony is finished, which won't be at least until
5 tomorrow obviously.

6 THE WITNESS: Thank you, sir.

7 MR. KISE: We have Ms. Dillon tomorrow and Flores?
8 MR. AMER: Yes.

9 MR. KISE: Okay. Just want to be sure.
10 (Whereupon, the trial proceedings are adjourned to
11 Friday, October 27, 2023 at 9:30 a.m.)
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1 A To your point about my entire discussion with Eric or
2 partial discussion, it's not a yes-or-no question in my view.
3 If I could just have --

4 THE COURT: Go ahead, explain.

5 MR. SOLOMON: Your Honor, other witnesses,
6 including us, you have indicated if it's a yes-or-no
7 question you have to answer yes or no and they're able to
8 explain their answers by questioning on the other side.

9 MR. ROBERT: First of all, Mr. Solomon, as the
10 judge would say if you can answer it yes or no and the
11 witness said that they couldn't the judge would then allow
12 them to answer.

13 THE COURT: Yes or no to me to the witness may not
14 appear, so I'll allow an explanation. I hope it's brief.

15 A It will be brief.

16 So I have no recollection of the conversation itself.
17 I don't know if there is more in the conversation, I don't know
18 if there is less in the conversation. I believe I would have
19 accurately reflected the parts of the conversation that I
20 reflected here I would believe are accurate, but whether there
21 were more things talked about, less things -- well, wouldn't be
22 less things, but I can't tell you that sitting here today. It
23 was a conversation ten years ago.

24 THE COURT: Okay.

25 MR. SOLOMON: Your Honor, I've gone over my time.

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NYSCEF DOC. NO. 1637
NYS Attorney General v.
Donald Trump, et al.RECEIVED NYSCEF: 11/15/2023
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In The Matter Of:
PEOPLE OF THE STATE OF NEW YORK v.
DONALD J. TRUMP, et al.

SHERI DILLON
October 27, 2023

NICOLE C. ROBINSON

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 3 ----- X
 4 PEOPLE OF THE STATE OF NEW YORK, BY
 5 LETITIA JAMES, ATTORNEY GENERAL OF
 6 THE STATE OF NEW YORK,
 7 Plaintiff,
 8
 9 Index No.
 10 -against- 452564/2022
 11 DONALD J. TRUMP; DONALD TRUMP, JR.; ERIC TRUMP;
 12 IVANKA TRUMP; ALLEN WEISSELBERG; JEFFREY MCCONNEY;
 13 THE DONALD J. TRUMP REVOCABLE TRUST; THE TRUMP
 14 ORGANIZATION, INC.; TRUMP ORGANIZATION, LLC;
 15 DJT HOLDINGS, LLC; DJT HOLDINGS MANAGING MEMBER;
 16 TRUMP ENDEAVOR 12, LLC; 401 NORTH WABASH VENTURE,
 17 LLC; TRUMP OLD POST OFFICE, LLC; 40 WALL STREET,
 18 LLC.; AND SEVEN SPRINGS, LLC,
 19 Defendants. ----- X
 20 Supreme Courthouse
 21 60 Centre Street
 22 New York, New York
 23 October 27, 2023
 24
 25 B E F O R E:
 HONORABLE ARTHUR F. ENGORON,
 Justice, Supreme Court
 A P P E A R A N C E S:
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1 THE COURT OFFICER: All rise. Part 37 is now in
 2 session. Honorable Judge Arthur Engoron presiding. Make
 3 sure all cellphones are on silent. Laptops and cellphones
 4 will be permitted, but only to members of the press.
 5 There's absolutely no recording or photography of any kind
 6 allowed in the courtroom. Now, be seated and come to order.
 7 THE COURT: Okay. So why are we here at 9:30
 8 instead of 10:00? Because we're going to hear oral argument
 9 on a motion by Ivanka Trump to quash a subpoena, trial
 10 subpoena issued against her.
 11 I read the papers, so, please, don't be too
 12 repetitive. I'm hoping that we can finish by 10:00. If we
 13 can't, then by 10:30. We want to try to finish with the
 14 current witness, Sheri Dillon, today. And without further
 15 ado, who would like to speak on behalf of the motion?
 16 MR. MOSKOWITZ: Good morning, Your Honor. Bennet
 17 Moskowitz on behalf of non-party witness Ivanka Trump.
 18 First, let me say thank you everyone here, especially Your
 19 Honor, Ms. Greenfield and the parties for giving us the time
 20 for this in the middle of a very busy trial.
 21 I heard you loud and clear. I have no intention to
 22 just rehash what's in my moving papers. As Your Honor
 23 knows, I wasn't afforded a reply opportunity, so I'll take
 24 this opportunity to address things mostly that the AG
 25 raised. What I will say just to level set here and I don't

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 Senior Court Reporters

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1 want to get lost in the shuffle with all the papers flying
 2 back and forth on this. We're not here about technical
 3 service defects. This is about fundamental issues of
 4 jurisdiction.
 5 THE COURT: Good. That makes things a lot simpler.
 6 MR. MOSKOWITZ: Right, and hearing only facts that
 7 matter for purposes of the jurisdiction. Ms. Trump does not
 8 live in New York. She's not domiciled here and despite the
 9 fact that the AG concludes otherwise and doesn't present
 10 evidence supporting that conclusion, she does not transact
 11 business here. Let me say it again, she does not transact
 12 business here. That has a very specific meaning under New
 13 York law.
 14 Weinstein, Korn & Miller, no offense to Professor
 15 Siegal. He's great, too. I picked it up and Section 30809
 16 of Weinstein, Korn & Miller, so that section of Weinstein,
 17 Korn & Miller provides, Your Honor, that actual place of
 18 business under New York law means where that person is
 19 regularly, physically present and regularly transacts
 20 business.
 21 Ivanka Trump does not regularly transact business
 22 and does not regularly at any of the addresses where they
 23 served these subpoenas to these entities at most since 2017
 24 and if they want an affidavit for that business, that's
 25 fine. By the way, side note, they didn't put in an

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1 affidavit because I urge the Court, and you read the papers,
 2 if you revisit it, maybe you don't need to, the
 3 correspondence attached to my affirmation, the AG's position
 4 on this motion has been like a moving target.
 5 First they said, "Oh, it is a subpoena to these
 6 entities." No, it is a subpoena to her. Now I'm hearing in
 7 their papers for the first time that she transacts business
 8 at Trump Tower. She does not. Since 2017, she's been there
 9 once or twice a year, never for business, to say hello,
 10 people including family members for 15 minutes, 30 minutes,
 11 things like that. So there is no basis to say a service on
 12 an entity at Trump Tower is service on her individually.
 13 That's just wrong.
 14 Let's look at the case law here and I'll address
 15 mostly the case law that was cited by my friends across on
 16 the other side. First, they don't deal with the fact that
 17 Justice Fried's decision just as an example, Amelius is
 18 decisive. A non-party, non-domiciliary is not subject to
 19 the subpoena power of the court. That's 64 New York State
 20 3d 855 at 866. Again, that was Justice Fried.
 21 When we had the ongoing discussions leading up to
 22 this motion and still today, perhaps the AG relied on cases
 23 like 2323 Communications Corp. Those cases stand for a
 24 principle that's very different which is that where an
 25 entity is a party, it can be compelled to appear through a

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1 specific person. The entities they subpoenaed are not
 2 parties, so those cases are not applicable.
 3 They also talk about this Gibson Dunn case. Let's
 4 take a close look at that case, Your Honor. It is a First
 5 Department case, doesn't help them. Maybe they didn't find
 6 anything better. In that case, you could tell that -- it's
 7 a Gibson Dunn case, is a dispute over legal fees and the
 8 person trying to evade service, Your Honor, had the legal
 9 fees sent to a specific Madison Avenue address. In the few
 10 months leading up to --
 11 THE COURT: Wait. Wait, you don't mean that the
 12 legal fee was sent. How the bills were sent.
 13 MR. MOSKOWITZ: The bill, excuse me, for the legal
 14 fees. Invoice me here kind of thing. Then there is a suit
 15 over legal fees. The person trying to say service didn't
 16 apply, jurisdiction didn't apply had been to that address
 17 for work multiple times leading up to the legal proceedings
 18 and leading up to the service. And what the court found
 19 there was this guy induced Gibson Dunn to rely on this place
 20 where he does go to work sometimes. He can't now turn to
 21 the court and say that "I'm actually not really there that
 22 much." That's not this case.
 23 Ivanka Trump didn't induce anyone to go to Trump
 24 Tower. She hasn't been there working since 2017 and she did
 25 not go to work there since then, certainly not in the three

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1 months leading up to this. So if that's the best case they
 2 can do, I'm happy with it. It doesn't help them. It helps
 3 me.
 4 There are other cases. The Court doesn't have to
 5 take my word for it. A lot of cases have cited that Gibson
 6 Dunn case and what they rely upon such as this Napoli vs.
 7 Bern which is 2021 Westlaw 5458747 at page three, 2021 case
 8 with the line of cases that I found talking about the Gibson
 9 Dunn case. They'll hook on to that inducement. This guy
 10 had the legal fees sent there, represented that's where he
 11 worked, and then he turned around and said ha-ha, fee over
 12 legal dispute, can't get me there.
 13 Now, there is another new argument and, you know,
 14 Your Honor, I always tell younger associates there comes a
 15 time in trial where parties go a bridge too far and try not
 16 to do it. Here is the AG's bridge way too far. How they
 17 assert for the first time and they are getting a little
 18 desperate here, respectfully, that Ms. Trump consented to
 19 this jurisdiction in this case because she's a party in the
 20 special proceedings.
 21 They must take us all for fools. I'm looking
 22 around. This is not the special proceedings. They didn't
 23 issue the subpoenas in the special proceedings. There was
 24 no trial in the special proceedings, so that's just false on
 25 its face. And in any event, we could cite case law that

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1 stands for the proposition, including First Department case
 2 law and this is pretty basic, that even consent in one
 3 action does not mean that there's jurisdiction over a person
 4 who consents even in a related action. Here is not what we
 5 are dealing with. They're saying we had this years-long
 6 social proceeding. She was subject to jurisdiction in that
 7 proceeding. Therefore, in this trial, under separate index
 8 number, which we issued subpoenas, she must come today. Not
 9 how it works and there's a reason we didn't hear that
 10 argument previously. It doesn't fly.
 11 So let's talk about the entities. Again, I urge
 12 Your Honor to revisit the fact that the AG kind of spoke
 13 from both sides of the mouth about what these subpoenas
 14 were. It is pretty simple. We all know what happened here.
 15 They had easy jurisdiction over Ivanka Trump. They could
 16 have served her at her house. Much different. We probably
 17 wouldn't be here today. What appears to happen is they task
 18 one someone in their office for saying let's go to the
 19 transcript let's look at documents let's find some entities
 20 that have something to do with her and let's fire off
 21 subpoenas. That's what they did.
 22 THE COURT: Wait. Wait. Entities that had
 23 something to do with her? Didn't she own some of them and
 24 didn't some of them own parts of others?
 25 MR. MOSKOWITZ: I'll get to that. It is not clear.

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1 The TTT and OPO entity, she absolutely has an affiliation
 2 with those entities as do other people who can competently
 3 testify for those entities, but let me stop there. Again,
 4 as non-parties, you don't get to subpoena those entities and
 5 say you must appear via specific person X rather, I'll get
 6 to it in a minute, it's black letter law an entity can
 7 provide anyone who's competent to testify which goes back to
 8 my point.
 9 I asked them why TTT? Why this OPO entity? Why
 10 502 Park? I never got an answer because what they were very
 11 honest about, and I appreciate, is that they want her to
 12 appear and there's no limitation in their mind of what they
 13 could ask her about because it is really not about these
 14 entities. That's just the way that they're trying to get
 15 jurisdiction over her. 502 Park, I said to them, "Guys, I'm
 16 having trouble here. I can't find anything on my end that
 17 shows what she has to do with this entity. What did you
 18 have before you served the subpoena." I didn't get an
 19 answer. You don't get to -- subpoena powers are awesome --
 20 THE COURT: You might get an answer today if there
 21 is an answer.
 22 MR. MOSKOWITZ: Yeah, I would like to know the
 23 answer because I haven't found it. I said, "Please, share
 24 it because if there is something "-- I'll note I spent a
 25 lot of time. I don't even know that that entity was used

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1 for anything. It exists, I grant you that. I could
 2 speculate at what it might have been. I have no document
 3 that says that like the other two that she was an officer or
 4 anything like that. She doesn't know what it is and the AG
 5 doesn't know what it is.
 6 So they weren't served on Ivanka Trump. They were
 7 served at best on these entities. And, by the way, not all
 8 cleanly, but again, I'm not here about service stands or
 9 what. If they insist they need those entities, those
 10 entities can appear. I think they should articulate with
 11 why they need those entities, but I understand the
 12 defendants will speak for themselves. They offered -- for
 13 the two that we concern that they offer, they offered for
 14 someone who has lived here appear and testify for those
 15 entities, which you are allowed to do.
 16 New York law again, I pulled out Weinstein, Korn &
 17 Miller. You can look at Section 230504, "If a subpoena to
 18 testify is served on and is addressed to an entity, that
 19 entity may choose the person who will be deposed," period.
 20 So they cite --
 21 THE COURT: I'm very familiar with that concept
 22 that the entity has the right in the first instance to
 23 decide who to produce. I think we are in a different
 24 situation than the normal one here. As we all recognize, we
 25 are not looking for the entities. They're looking for the

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1 person.
 2 MR. MOSKOWITZ: That's exactly right. At the end
 3 of the day, Your Honor, they just don't have jurisdiction
 4 over her. They tried with this transient business again
 5 articulated to me for the first time in their papers that
 6 they submitted to Your Honor and I just addressed it. It's
 7 just wrong and if they want an affidavit saying what I just
 8 represented to the Court as an officer and I'll say it again
 9 that she does not transact business at any of those places
 10 they served, I will be happy to do it.
 11 THE COURT: Did she ever transact business?
 12 MR. MOSKOWITZ: Yes.
 13 THE COURT: When was the last time she transacted
 14 business?
 15 MR. MOSKOWITZ: Before 2017.
 16 THE COURT: Okay. So what?
 17 MR. MOSKOWITZ: You have to have jurisdiction over
 18 her now. If someone worked in New York 50 years ago and
 19 leaves, you don't get to say, "Hey, you once worked at this
 20 address. Come to trial." That's not how it works. It has
 21 to be jurisdiction now, transact business here now.
 22 THE COURT: How are we going to define now? What
 23 if somebody transacts business here, leaves on a vacation or
 24 a business trip or is away?
 25 MR. MOSKOWITZ: Again --

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1 THE COURT: A week later, they're not still --
 2 MR. MOSKOWITZ: No. The Weinstein, Korn & Miller
 3 basic principle addresses that, Your Honor. If it is a
 4 place you regularly return to work such as like I work on
 5 Third Avenue where my law firm offices are. If I leave for
 6 a week and they serve me there, I can't turn around and say,
 7 "Oh, I was gone that week." Here, you have someone who
 8 didn't work at the place for many, many years. They no
 9 longer return there for work.
 10 THE COURT: Let me ask you a question. Did Ivanka
 11 submit any sworn statement?
 12 MR. MOSKOWITZ: On this motion, no, because again,
 13 I didn't hear this argument and didn't get a reply for it.
 14 I'm happy to submit one now. I would have done it in a
 15 reply brief.
 16 THE COURT: Now is too late. I'm hoping to decide
 17 this today and if she testifies, it will be fairly soon.
 18 MR. MOSKOWITZ: I wasn't put on notice that that
 19 was their argument because they kept changing it. How could
 20 I respond to something they didn't articulate? I can't
 21 guess what their position is.
 22 THE COURT: Well, it's standard practice in New
 23 York law that you need to have an affidavit from someone
 24 with personal knowledge if you're going to start spouting
 25 facts, but --

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1 MR. MOSKOWITZ: I agree, and they don't have one
 2 either showing the opposite, but I'm happy to put one in
 3 today.
 4 THE COURT: I'm not sure that they can prove a
 5 negative. Ivanka would be the person best able to say when
 6 she ever -- when was the last time she worked in New York
 7 or whether she still works in New York, what she owns here,
 8 et cetera, et cetera, but --
 9 MR. MOSKOWITZ: I could get it to the Court ASAP.
 10 THE COURT: I promise you I'm not a "Ha-ha, I got
 11 you" judge. I'm not trying to say, "Ha-ha, you didn't have
 12 an affidavit from her," but it does weaken your argument
 13 because you keep talking about what she does and doesn't do.
 14 She would know better than you.
 15 MR. MOSKOWITZ: I agree, and if I had been afforded
 16 an opportunity to reply, I would have submitted it. I did
 17 not want to disregard what the Court advised me which was no
 18 reply afforded, which was the e-mail I received.
 19 THE COURT: Whether you should have needed a reply,
 20 waited for a reply, a reply is to respond to their
 21 arguments, but if you don't make out a prima facie case by
 22 an affidavit from Ivanka saying "I don't do these things. I
 23 don't live there," et cetera, I don't think that should have
 24 been in the reply. That should have been in moving papers,
 25 but that's just my opinion. All right, continue.

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1 MR. MOSKOWITZ: Thank you, Your Honor. So going
 2 back to the idea that corporations can designate their own
 3 witnesses, they cite the Standard Fruit case, totally
 4 different. In that case -- by the way, it was from
 5 1977 -- the court did allow a party to subpoena an
 6 out-of-state witness. It was after the witness provided by
 7 the subpoenaed corporation was unable to testify to the
 8 relevant facts. And even then, the court allowed the
 9 corporate entity to select between two different
 10 individuals.
 11 THE COURT: When I said, I read all the papers, I
 12 didn't read all the cases, but that case, I did read.
 13 MR. MOSKOWITZ: Right. Right. So again, that's
 14 our point. The corporation gets to put someone up and it
 15 has to be someone who can speak to the facts, again, which
 16 is why my first question to them when we got notice that
 17 they were trying to serve these subpoenas, "Hey, what
 18 testimony are you going for" and we quoted this and it is in
 19 the exhibits to my affirmation. They were honest about it.
 20 I appreciate that. It was basically limited. It was, "She
 21 knows this, she knows that, but I can't really limit it," so
 22 they want her here. They want it to be unlimited. They
 23 didn't depose her. They could have. They didn't de benne
 24 esse, you know, subpoena her. They could have done that. I
 25 guess they didn't think she'd be out of the case. I'm

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1 sorry. She is and that changes things fundamentally.
 2 You're no longer in the case. You're not a resident. You
 3 don't work here. You don't have jurisdiction over that
 4 person. That's the breaks.
 5 THE COURT: The expression is "that is the breaks."
 6 MR. MOSKOWITZ: I'm referring in the singular
 7 situation, but I appreciate Your Honor's.
 8 THE COURT: All right. Anything else on your
 9 initial -- I don't know whether we will have time for a
 10 reply, but was that it for now?
 11 MR. MOSKOWITZ: Yes, Your Honor. I mean, I
 12 appreciate the possibility if I hear something new, to
 13 address it.
 14 THE COURT: Probably. Probably.
 15 MR. MOSKOWITZ: Yeah.
 16 THE COURT: Okay. It is my understanding that the
 17 defendants themselves do not have standing to contest this,
 18 but I'll let them talk if they want to.
 19 MR. KISE: Thank you, Your Honor. I don't know
 20 that I would say we don't have standing since it affects the
 21 impact of the trial and it affects the course of the trial,
 22 but in all events, I appreciate the opportunity to address.
 23 THE COURT: We always like to hear your mellifluous
 24 voice.
 25 MR. KISE: That's good. At least there's something

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1 positive that may happen here. I will try not to go over as
 2 you suggested, Your Honor. I'm not going to belabor the
 3 papers. I know you've read them and you've seen in our
 4 papers that we view the subpoena truly as just continued
 5 harassment of President Trump's children. They were all
 6 named and included in this case as leverage. There's no
 7 serious evidence that any of them had any involvement in the
 8 Statement of Financial Condition preparation.
 9 Ms. Trump was dismissed from the lawsuit by the
 10 First Department and now despite having a year to depose Ms.
 11 Trump in this case, several months post-dismissal to depose
 12 her, now all of a sudden in the trial, the Attorney General
 13 claims that her testimony is somehow essential. I thought
 14 Mr. Wallace was going to object when he stood up. I'm just
 15 so used to it. No. No.
 16 THE COURT: Obviously, testimony does not have to
 17 be "essential."
 18 MR. KISE: Even if it were relevant then, then they
 19 should have done it during discovery. They're claiming now
 20 that only she can provide this information and if it was so
 21 essential, then why are we here in the middle of trial?
 22 There was no even attempt to do a de benne esse deposition
 23 which was done with other witnesses who may or may not be
 24 available for trial.
 25 The exhibits attached to their motion demonstrate

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1 that this is an inexcusable delay. All of the documents
 2 that I saw that were attached as exhibits were all things
 3 they had in their possession for at least a year, if not
 4 more. The Attorney General certified in their NOI, their
 5 note of issue, that all discovery was complete and the
 6 service of that prohibits reopening. I'll cite the Court to
 7 the Melcher case, 38 AD3d 376. It is a First Department
 8 case that stands for that proposition that their
 9 certification meant that they've completed their
 10 investigative efforts for trial, their discovery efforts for
 11 trial and yet, this is tantamount to a discovery subpoena.
 12 Nothing was done.

13 To us, again, our answer is obvious they want to
 14 put Ms. Trump on the stand, create another media event while
 15 I'm always certainly happy to have the Attorney General in
 16 the courtroom, her presence today demonstrates that that's
 17 what this is about. I doubt she came here to hear Ms.
 18 Dillon. I doubt she came here to hear Mr. Flores.
 19 Although, I'm sure the testimony will be riveting. Really
 20 the purpose here is to focus on another one of Mr. Trump's
 21 children who has been dismissed from the lawsuit.

22 To the jurisdictional point that Mr. Moskowitz
 23 raised, there's just no legal authority for the Court to
 24 require a non-party, non-domiciliary to appear at trial as a
 25 representative of a non-party entity. It's non, non, non.

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1 And the Court itself could not compel her attendance under
 2 these circumstances.

3 The service issue, I'll just touch on briefly. The
 4 service on -- and the cases -- I'm not citing all the
 5 papers. They're in their papers, Your Honor. The service
 6 on a non-party entity registered agent is not service. It
 7 is not service on Ms. Trump in her individual capacity and a
 8 non-party, non-domiciliary not subject to the court's
 9 subpoena power does not constitute service on Ms. Trump.

10 And I'll cite, as in our papers, the Genger case,
 11 50 Misc.2d 361. The Attorney General argues that Ms. Trump
 12 did not contest jurisdiction in the special proceeding, but
 13 that's frankly a complete non sequitur. The Coutts case
 14 they cite is completely in opposite. That's a judgment
 15 debtor who fled the jurisdiction after judgment that then
 16 filed a parallel action against the creditor in a New York
 17 court.

18 There was no dispute that the court could obtain
 19 the jurisdiction over the debtor in the very case at issue,
 20 but here, you have Ms. Trump is not a party. She was
 21 dismissed by the First Department. She's not a judgment
 22 debtor and she's not actively litigating any affirmative
 23 case in New York.

24 The Standard Fruit case that they cite is also in
 25 opposite. There, an investigative subpoena sought

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1 information about that entity, about Standard Fruit, about
 2 that specific entity. They produced, as was their right,
 3 the first witness, the corporate designee to testify about
 4 relevant facts. Only after that witness testified and there
 5 was a demonstration that that witness could not -- could
 6 not testify did the court order another witness.

7 The Amelius case, which we also cite 64 NY Supp. 3d
 8 855, draws the distinction further bearing out, Standard
 9 Fruit draws the distinction between a non-party corporation
 10 and a corporation under investigation. Here, you have three
 11 non-parties, none of which are under investigation, none of
 12 which have any association heretofore with this case.

13 So, the subpoenas were not served. They were
 14 served all on Ms. Trump. They were served on the non-party
 15 entities. Those non-party entities are entitled to
 16 designate a corporate representative and the Attorney
 17 General has the burden in the first instance to demonstrate
 18 that that designation was inadequate. The Barone case, 260
 19 AD2d 417 and the other cases we cite stands for that
 20 proposition that there must be some demonstration that the
 21 initial witness that is designated by the entity is
 22 inadequate.

23 There's no showing that the individual that's been
 24 designated here by the corporate entities, Eric Trump is
 25 inadequate. In fact, the Attorney General herself alleged

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1 in the complaint that Eric Trump is responsible for all
 2 aspects of management. I mean, that's their allegation. So
 3 I don't see how they can claim without any explanation
 4 that -- or any proof that Eric Trump is now somehow an
 5 inadequate corporate designee, and they're not entitled to
 6 raise that issue unless and until they make that -- make
 7 that showing and that has been established by the court.

8 Finally, and just briefly, the subpoena itself
 9 revealing what this is all about is truly overly broad.
 10 There is no attempt to narrow the issues. They just want
 11 another free-for-all on one of President Trump's children.
 12 There's no real relevance to the proceeding. It's more in
 13 the nature of a subpoena for a deposition where we're going
 14 to spend seven hours. "What do you know about this?" "What
 15 do you know about that?"

16 THE COURT: She was deposed already in a different
 17 case related, if you pardon the expression, so it is not
 18 like they're not -- it is not like a total shot in the
 19 dark.

20 MR. KISE: It may not be a total shot in the dark,
 21 but the subpoena is pretty close. The lights are on dimly
 22 and they're shooting off to the right when there's someone
 23 over on the left that's their target. So yeah, maybe it is
 24 in the same room, but the lights are dim and they're going
 25 in the wrong direction. So there's -- if they had a

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1 specific focus, then they would have put that in the
 2 subpoena. If they had a specific purpose, they would have
 3 put that in the subpoena.
 4 And frankly, had they had such specific focus and
 5 specific purpose, we wouldn't be here because they would
 6 have either deposed Ms. Trump during the long course of
 7 discovery in this case. They had ample opportunity to
 8 depose anyone they wanted. She was certainly available for
 9 that while she was a party. And then after she wasn't a
 10 party as of June of this year, they still had several months
 11 to conduct a de benne esse deposition.
 12 They haven't even deposed -- made any showing to
 13 the Court as to why that wouldn't suffice or wouldn't have
 14 sufficed. Even after the commencement of trial, they
 15 haven't even proposed that. And I'm not going to agree to
 16 that on behalf of Mr. Moskowitz' client. I'm just showing
 17 that it just shows the real purpose here is to drag her into
 18 court. It is bad faith and it is harassment of another one
 19 of President Trump's children who has been dismissed out of
 20 this case.
 21 The First Department determined that she left in
 22 2017, so to your point, Your Honor, about affidavit or
 23 connectivity, I mean, I think the First Department has
 24 certainly, if not established it fully, has established it
 25 almost 95 to 99 percent of the way. They basically said she

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1 doesn't have anything to do with this case and she should be
 2 out. She left years ago. This is not as Your Honor
 3 posited, respectfully, a situation where she's gone on some
 4 vacation or some business tip. She's been gone for years,
 5 multiple years, years and so for those reasons and the
 6 reasons stated in our papers and those of Ms. Trump's
 7 counsel, we would ask the Court to quash the subpoena.
 8 Thank you.
 9 THE COURT: Mr. Robert.
 10 MR. ROBERT: As usual, I will be extremely brief.
 11 The goosey gander rule, Your Honor refers to it, what's
 12 sauce for the goose is sauce for the gander. Yesterday
 13 morning when Mr. Holl was on the stand and I had colloquy
 14 with the Attorney General's office because we didn't think
 15 he was going to be called and I said, "Are you going to call
 16 him back?" And they said, "Well, no. Try to serve a
 17 subpoena on him." Turns out he is an out-of-state resident.
 18 We did effectuate service on him outside once he left the
 19 court yesterday, but the rules are the rules.
 20 The motion that's before Your Honor today is a
 21 motion to quash the subpoena on three entities. I agree
 22 with Your Honor's sentiment that what this is really about
 23 is trying to serve a subpoena on Ivanka Trump individually.
 24 Then that's what they should have done. There were plenty
 25 of opportunities to do it. They could have deposed her in

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1 this case. She was dismissed in the case the end of June.
 2 There was still time to do the de benne esse deposition and
 3 they did not and instead of coming before this Court
 4 forthright and saying, "Listen, we want Ivanka Trump and
 5 these are the reasons why," they come up with this Ruth
 6 Goldberg, coming up with these three companies that have
 7 nothing to do with it. We want them.
 8 Mr. Moskowitz in consultation with my client says,
 9 you know what, for the two companies that have something to
 10 do with Trump, Eric Trump is willing to be the corporate
 11 representative because he's going to be testifying anyway
 12 and they said, "Well, no, no, not so fast." They were
 13 smoked out as Your Honor pointed out. They want Ivanka
 14 Trump. If they want Ivanka Trump, there is a mechanism to
 15 do it. If they do it in the appropriate way and even if
 16 there is still an objection by Mr. Moskowitz, that becomes a
 17 motion that's before Your Honor. But right now, all there
 18 are are three subpoenas, three subpoenas in our view in our
 19 papers are defective. There should be no question that they
 20 be quashed and we move on. Thank you, Your Honor.
 21 (Continued on the next page.)
 22
 23
 24
 25

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1 THE COURT: Does the Attorney General have anything
 2 to say?
 3 MR. WALLACE: I will try to be brief, Your Honor.
 4 THE COURT: You don't have to be. They took their
 5 time.
 6 MR. WALLACE: I want to try to be, though.
 7 So I'll start with the point the defendants made
 8 about whether there is a mystery as to what Ms. Trump might
 9 testify to, why it might be that Eric Trump is not a
 10 suitable replacement for Ms. Trump and the answer as you
 11 somewhat indicated is they have a very good idea of exactly
 12 what we would like to ask Ivanka Trump. I don't think we
 13 were hiding it. Her name is on the subpoena. We've been
 14 going back and forth about whether Ivanka Trump, the person,
 15 would be appearing.
 16 We have her examination during the investigation.
 17 We've even offered as -- as a resolution that we would put
 18 being sued into evidence, her examination from
 19 investigation. We even gave the defendants the designations
 20 of what we would have introduced from her examination and
 21 the defendants, as is their right, declined to waive the
 22 fact that they were not present to cross examine her during
 23 that exam and hence, it's not admissible. But they very
 24 much know exactly what we would like to put into evidence
 25 from Ms. Trump.

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1 I'll also go back to the idea that she is no longer
 2 a party and somehow the statute of limitations may play into
 3 whether or not she has relevant evidence to provide the
 4 Court and courts at trial.
 5 I will note that the statute of limitations
 6 stretches back to 2014. That means that Ms. Trump was an
 7 executive of the Trump Organization in 2014, 2015 and 2016
 8 before departing the company in 2017. All of that is
 9 relevant to the case and within the statute of limitations
 10 period. She was an executive of defendant entities and she
 11 undertook transactions on their behalf.
 12 Whether or not the First Department thought that we
 13 had established she committed fraud during the period that
 14 she was subject to the statute of limitations is unrelated
 15 to whether or not she has relevant knowledge of what was
 16 happening within the company at that time. And part of the
 17 reason we need her knowledge and not Eric Trump's is because
 18 she was the direct contact with Deutsche Bank on the OPO
 19 loan. She ran that project, not Eric Trump. And I believe
 20 the case law in our brief establishes that we're not
 21 required to take a witness who may educate themselves about
 22 the company's position and then testify.
 23 I will also add the idea that we should have taken
 24 her deposition is -- it is a red herring. She has a
 25 presence in this state. She owns multiple businesses within

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1 the state. She owns multiple businesses that have their
 2 principal place of business within the state.
 3 And I'll note that Mr. Bennet -- Mr. Moskowitz
 4 keeps talking about I believe he's a Weinstein & Miller fan.
 5 THE COURT: Weinstein Koren & Miller is with a "K"
 6 and not a "C."
 7 MR. WALLACE: I'm aware of that at least. But he
 8 also ignores the plain language of the CPLR 3086 which
 9 states: "For purposes of this section, actual place of
 10 business shall include any location that the defendant
 11 through regular solicitation or advertisement has held out
 12 as its place of business." Ivanka Trump has certainly held
 13 out the location of Trump Tower and the Trump Organization
 14 as a place of business for the OPO Ivanka entity, for TTT
 15 and for the 502 entity.
 16 I will add that if Mr. Moskowitz needs additional
 17 information on relationship to the 502 entity that can be
 18 found in the -- paragraphs 24 through 26 of the supporting
 19 affidavit that we submitted and the documents attached
 20 thereto. It is a property that she owns and is renting out
 21 as a commercial enterprise for TTT.
 22 I would note that this is part of the case already.
 23 Ms. Kidder talked about it during week two of the trial. It
 24 is part of the licensing fees that the company earns.
 25 I would also note that she returned as a manager.

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1 And this is identified in paragraph 17 and 18 of our
 2 supporting affidavit. "She returned as a manager to that
 3 entity after her time in Washington was over."
 4 So she is a manager of the Trump Organization
 5 business. I think you combine that with the fact that
 6 they're offering Eric Trump as a replacement suggests that
 7 she is very much still intertwined with the Trump
 8 Organization.
 9 So we're not just focused on the specifics of the
 10 mechanics of service. I certainly think that under the
 11 operative words of this Court she could be brought here by
 12 the Trump Organization. They certainly seem to have enough
 13 control of her.
 14 The only other point that I think I would make is
 15 she clearly owns and operates businesses. They're still
 16 affiliated with defendants, they're still relevant to this
 17 case and are located in New York. If she truly wanted to
 18 completely absent herself from the company, from the state,
 19 she was free to do that. She has maintained these
 20 businesses and these businesses aren't complete strangers to
 21 this action. Ivanka OPO is the ownership interest she held.
 22 As late as after the sale of this property she obtained I
 23 believe at least \$4 million from her interests in the sale
 24 of the OPO property which explains very much directly at
 25 issue in this case. She was acting in her own interest when

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1 she was negotiating a loan with Deutsche Bank on OPO.
 2 So, in any event, she very much remains intertwined
 3 with the Trump Organization. She very much still has a
 4 presence in New York and we are now obligated to go seek her
 5 de bene esse deposition because she is still available to
 6 this Court and through that commercial presence. She is a
 7 hundred percent someone who can come in and testify and is
 8 susceptible to subpoena in this jurisdiction.
 9 So I don't think she is currently unavailable. She
 10 is a hundred percent available and the subpoenas were
 11 properly served on business addresses she maintains. Either
 12 businesses can require her to come forward and testify or
 13 she is holding out herself as doing business in those
 14 locations in the services appropriate. The fact that
 15 they're multiple avenues to secure her testimony in this
 16 court does not mean that we're doing something untoward or
 17 hidden or changing our tune. She is still apart of the
 18 Trump Organization. She still has commercial interests here
 19 in New York. She operates businesses here. Whether or not
 20 she visits them once a year just to say hello to the good
 21 people who are handling her paperwork or she comes more
 22 regularly is really irrelevant under 308 subsection six.
 23 But I'm happy to answer any questions Your Honor might have,
 24 but we really don't see this as being a closed issue. She
 25 has sufficient contact with New York if the subpoenas were

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1 appropriate.

2 THE COURT: What are your thoughts about granting

3 the motion only in part and limiting her testimony to the

4 OPO, Old Post Office transaction?

5 MR. WALLACE: I don't think -- I'm not sure what

6 the basis would be for that. She would have the knowledge

7 in her head of what the transactions are. I think it would

8 also cover her information on the licensing agreements of

9 TTT, her knowledge of the 502 Park apartment. But honestly,

10 if it's just the OPO, I do think relevant -- the course of

11 conduct with Deutsche Bank is relevant to the OPO loan. I'm

12 not sure it presents that much of a restriction to the scope

13 of her testimony, but I think it -- the entities we've

14 subpoenaed really do cover most of the breadth of what we

15 would be interested in hearing -- what we would be

16 interested in having her testify about.

17 THE COURT: Brief replies?

18 MR. MOSKOWITZ: Thank you, Your Honor.

19 First, as to the only argument I heard that touches

20 on actual jurisdiction, the issue which is what dictates the

21 result today is whether there is jurisdiction over my

22 client. I heard this argument with this other CPLR section.

23 There is no case that says that being affiliated with an

24 entity registered to do business in New York means that

25 service of a subpoena on that entity means you have

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1 jurisdiction over that individual. That is just wrong. We

2 do cite cases in our brief that go to that point.

3 Even when it's a party entity the cases make clear

4 it's not the same thing. What I guess I'm hearing now,

5 again, a new argument going back to, you know, why I didn't

6 put in certain affidavits I was replying to. I'm now

7 hearing basically a general jurisdiction argument. There is

8 no evidentiary record of asserting general jurisdiction over

9 Ms. Trump and now that we're here today and I'm hearing it

10 for the first time I go as far as to say that argument's

11 been waived.

12 I also heard beyond the jurisdictional argument

13 that was the briefest part of Mr. Wallace's presentation. I

14 heard a lot of, "I want this, we want her for that." I want

15 lots of things. My kid wants a unicorn. What I didn't hear

16 is why there is jurisdiction over her such that you can get

17 those things. There isn't. A lot of these things are not

18 in the record. A lot of it was just their say so

19 conclusion. She holds herself out as doing business in New

20 York? No, she doesn't. Where is that in the record?

21 Again, all they have submitted and all that there is in life

22 is that she is affiliated with certain entities that are

23 registered to do business in New York.

24 THE COURT: Well, again, "affiliated?" That's kind

25 of a loosey-goosey term.

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1 MR. MOSKOWITZ: Say owner. I can go with that.

2 Someone who lives in Nebraska can own shares in 50 New York

3 corporations. The case law is clear, Weinstein Koren &

4 Miller with a "K" is clear, Siegel is clear that service of

5 a subpoena of process of a complaint, whatever it is on

6 those entities is not service on that person and does not

7 mean that you necessarily have jurisdiction over that person

8 absent something like someone who is also subject to general

9 jurisdiction which is not what we're here talking about

10 today. Thank you, Your Honor.

11 MR. KISE: Just briefly, Your Honor. I think

12 Mr. Wallace's points about we have a very good idea what we

13 want out of Ms. Trump's testimony, we knew about the OPO

14 loan involvement, all the facts that he's reciting they've

15 known about since the investigation. Forget about since the

16 case started. Since the investigation.

17 So the question comes up again why not do this

18 during discovery. Why not depose her during discovery? Why

19 not depose her after she was dismissed from the case? They

20 had plenty of time to do that. Why issue a Note of Issue if

21 they had a witness that they still needed an essential

22 witness. The rules exist --

23 THE COURT: You file a Note of Issue. You don't

24 issue a Note of Issue.

25 MR. KISE: That actually sounds better.

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1 THE COURT: I'm just trying to get you up to speed

2 on New York law.

3 MR. KISE: By the time we're done here in November

4 of 2025, I probably will be. The rules exist for a reason,

5 Your Honor, they do. And the case I cited it's just black

6 letter law. Once the Attorney General files a Note of

7 Issue, that's it. They don't get to reopen discovery.

8 Particularly -- it would be one thing if this were some new

9 witness that no one knew about before that. Well, this is

10 something critical to our case and we didn't know about

11 these facts and there is some justification. This is an

12 individual that's been associated with the investigative

13 process and then this case then dismissed and no attempt to

14 do anything despite the fact that as Mr. Wallace said we

15 have a very good idea we've known about these specifics,

16 we've known about her specific involvement in the OPO

17 transaction, etc.. So they haven't provided the Court with

18 any explanation for that. The designations that Mr. Wallace

19 represent, I'm glad that he acknowledged and I appreciate

20 him acknowledging. Of course, we weren't there which is our

21 biggest problems with using the examinations under oath, but

22 the designations offer little because there were

23 designations essentially with most of the transcript. So it

24 wasn't really a narrowing in that sense.

25 The idea that somehow Ms. Trump is under the

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1 control of the Trump Organization or any of the defendants,
 2 her father, all I can say is anyone that's raised a daughter
 3 past the age of 13 knows they are not under your control.
 4 She lives in Florida, she has her own family. The
 5 jurisdiction must be here and now irrespective of what she
 6 did five years ago, ten years ago with the OPO transaction,
 7 the jurisdiction must be here and it must be now and it
 8 simply doesn't exist.
 9 And respectfully, the Court doesn't have the
 10 authority to just ignore that impediment. Respectfully, it
 11 doesn't have the authority to ignore the Note of Issue.
 12 Respectfully, the Court doesn't have the authority to just
 13 say well, I don't care if they knew about all this a long
 14 time ago, we're going to let this happen in the middle of
 15 trial. I think the case law on that is very well
 16 established.
 17 So -- and, again, they haven't even proffered --
 18 I'm not offering this on behalf of Mr. Moskowitz and his
 19 client. They haven't proffered the least intrusive means
 20 which would be some deposition taking place where she does
 21 live, in Florida. And if it's so narrow and it's so focused
 22 her testimony, then perhaps that can accommodate the issues.
 23 Again, I'm not volunteering that, but what I'm saying is the
 24 Attorney General's offered nothing to this Court but no, she
 25 must come in here now. We didn't depose her, we don't have

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1 jurisdiction over her, we're sending subpoenas to these
 2 nonparty entities, but she must show up now. Only one
 3 reason: They want her in the courtroom so that it will be
 4 filled again with media and we can have another circus day.
 5 So for those reasons and the ones stated, the subpoena
 6 should be quashed, Your Honor.
 7 THE COURT: Okay. Give me a moment.
 8 (Whereupon, there is a pause in the proceedings.)
 9 THE COURT: Let me turn on the microphone first.
 10 Defendants, I'm not saying that this is sufficient. In
 11 fact, it's not sufficient, but what properties does she
 12 currently own in New York or what economic interests does
 13 she currently have in New York? If you don't know, you
 14 don't know. That's okay.
 15 MR. MOSKOWITZ: I don't know, Your Honor.
 16 THE COURT: Okay.
 17 MR. MOSKOWITZ: And I'll point out that if it were
 18 clearly in the submissions, which it's not, I would have
 19 addressed it and I don't --
 20 MR. KISE: I don't know either, Your Honor. I just
 21 know there is nothing in the record that shows that she does
 22 other than ownership and entities that are nonparties.
 23 Again, as Mr. Moskowitz --
 24 THE COURT: I didn't ask whether they were parties
 25 or not. I asked whether she has ownership interest in New

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1 York now.
 2 MR. KISE: Again, I don't know other than what's in
 3 the record and that would -- any ownership of any nonparty
 4 entity or party entity would not necessarily give the Court
 5 jurisdiction.
 6 THE COURT: I acknowledge that.
 7 MR. KISE: Because JP Morgan is headquartered here
 8 and I think it's somewhere in my 401(k) -- I have ownership
 9 interest in a New York entity.
 10 THE COURT: You have to be careful what you do up
 11 here.
 12 MR. KISE: Yes, right.
 13 THE COURT: Defendants, what, if anything, in the
 14 record shows current ownership interest by Ivanka in New
 15 York?
 16 MR. WALLACE: I believe that's almost everything
 17 that's laid out in our affirmation in support. She owns the
 18 OPO entity, which has its principal place of business at
 19 Trump Tower; she owns the 502 entity; she owns an interest
 20 in TTT Consulting. We -- she is also one of the managers.
 21 She owns two apartments at the Trump Park Avenue property.
 22 I believe that's primarily the scope of what we laid out in
 23 our affirmation.
 24 THE COURT: And was the affirmation -- were the
 25 affirmations by someone with personal knowledge?

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1 MR. WALLACE: It was made by someone with personal
 2 knowledge of our files and it attaches the documents that
 3 are the support, so it shows the agreements relevant to the
 4 OPO entity, to the TTT entity and to 502. So it lays out
 5 documentary evidence that supports our assertions on those
 6 fronts.
 7 THE COURT: Any last words by defendants? And then
 8 I'll retreat for properly ten or 12 minutes and come back
 9 with a decision.
 10 MR. MOSKOWITZ: Thank you, Your Honor. I can
 11 answer Your Honor's question. No, it was not someone with
 12 personal knowledge. It was a member of counsel for the
 13 Attorney General who attached stale documents. None of them
 14 show, answer the question that I can't answer either, which
 15 is what does she currently own.
 16 By the way, that's all stuff that usually gets
 17 addressed at a Traverse hearing, which again, they didn't
 18 ask for. We're not submitting to, but that's all about
 19 general jurisdiction which they never even argued until now.
 20 THE COURT: I once read all the way through
 21 "Prince, Richardson & Farrow On Evidence." One of the
 22 things I really appreciated learning is there is a
 23 presumption in the law that facts stay the same, that they
 24 don't change unless there is some reason to think they
 25 change. So I don't think the -- well, we don't know what

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1 she owns today. Because she owns something six months ago,
 2 I don't think that --
 3 MR. MOSKOWITZ: I was just going to say someone can
 4 show you a piece of paper that says I go to NYU.
 5 Unfortunately, for me, those days are long gone and my point
 6 is that as to the question of what gives jurisdiction over
 7 her now, there is nothing in this affidavit from someone who
 8 in any event doesn't have personal knowledge of that
 9 question.
 10 THE COURT: You said you went to NYU?
 11 MR. MOSKOWITZ: Yes, Your Honor.
 12 THE COURT: Which division, which school?
 13 MR. MOSKOWITZ: College of Arts and Science.
 14 THE COURT: Okay. The law school, '79.
 15 MR. MOSKOWITZ: I'm aware of because my colleague
 16 went to school with you.
 17 THE COURT: Anyway, interesting.
 18 MR. MOSKOWITZ: Your Honor, I could submit an
 19 affidavit, though, again, if the Court has questions I would
 20 like to point out, though, they flip the burden.
 21 My life as a litigator would be very easy if I
 22 could fire off subpoenas without the basis to do so which
 23 last I checked I have to have the basis when I serve a
 24 subpoena and then say to the person tell me why it shouldn't
 25 be this subpoena which is what they're doing here, but

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1 again, I could submit an affidavit and do it very quickly.
 2 THE COURT: All right. Let's take a break until
 3 10:35. I suspect to come back with a decision.
 4 (Whereupon, there is a recess in the proceedings.)
 5 THE COURT OFFICER: All rise. Part 37 is back in
 6 session. Be seated and come to order.
 7 THE COURT: Let me start with two basic ancient
 8 principals for which no citation is necessary.
 9 A trial is a search for the truth and the law is
 10 entitled to every person's evidence. On the other hand, we
 11 don't compel people to testify unless the Court has personal
 12 jurisdiction over them. As we learned in law school in the
 13 international shoe case, personal jurisdiction to satisfy
 14 due process has two elements: Notice and power.
 15 Here, the power of the Court to compel Ms. Trump
 16 into court to testify. In this case, notice is clear which
 17 is why we are here and in any event I think was essentially
 18 conceded by her attorney.
 19 I find that the power element is also clearly
 20 satisfied here. "The due process element is satisfied where
 21 the non-domiciliary has minimum contacts with New York State
 22 and based upon those contacts the non-domiciliary could or
 23 should have reasonably anticipated being hailed into court,"
 24 and that's more or less an exact quote or paraphrase from
 25 LaMarca, 95 NY2d 216.

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1 Also, and this phrase is engrained in all lawyers,
 2 "Ms. Trump has clearly availed herself of the privilege of
 3 doing business in New York."
 4 Finally, plaintiff's papers make abundantly clear
 5 by documentary evidence that Ms. Trump owns property in New
 6 York and has done business in New York. Even Ms. Trump's
 7 own papers admit that she is occasionally here.
 8 With all due respect to Mr. Moskowitz, the record
 9 is devoid of any evidence because we do not have a sworn
 10 statement from Ms. Trump that she does not do currently or
 11 has not recently done business here. The time to submit any
 12 such affidavit in the first place was in the moving papers.
 13 Movant made the argument. There is no jurisdiction over her
 14 and it was her burden to provide an affidavit of someone
 15 with personal knowledge, meaning herself, to substantiate
 16 that. It is black letter law that you may not use a reply
 17 to state facts that should have been in your moving papers.
 18 Basically we don't know what she does or doesn't do because
 19 only she could tell us that and it's too late to tell us
 20 that now. That was -- that should have been, could only
 21 have been in the moving papers. That's what you do in the
 22 motion to quash a subpoena and I've seen that all the time.
 23 I get affidavits from people in California or
 24 Nebraska saying I don't own property here, I don't come
 25 here, I don't do business here. We don't have that.

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1 So the motion is denied, but her testimony shall
 2 not be scheduled before Wednesday, November 1st for
 3 Ms. Trump to appeal this decision if she deems herself so
 4 advised.
 5 Now, let's go on to the trial. First witness, next
 6 witness or same witness?
 7 Sure, Mr. Moskowitz, you want to say something
 8 first?
 9 MR. MOSKOWITZ: I just want to request a so
 10 ordering of the transcript unless the written decision is
 11 forthcoming.
 12 THE COURT: Unlike what I sometimes do there won't
 13 be a follow-up written decision. The decision will be a so
 14 order of the transcript and I'll make sure it gets so
 15 ordered today.
 16 MR. MOSKOWITZ: Thank you, Your Honor.
 17 MR. KISE: Not to volunteer, would the Court
 18 entertain -- I mean, we just did one on Monday, a de bene
 19 esse deposition? We just did one on Monday. That way
 20 Ms. Trump doesn't have to leave her family and three
 21 children to come to New York.
 22 THE COURT: No. Denied. I want to see her in
 23 person. That's how we prefer testimony.
 24 I'll get the signed transcript from which you can
 25 appeal by Monday morning. It's just tough, but you know

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1 what it will say.
 2 MR. WALLACE: Your Honor, before the witness begins
 3 her testimony, we did have one housekeeping matter
 4 concerning today. I believe Mr. Solomon has maybe an hour
 5 and a half -- at least an hour and a half of questioning. I
 6 believe the defendants are going to cross and the question
 7 is should we bring the next witness, Mr. Flores, back to the
 8 courthouse or do defendants expect this will take us through
 9 the remainder of today?
 10 MR. KISE: I don't know if we're going to cross
 11 this witness at this time. We may call her in our case, but
 12 to preserve time we're not going to take up the Court's time
 13 today necessarily. We reserve the right as we have with
 14 other witnesses, but I'm not sure that's going to become
 15 necessary. So I don't want to unnecessarily delay the
 16 proceedings.
 17 THE COURT: So that will save time for today.
 18 Will there be enough time to finish the current
 19 witness and have Flores testify?
 20 MR. KISE: If we go like yesterday --
 21 MR. SOLOMON: Your Honor, my questions -- I should
 22 be able to finish. With respect to objections and how long
 23 they take, I can't speak to that. I will do everything in
 24 my power to finish this witness today, if at all possible,
 25 yes.

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1 THE COURT: The question is will we be able to get
 2 to Mr. Flores today at all? Let's make it easy on
 3 everybody.
 4 MR. KISE: I think it would be optimistic.
 5 THE COURT: All right, so we'll have Flores testify
 6 starting next week, okay.
 7 MR. WALLACE: Understood, Your Honor.
 8 MS. FAHERTY: Thank you, Your Honor.
 9 THE COURT: I like to make life easy on everybody.
 10 I'll remind the witness as I always do that she is
 11 still under oath.
 12 And let's get right into it, Mr. Solomon.
 13 MR. SOLOMON: Thank you, Your Honor.
 14 CONTINUED DIRECT EXAMINATION
 15 BY MR. SOLOMON:
 16 Q Ma'am, I'd like to ask the court officer for PX 158 in
 17 front of you. This document is already in evidence.
 18 If turn to page six of 13 you'll see that it's
 19 addressed to you from Cushman & Wakefield, David McArdle's
 20 letterhead. Do you see that?
 21 A Yes.
 22 Q Okay. And if you turn to page 11 of 13, is that your
 23 signature?
 24 A Yes.
 25 Q And did you sign it on or about February 19, 2014?

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1 A Yes.
 2 Q Okay. Please turn back to page six.
 3 I'd like to focus your attention on the "Subject of the
 4 Assignment and Relevant Characteristics."
 5 THE COURT: Let me just suggest to the witness she
 6 has -- you have three different ways to see this: the paper
 7 copy, the screen in front of you and the screen there. I
 8 often find the screens are a lot simpler. You don't have to
 9 turn pages, they turn the pages for you, but whatever you
 10 want to do is okay. Some people like physical papers in
 11 their hands.
 12 THE WITNESS: Thank you.
 13 Q Ma'am, if you look at this paragraph, did you
 14 understand you or your firm were retaining Cushman & Wakefield
 15 to "perform an appraisal on the hypothetical 71-unit development
 16 site located at Briarcliff Manor?"
 17 A Yes, I did.
 18 Q Okay. And was that appraisal to be done in connection
 19 with a potential donation of a conservation easement?
 20 A Yes, it was.
 21 Q Thank you.
 22 A And to be clear, the purpose of this was to document
 23 the value of the conservation easement. In connection with that
 24 as apart of that assignment it was to appraise the hypothetical
 25 71-unit the residential development.

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1 Q The development didn't exist at the time of the
 2 appraisal; correct?
 3 A No, no, no. It was a hypothetical.
 4 Q When you say "no" let's clarify this.
 5 Did the 71-unit development exist at the time of the
 6 appraisal?
 7 A There was no building.
 8 Q And, in fact --
 9 A Or two buildings.
 10 Q And, in fact, to your knowledge, it's never been built;
 11 right?
 12 A To my knowledge, it's never been built.
 13 Q Okay.
 14 MR. SOLOMON: Can I please have 3194? May I ask
 15 the court officer to put 3194 in front of the witness which
 16 was already in evidence.
 17 A I'm sorry, could I clarify one more thing?
 18 THE COURT: Yes.
 19 A I guess it wasn't -- while there was a general scope of
 20 -- I think you need to look more at the general scope of work to
 21 understand the work that was being done. And, again, this was
 22 all about documenting the value of a conservation easement and
 23 not just the 71-unit hypothetical buildings, you know, units
 24 needed to be appraised, but it was also the golf course and
 25 other properties. So it was a little bit shorthand or

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1 abbreviation just to say is that the 71-unit. That was part of
 2 the whole project.
 3 Q I appreciate that.
 4 A That's why I wanted to take a look at the letter
 5 because that didn't sound right to me, but I wanted to get that
 6 right.
 7 Q Sure. I appreciate that.
 8 The appraisal needs to determine whether the
 9 surrounding parcels or contiguous parcels that may be owned by
 10 the same party are enhanced in some way by the conservation
 11 easement. I think you mentioned that yesterday; right?
 12 A That's apart of it, but again, the whole point is to
 13 get to the differentials. What is the value of the conservation
 14 easement, the rights and restrictions, the economic value of
 15 those things that were being given away.
 16 Q But in that process one of the steps is valuing the
 17 hypothetical 71-unit residential development; right?
 18 A That is apart of the assignment but it's not the entire
 19 assignment. There was more to the assignment than that.
 20 Q If you take a look at PX 3194. The cover is an e-mail
 21 to you from Mr. McArdle dated April 25, 2014. Do you see that?
 22 A I don't have that yet, but --
 23 MR. SOLOMON: PX 3194.
 24 A Yes. It is an e-mail to me from Mr. McArdle.
 25 Q And did you receive it in or about April of -- April --

Page 2686

1 "The development site is entitled to allow the
 2 construction of 71 luxury housing units contained within two
 3 adjacent low rise structure." Do you see that?
 4 A Yes, I do.
 5 Transcript continues on the following page....
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Proceedings Page 2685

1 on or about April 25, 2014?
 2 A I have no recollection of that, but I assume that I did
 3 since it's an e-mail addressed to me and I have no reason to
 4 believe I did not.
 5 MR. SOLOMON: We offer it in evidence.
 6 THE COURT: Granted. It's in evidence.
 7 MR. ROBERT: Statute of limitations.
 8 THE COURT: Overruled. Understood.
 9 (Whereupon, the item previously referred to is
 10 received and marked Plaintiff's Exhibit Number 3194 in
 11 evidence.)
 12 Q If you turn to page six of 193, please, under "General
 13 Description." Do you see that?
 14 MR. ROBERT: Excuse me, I haven't been provided
 15 with a hard copy. Is it just the e-mail or is there an
 16 attachment seeking to move it into evidence?
 17 MR. SOLOMON: It's already in.
 18 MR. ROBERT: I thought you moved it into evidence.
 19 That's why you asked to move it. You said "we offer it into
 20 evidence."
 21 MR. SOLOMON: I'm sorry. It was already in
 22 evidence.
 23 MR. ROBERT: Got it. Thank you.
 24 Q If you could turn to page six of 193. I'd like to
 25 focus you on the general description, second sentence:

S. DILLON - PLAINTIFF - DIRECT(MR. SOLOMON) Page 2687

1 Q So in connection with this project, did the appraisers
 2 determine in trying to calculate the value of the conservation
 3 easement the value of the right to build 71 luxury housing
 4 units?
 5 A My understanding, that was part of the assignment, yes.
 6 Q Please turn to page 4 of 193. The chart in the middle
 7 of the page, "Final Value Reconciliation." And do you see,
 8 "Final Value Conclusion of Conservation Easement \$43,300,000?"
 9 Do you see that?
 10 A I see that.
 11 Q Did you share this information, the value of the
 12 conservation easement, with your client as reflected in this
 13 appraisal?
 14 A Yeah, I believe, I can. Although, this easement was
 15 never completed, I'm not entirely sure.
 16 Q Would it have been your practice whether the easement
 17 was actually completed and donated or not to share the valuation
 18 in the appraisal with your client?
 19 A It would have been my practice as the project was going
 20 along to share values along the way with my client. Do I have a
 21 specific recollection of this? No.
 22 Q I understand, but you said it was your practice and I
 23 appreciate that.
 24 MR. SOLOMON: PX 132, please. It's already in
 25 evidence.

S. DILLON - PLAINTIFF - DIRECT(MR. SOLOMON) Page 2688

1 Q Ma'am, would you be comfortable while they're looking
 2 for it to look at it on the screen if we move along?
 3 A Yeah, if I could look at all the parts we need.
 4 Q Then let's wait.
 5 MR. SOLOMON: Thank you.
 6 Q This is a document dated June 23, 2014 addressed to Mr.
 7 Eric Trump, Cushman & Wakefield letterhead, again, from David
 8 McArdle. Do you see that?
 9 A I do.
 10 Q Do you have an understanding why Briarcliff Manor
 11 Development, LLC was retaining Cushman & Wakefield if you had
 12 already retained them, as we saw in that other document, a few
 13 months before?
 14 MR. ROBERT: Objection.
 15 THE COURT: Ground?
 16 MR. ROBERT: Attorney-client privilege. "Do you
 17 have an understanding why Briarcliff Manor Development, LLC
 18 was retaining Cushman & Wakefield if you had already
 19 retained them?" It would go to conversations Ms. Dillon had
 20 with her client.
 21 THE COURT: Response?
 22 MR. SOLOMON: I don't believe that's in connection
 23 with legal advice. The witness has testified that there is
 24 a process in determining whether to place a conservation
 25 easement on a particular piece of property and I believe the

S. DILLON - PLAINTIFF - DIRECT(MR. SOLOMON) Page 2689

1 witness testified there are preliminary steps and then there
 2 is actually a formal appraisal. I'm just trying to
 3 understand is this the next step in the process to get to
 4 the formal appraisal.
 5 MR. ROBERT: Those were general questions. I think
 6 you started them all at a high level and now we're getting
 7 into specifics as to this particular engagement and this
 8 particular assignment.
 9 THE COURT: Can you just, please, read back the
 10 question.
 11 (Whereupon, the requested portion of the record was
 12 read back.)
 13 THE COURT: I don't see it as legal advice.
 14 Overruled.
 15 A Sitting here today, this is a little confusing for me
 16 because I haven't had a chance to look at what was the prior
 17 appraisal.
 18 MR. KISE: The question as framed is a yes-or-no
 19 question. So if your ruling is can she answer, does she
 20 have an understanding yes or no, I would agree with you that
 21 that answer is not privileged. But if he asks, then, what's
 22 the basis for that understanding, that would be different.
 23 THE COURT: I will buy that.
 24 MR. SOLOMON: My first question was does she have
 25 an understanding because if the answer is she does not, then

S. DILLON - PLAINTIFF - DIRECT(MR. SOLOMON) Page 2690

1 we don't need to go further.
 2 Q Do you have an understanding?
 3 A Sitting here today, I don't have an understanding
 4 without looking through these documents in more detail.
 5 Q You mentioned that you did not believe that a
 6 conservation easement was ultimately placed on the Briarcliff
 7 property. Do you recall that?
 8 A Yes.
 9 Q If you look at the intended use here -- highlight that.
 10 "To document the value of a conservation easement placed," past
 11 tense, "On a parcel of land for federal and state income tax
 12 purposes."
 13 Can you explain if you don't believe a conservation
 14 easement was placed on the property, why they would be using the
 15 past tense in this retention letter or engagement letter?
 16 A In my experience, there are sometimes typographical
 17 errors or misstatements and I believe that would be a
 18 typographic or a clerical error.
 19 MR. SOLOMON: 3127 which is already in evidence.
 20 Q This is an e-mail to you from Mr. McArdle dated
 21 July 30, 2014. "Sheri, here is the revised appraisal." Do you
 22 see that?
 23 A Yes, I do.
 24 Q Okay. Again, on page 3 of 113 for the document, the
 25 third paragraph, "Trump Briarcliff Manor owned a parcel of land

S. DILLON - PLAINTIFF - DIRECT(MR. SOLOMON) Page 2691

1 in Briarcliff Manor, New York, the parcel over which it has
 2 placed." Again, is that just a typographical error?
 3 A As I look here, yes. This is not a final appraisal and
 4 I can see that because it says donated to XXX. So it appears to
 5 be in contemplation, but using the past tense.
 6 Q If you turn to page 4 of 113, you will see here, again,
 7 the, "Final Value Conclusion of Conservation Easement
 8 \$43.3 million." Do you see that?
 9 A I do.
 10 Q Did you share that information with your client in or
 11 about July of 2014?
 12 A I don't recall.
 13 Q Would it have been your practice to share that
 14 information with your client upon receipt?
 15 A I didn't share every bit of information I got along the
 16 way. At various points in times, I would have shared some
 17 values with the client.
 18 Q Do you believe this was one of those various points in
 19 time?
 20 A I have no recollection of whether I did or not.
 21 THE COURT: That's not the question. The question
 22 is whether you would have, not whether you recollect that
 23 you did or didn't.
 24 THE WITNESS: I don't know if I would have because
 25 I don't see all the other e-mail traffic around this. I

S. DILLON - PLAINTIFF - DIRECT(MR. SOLOMON) Page 2692

1 don't know if there is a valuation two weeks before, two
 2 weeks later. I don't know if this particular valuation was
 3 relevant. There's lots of activities with valuation because
 4 lots of new facts and information come in and can make
 5 things change from time to time.
 6 Q But you do endeavor to keep your client informed of the
 7 changes of the facts, right?
 8 A Only if it is material and relevant.
 9 Q Is the value of a conservation easement of \$43,300,000
 10 material and relevant?
 11 A It may or may not have been. If I would have shared
 12 that number with them a month ago, it wouldn't be relevant if it
 13 is about the same number.
 14 Q Is it fair to say if you hadn't shared that number with
 15 them previously, you would have shared it with them at that
 16 time?
 17 A If if, yes, but again, I'm not saying whether I did
 18 or not and I'm not trying to be difficult. I just want to be
 19 accurate.
 20 MR. SOLOMON: PX 910, please. This is an e-mail
 21 from Mr. McArdle to you with a cc to your colleague Mr.
 22 Zemil, "attaching a revised draft." Do you see that?
 23 A I do.
 24 Q He states that he "addressed your comments." Do you
 25 see that?

S. DILLON - PLAINTIFF - DIRECT(MR. SOLOMON) Page 2693

1 A I do.
 2 Q Please turn to page 6 of 217. Do you see the value of
 3 the conservation easement has now increased by \$1.9 million to
 4 45,200,000?
 5 A I do.
 6 Q Would you have shared that information with the client?
 7 A Again, we can see this appears to be a work in
 8 progress. I'm not sure which works in progress I would have
 9 shared or not shared along the way. Only when I felt it was
 10 relevant material and a decision needed to be made would I share
 11 that information.
 12 Q This is a difference of almost \$2 million in the value
 13 of the conservation easement from the appraisal we saw earlier,
 14 correct?
 15 A Yes, it is.
 16 Q And is that something you would have shared with the
 17 client?
 18 A Again, not knowing where we were in the process, I
 19 can't tell you yes or no would I have done that.
 20 Q We've been talking about the 71 hypothetical units in
 21 these appraisals, correct?
 22 A Yes.
 23 Q Didn't you and Eric Trump know by no later than June of
 24 2014 that Briarcliff Manor Development did not have the absolute
 25 right to build 71 units?

S. DILLON - PLAINTIFF - DIRECT(MR. SOLOMON) Page 2694

1 A I can't speak for what Eric Trump knew or didn't know.
 2 As for myself, I don't recall. You'd have to refresh me with
 3 some documents, if you have something that will help me.
 4 Q Did there ever come a point in time that you became
 5 aware that Briarcliff Manor Development did not have the
 6 absolute right to build those 71 hypothetical units?
 7 A I don't recall if it was 71 units or some other number,
 8 but that wasn't particularly relevant to me, and that's because
 9 it doesn't matter whether you had the absolute right or not in
 10 valuing this. Again, it is a hypothetical exercise and what
 11 you're trying to show is what is the highest and best use of the
 12 property that you're intending to place a conservation easement
 13 over. And then you hypothetically take a look and design and
 14 design either buildings or commercial space or whatever the case
 15 may be and it doesn't require you to have any permits, any
 16 entitlements.
 17 So whether it was 71, 69, 105, there is a number that
 18 you thought is, you know, something that is physically possible,
 19 feasible, legally permissible, and it doesn't require you to be
 20 permitted. It just requires it to be permissible and things
 21 change over time, so you certainly don't have to go and get all
 22 the entitlements in place.
 23 MR. SOLOMON: Your Honor, move to strike as
 24 non-responsive.
 25 MR. ROBERT: It is absolutely responsive.

S. DILLON - PLAINTIFF - DIRECT(MR. SOLOMON) Page 2695

1 MR. KISE: It is, Your Honor. She answered the
 2 question. He just doesn't like -- Mr. Solomon just doesn't
 3 like the answer.
 4 MR. SOLOMON: We like the answer, Mr. Kise.
 5 MR. KISE: Then why are you moving to strike it?
 6 MR. SOLOMON: Because it is not responsive to the
 7 question.
 8 THE COURT: Let me just check. I'm so happy --
 9 MR. KISE: It looks very responsive to me.
 10 THE COURT: -- we have the immediate transcript
 11 here. It is stricken because it is not responsive to the
 12 question which is a yes-or-no question. Is that --
 13 MR. SOLOMON: May I --
 14 THE COURT: Is that how you perceived it yourself,
 15 Mr. Solomon, that it is a yes-or-no question?
 16 MR. SOLOMON: Yes, Your Honor. May I ask the Court
 17 for a readback of that question, please.
 18 THE COURT: Sure. Please, read back.
 19 (Whereupon, the requested portion of the record was
 20 read back.)
 21 A I don't remember.
 22 Q Let's see if we can refresh your recollection.
 23 MR. SOLOMON: May I, please, have marked for
 24 identification PX 3275.
 25 Q Ms. Dillon, do you recognize this document to be the

S. DILLON - PLAINTIFF - DIRECT(MR. SOLOMON) Page 2696

1 amendments to the original offering plan for the residences at
 2 Trump National Golf Club Condominium?
 3 A I can read what it says, but I don't recognize it from
 4 past experience. It looks like lots of documents I've seen in
 5 the past.
 6 Q Please turn to page 37 of 99. This in particular is
 7 Amendment No. 8 to the original offering plan (a/k/a Amendment
 8 No. 4 to the second restated offering plan) of the residences at
 9 Trump National Golf Club Condominium."
 10 You will see that this document is dated May 6, 2004.
 11 A I do.
 12 Q And, "roman numeral one, reduction in size of the
 13 condominium," do you see that?
 14 A I do.
 15 Q And it still maintains the 16 golf villa residential
 16 units on the third line. Do you see that?
 17 A Yes.
 18 Q And then it --
 19 A Well, actually where? I'm sorry.
 20 Q That's okay. Third line.
 21 A Okay. Yes, I do.
 22 Q "(16) golf villa residential units" and now it is 31
 23 residential units in the Park Briar. Do you see that?
 24 A I do.
 25 Q Does that refresh your recollection that the sponsor

S. DILLON - PLAINTIFF - DIRECT(MR. SOLOMON) Page 2697

1 voluntarily reduced the number of units it could build from 71
 2 to 31 in 2004?
 3 A No. It refreshes my recollection that there were lots
 4 and lots of amendments and in this particular document, at this
 5 particular time, I have no independent recollection of it. I
 6 see what the document says and I can read the words.
 7 Q Okay.
 8 MR. SOLOMON: Your Honor, we offer this in
 9 evidence.
 10 MR. KISE: Your Honor, I'm not sure what basis
 11 there would be to offer this in evidence. She doesn't
 12 recognize it. There is no exception to the hearsay rule
 13 that he's articulated. It was used as you can use anything
 14 to refresh recollection, but that's it. I mean,
 15 that's it. I mean, that's fine. We didn't object to his
 16 question because his questions were "would this refresh your
 17 recollection," but it is not substantively admissible in
 18 evidence. There is no foundation. There's nothing to
 19 support the admission of this in evidence at all. It is
 20 hearsay.
 21 THE COURT: Why is it not hearsay or what exception
 22 might there be?
 23 MR. SOLOMON: Certainly. There is a matter of
 24 public record, Your Honor. These are amendments to a
 25 condominium declaration that are publicly filed. They were

S. DILLON - PLAINTIFF - DIRECT(MR. SOLOMON) Page 2698

1 also produced from Morgan Lewis' files to us, so there is no
 2 question about authenticity or--
 3 THE COURT: Authenticity doesn't do it. Sorry. Go
 4 ahead.
 5 MR. SOLOMON: If that's not an issue, Your Honor, I
 6 won't address that, but it's not hearsay. These are
 7 publicly-available documents. These matters are a public
 8 record.
 9 MR. KISE: That's not demonstrable from the face of
 10 the document. We can't tell one way or the other. If it
 11 came from Morgan Lewis, that's fine; but they're not the
 12 public repository last I checked.
 13 THE COURT: How do we know it's a public record? I
 14 know these things are routinely filed, but I don't know that
 15 this was filed.
 16 MR. KISE: We don't have to take up the Court's
 17 time now. If they can demonstrate -- I'm not saying it is
 18 or it isn't. I'm saying you can't tell from this record
 19 that's presented here and we want to be very careful. The
 20 witness on the stand is very careful because she unlike
 21 litigators who are very loose with things, tax lawyers tend
 22 to be very, very precise.
 23 THE COURT: The objection is sustained.
 24 (Whereupon, the Document was marked in evidence as
 25 Plaintiff's Exhibit 3275.)

S. DILLON - PLAINTIFF - DIRECT(MR. SOLOMON) Page 2699

1 Q Do you know if amendments to condominium declarations
 2 in the State of New York are filed with the Attorney General's
 3 office?
 4 MR. KISE: Objection. Foundation.
 5 THE COURT: She hasn't been qualified. Although,
 6 she may be as an expert at this point, right?
 7 MR. SOLOMON: I was asking her knowledge, Your
 8 Honor, not as an expert, but --
 9 THE COURT: But --
 10 MR. SOLOMON: We'll move on. We offer it for
 11 notice of the fact that it was reduced to 31 units not
 12 necessarily for the truth of the matter asserted and we will
 13 address that issue at a later time?
 14 THE COURT: Notice to whom?
 15 MR. KISE: To whom?
 16 MR. SOLOMON: Notice to --
 17 MR. KISE: Morgan Stanley.
 18 MR. SOLOMON: Please, let me finish. Counsel --
 19 THE COURT: All right.
 20 MR. SOLOMON: Briarcliff Manor Development, LLC
 21 which is a part of the umbrella organization in the Trump
 22 Organization. That's the entity, that's the sponsor that
 23 executed this, that filed this, that voluntarily reduced the
 24 number of units.
 25 THE COURT: It's even more than notice. They wrote

S. DILLON - PLAINTIFF - DIRECT(MR. SOLOMON) Page 2700

1 it so --

2 MR. KISE: Your Honor.

3 THE COURT: Yes?

4 MR. KISE: If they solve the hearsay problem, if it

5 is a matter of public record, I don't know why we are

6 debating it. They just simply demonstrate that it's a

7 public record. Otherwise, again, it is notice to whom

8 because there's no demonstration --

9 THE COURT: Notice to the author.

10 MR. KISE: This is our official document. It might

11 be Morgan Stanley's document, but there is no demonstration

12 it is ours. I'm not debating one way or the other. I'm

13 saying in this record as it stands right now, it is not

14 there. On a break, I'm sure they could find it if it is

15 public record. Most everything is online now.

16 THE COURT: It's admitted into evidence as notice

17 of the statements therein to Briarcliff Manor, whatever the

18 corporate entity is known as.

19 Q Ms. Dillon, do you remember specifically analyzing the

20 eighth amendment and providing to your client your conclusion

21 that it reduced the number of luxury residential units that it

22 could build from 71 to 31?

23 MR. ROBERT: I just want to be very careful that

24 this is a yes or no and beyond that, I will object that it

25 is privileged.

S. DILLON - PLAINTIFF - DIRECT(MR. SOLOMON) Page 2701

1 THE COURT: Is that a yes or no?

2 MR. SOLOMON: For the moment, it is a yes or no,

3 Your Honor; but I will say that the Court has actually ruled

4 upon the documents that I'm about to show this witness

5 in-camera and determined that they are not privileged. So

6 this is a yes or no. I'm laying my foundation for the next

7 document.

8 THE COURT: Please answer yes or no.

9 A I analyzed thousands of documents for this client over

10 the year. Whether this was one of them, I don't recall; but if

11 you can help me, that would be great.

12 MR. SOLOMON: May we, please, mark PX 3261 for

13 identification.

14 Q Ms. Dillon, this is an e-mail chain from June 2014

15 between you and Eric Trump, correct?

16 A Yes, it is.

17 Q And the top e-mail, you wrote to Mr. Trump, Eric Trump,

18 "Hi Eric. In going through the documents, this is what I see

19 happening."

20 You first lay out what happens in the original offering

21 plan and declaration. Do you see that?

22 A I do.

23 Q You see "Park Briar units, 31"? Do you see that,

24 ma'am?

25 A Yes, I do.

S. DILLON - PLAINTIFF - DIRECT(MR. SOLOMON) Page 2702

1 Q Okay. Do you see, "Highlander units, 40"?

2 A I do.

3 Q Then you analyze what happens under the first amendment

4 to the declaration and the eighth amendment to offering plan,

5 reduced size of condominium. Do you see that?

6 A I do.

7 Q That was the eighth amendment we were just looking at,

8 right?

9 A That would be my expectation.

10 Q Now, there are still 31 Park Briar units, right, and

11 zero Highlander units?

12 A Yes, that's what it says.

13 Q So the number of units that the sponsor could build as

14 of right was reduced from 71 to 31 according to your analysis as

15 well as the language of the eighth amendment?

16 A That's what I understood in this e-mail.

17 Q Do you know if Mr. McConney and the Trump Organization

18 still valued on the Statement of Financial Condition the ability

19 to build 71 units as of right?

20 MR. KISE: Objection; foundation.

21 THE COURT: Overruled. She knows or she doesn't.

22 A I have no knowledge one way or the other.

23 Q Let's turn to the Seven Springs project. I think we've

24 established that you're familiar with the property located in

25 the Towns of Bedford, New Castle and North Castle, right?

S. DILLON - PLAINTIFF - DIRECT(MR. SOLOMON) Page 2703

1 A Yes, we have.

2 Q Did there come a time that you on behalf of Seven

3 Springs, LLC began work on a potential donation of a

4 conservation easement?

5 A Yes.

6 Q Was that in or about October of 2012?

7 A I don't recall the date.

8 Q Do you recall Robert Heffernan? Excuse me. Yes,

9 Heffernan.

10 A I do know Mr. Heffernan.

11 Q And how do you know Mr. Heffernan?

12 A He is an appraiser that from time to time was

13 consulted, did various work.

14 Q Did you retain him in or about October 2012 on behalf

15 of Seven Springs to provide an estimate of the fair market value

16 of a portion of the property of Seven Springs located in New

17 Castle?

18 A I do not recall the dates and I don't recall exactly

19 what he was retained for, but I believe at one point in time,

20 Mr. Heffernan was retained to take a look at a part -- a

21 piece -- overall Seven Springs property.

22 MR. SOLOMON: Take one step back, if I may, Your

23 Honor. I think I may have forgotten to move PX 3261, Ms.

24 Dillon's e-mail chain to Eric Trump.

25 MR. ROBERT: Objection. Statute of limitations and

S. DILLON - PLAINTIFF - DIRECT(MR. SOLOMON) Page 2704

1 I believe it is a privileged communication.
 2 THE COURT: Overruled. Granted. It is in
 3 evidence. It is business advice in my opinion as I've
 4 already held.
 5 (Whereupon, the Document was marked in evidence as
 6 Plaintiff's Exhibit 3261.)
 7 Q Ms. Dillon, does this refresh your recollection as to
 8 when you, you on behalf of your client, retained Mr. Heffernan?
 9 A Yes.
 10 Q Was that in or about October of 2012?
 11 A Yes.
 12 Q If you look at the second paragraph beginning, "the
 13 scope," do you see that?
 14 A I do.
 15 Q Second line, "Estimating the fair market value of a
 16 conservation easement placed on the client's property located in
 17 the town of New Castle, New York." Do you see that?
 18 A I do.
 19 Q Is that your signature on the last page of that
 20 document?
 21 A Yes.
 22 MR. SOLOMON: We offer PX 908 in evidence.
 23 MR. ROBERT: Objection. Statute of limitations.
 24 THE COURT: Overruled. Granted. It is in.
 25 (Whereupon, the Document was marked in evidence as

S. DILLON - PLAINTIFF - DIRECT(MR. SOLOMON) Page 2705

1 Plaintiff's Exhibit 908.)
 2 Q Do you recall the estimate provided by Mr. Heffernan as
 3 to the fair market value of the conservation easement referenced
 4 in this engagement letter?
 5 A My recollection is he never completed the project.
 6 Q Okay. My question was somewhat different.
 7 MR. SOLOMON: May I ask for a readback, Your Honor?
 8 THE COURT: Yes, readback, please.
 9 (Whereupon, the requested portion of the record was
 10 read back.)
 11 A No, because there wasn't one.
 12 Q Do you recall if Mr. Heffernan provided an estimate of
 13 the value for the lots in New Castle?
 14 A He may have done a preliminary. I just don't recall.
 15 MR. SOLOMON: Could we pull up the 202-G statement,
 16 paragraph 52. I'm sorry. Paragraph 55.
 17 Q Ma'am, this is a statement under rule 202-G of our
 18 local rules here in New York for court practice. The beginning
 19 paragraph 55 is the allegation by the plaintiff of an undisputed
 20 fact and then the response from the defendants is below. Do you
 21 see that?
 22 A It seems to not be an undisputed fact. It looks
 23 disputed.
 24 THE COURT: I don't know what you mean by
 25 "undisputed fact."

S. DILLON - PLAINTIFF - DIRECT(MR. SOLOMON) Page 2706

1 MR. SOLOMON: The response from the defendant.
 2 Your Honor, I will withdraw the question.
 3 THE COURT: Good.
 4 MR. SOLOMON: And rephrase, if I may.
 5 Q The paragraph 55 is the allegation by the plaintiff of
 6 what is an undisputed fact. The response is the response by the
 7 defendants. Do you see that?
 8 A I'm very confused. It looks to me like 55 is an
 9 allegation and the response disputes it, so it is not an
 10 undisputed fact.
 11 Q I understand, but after it disputes it, "There's an
 12 explanation and further discussion where it states Mr. Heffernan
 13 indicated he "didn't specifically recall" the preliminary value
 14 range he determined, but he recalled an e-mail back and forth
 15 with Bob Leonard that he was asking (Mr. Heffernan) why (he) was
 16 coming in at a number somewhere around \$700,000 a raw lot."
 17 That's the response from the defendants.
 18 Does that refresh your recollection as to the number
 19 Mr. Heffernan came back with for the lots in New Castle?
 20 A I can read what it says here today, but I don't recall
 21 the preliminary numbers he was -- that he apparently provided.
 22 I have no independent recollection of it.
 23 Q Okay. Just so we are clear, again, Mr. Leonard was
 24 affiliated with your law firm?
 25 A Yes, he was one of my colleagues. He was an associate

S. DILLON - PLAINTIFF - DIRECT(MR. SOLOMON) Page 2707

1 that worked with me.
 2 Q He was at Bingham with you at that time?
 3 A Yes.
 4 MR. SOLOMON: Can we, please, mark PX 3296.
 5 Q Ms. Dillon, have you had an opportunity to review the
 6 e-mail chain?
 7 A I'm still working through it.
 8 Yes, I've had a chance to review it.
 9 (Continued on the next page.)
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S. Dillon - Plaintiff - direct (Solomon) Page 2708

1 Q Great.

2 Does this e-mail chain refresh your recollection as to

3 whether Mr. Heffernan provided a preliminary view as to the

4 value of the lots in New Castle?

5 A I see that Mr. Heffernan is providing preliminary

6 views, but I have no independent recollection of those numbers.

7 I do know we worked with him. I don't disagree with that, but I

8 just don't recall all of this since he ended up not being the

9 appraiser on the project.

10 Q You have no reason to doubt that he did in fact provide

11 this information to Mr. Leonard in or about December of 2012, do

12 you?

13 A I have no reason to doubt the authenticity of this

14 e-mail.

15 Q Let's move forward into 2013, please.

16 Were you aware that at a Town of Bedford Planning Board

17 meeting in May 2013, an attorney for Seven Springs LLC agreed to

18 restrict construction on the New Castle and North Castle

19 portions of the property in order to obtain approval for the

20 subdivision of the lots in Bedford?

21 A I was not aware of that at the time. I have some

22 awareness derived in the course of these proceedings and

23 historically I -- yes, so during the course of these

24 proceedings, not just here today, but overall I've become

25 aware -- yes, go ahead.

S. Dillon - Plaintiff - direct (Solomon) Page 2709

1 Q I'm sorry. I didn't mean to interrupt you.

2 A No, go ahead.

3 Q Maybe I can clarify.

4 Prior to 2020 were you aware that an attorney for Seven

5 Springs LLC at a town planning meeting agreed to restrict

6 construction at the New Castle and North Castle portions of the

7 property in order to obtain approval for the subdivisions at the

8 lots in Bedford?

9 A I had an overall awareness of some activity, but I did

10 not have a specific awareness of that -- of the particular

11 planning meeting.

12 Q My question wasn't whether you were aware of the

13 planning meeting. My question was were you aware of the results

14 of the planning meeting?

15 A Can I have the question again? I'm not sure I

16 understood that.

17 MR. SOLOMON: Your Honor, may I ask for a read

18 back?

19 THE COURT: Read back, please?

20 (Whereupon, the requested portion of the

21 proceedings was read back by the court reporter.)

22 A I don't recall being aware of that level of

23 specificity, but I may have had -- again, a general awareness of

24 the results of the planning board meeting developed at some

25 point in the project.

S. Dillon - Plaintiff - direct (Solomon) Page 2710

1 Q Do you recall providing testimony in connection with

2 the investigation conducted by the Attorney General's office in

3 this matter?

4 A Yes, I do.

5 MR. SOLOMON: Could we pull up Ms. Dillon's

6 testimony, page 660, line 19?

7 Q You recall this was done during COVID; right?

8 A I remember that distinctly.

9 Q So we had -- the transcript may not be clear, but we'll

10 go through it, you were asking and we were discussing having the

11 document on the screen for everyone to share. Do you recall

12 that? And it had to be moved for a period of time so you could

13 see different portions of it?

14 A Yes, yes.

15 Q And my colleague, Alex Finkelstein, was the one who was

16 moving the documents. So when we see this on the transcript --

17 we'll be able to see this, 660, line 19. Okay:

18 "QUESTION: I'm going to ask Alex to pull up our

19 first electronically shared exhibit. It is a May 17, 2013

20 newspaper story from the Bedford/Pound Ridge Record Review.

21 Ma'am, as you've done in your prior sessions, if

22 you could please tell Alex when you refer to a portion and

23 you want him to move down that would be helpful."

24 "MR. SOLOMON: I'm going to mark this as

25 Exhibit 52."

S. Dillon - Plaintiff - direct (Solomon) Page 2711

1 And then you go on. The document is being

2 advanced.

3 "QUESTION: Does reading this article refresh your

4 recollection about any events involving Seven Springs before

5 the Bedford Planning Board?

6 "ANSWER: No, I was not involved in that process.

7 "QUESTION: That wasn't my question."

8 "MR. SOLOMON: Can I have the court reporter please

9 read back my question?"

10 Question is read back.

11 "ANSWER: --

12 It reads your answer; correct, just to clarify?

13 A Yes.

14 Q "Because I was not involved in the process, this

15 article does not refresh my" -- excuse me -- "doesn't refresh my

16 recollection about things I wasn't involved in.

17 "QUESTION: Ma'am, you will agree with me someone

18 could have told you about it, right?

19 "ANSWER: Someone could have told me about it.

20 "QUESTION: Right. So this article could have

21 refreshed that recollection, even if you weren't involved in

22 the events before the Planning Board?

23 "ANSWER: This article does not refresh my

24 recollection."

25 Was that your testimony during the investigatory

S. Dillon - Plaintiff - direct (Solomon) Page 2712

1 phase --

2 A Yes.

3 Q -- of this?

4 MR. ROBERT: Objection. He's conflating refreshing

5 the recollection with trying to impeach his own witness. I

6 mean, this is consistent.

7 THE COURT: Overruled. I don't see any problem

8 with this at all. He's just asking her if she sees that was

9 her testimony. I don't know what you're reading into the

10 question.

11 MR. ROBERT: There would be no reason to do that

12 other than if it refreshed her recollection.

13 MR. SOLOMON: Can we go to page 663, line 8?

14 THE COURT: What was the purpose of asking her if

15 she --

16 MR. SOLOMON: That she previously had no knowledge

17 about this planning meeting which is why we're going to this

18 next portion which is a short question and answer, Your

19 Honor.

20 THE COURT: So it is the admissibility of that

21 depending upon the admissibility or the answer or the

22 testimony you're going to read now?

23 MR. SOLOMON: Yes, it's being linked together.

24 MR. KISE: It looks like he's using something where

25 she didn't have a -- refresh her recollection -- to refresh

S. Dillon - Plaintiff - direct (Solomon) Page 2713

1 her recollection now and in either case it didn't, but if

2 Mr. Solomon is going to tie it together here we're on the

3 edge of our seat.

4 MR. SOLOMON: Glad I can keep you entertained.

5 Can we please go to page 663, line 8:

6 "QUESTION: Were you aware that Mr. Martabano" --

7 Q Mr. Martabano is the attorney at the planning meeting,

8 do you recall that?

9 A I have since. Yes, I recall that.

10 Q "Mr. Martabano on behalf of Seven Springs agreed to,

11 quote, 'restrict construction near the end of the road serving

12 Seven Springs to two houses to help resolve the dispute over the

13 need for an access road?'"

14 "ANSWER: I was -- I'm not aware of that if that's

15 accurate."

16 THE COURT: "I was not."

17 MR. SOLOMON: Excuse me. "I was not."

18 Thank you, Your Honor.

19 "QUESTION: I asked you to assume it was. You left

20 all of these negotiations to the land use attorneys

21 representing Seven Springs; correct?"

22 "ANSWER: I was not involved in this. I didn't

23 leave or not leave. It wasn't my decision.

24 "QUESTION: To your knowledge who was involved in

25 this then?

S. Dillon - Plaintiff - direct (Solomon) Page 2714

1 "Because I wasn't involved, I do not know."

2 So at that time you had no recollection of this

3 planning meeting; right?

4 A At that time I was -- I think I've been consistent. I

5 was not at that planning meeting. I was not involved in the

6 planning meeting. Have I learned things about the planning

7 meeting? Did I know some things? But I didn't know they came

8 about from the planning meeting, yes. It's complicated, but for

9 the most part it didn't matter. It didn't matter. It's again

10 back to hypothetical. It's a hypothetical subdivision that's

11 being drawn. No one needed to be permitted. The standard is

12 legally permissible and the courts have ruled time and time

13 again it's a waste of everyone's resources for taxpayers,

14 landowners, etc., to impinge upon a planning board, zoning

15 boards and everybody else that you don't have to actually be

16 permitted and entitled for anything.

17 MR. SOLOMON: Move to strike as nonresponsive, Your

18 Honor.

19 THE COURT: Stricken as nonresponsive.

20 I'll ask that the witness be taken out for a few

21 moments so I can talk to Counsel not in her presence.

22 (Whereupon, the witness is excused from the witness

23 stand and exits the courtroom.)

24 THE COURT: Mr. Solomon, I feel like we're two or

25 three levels away from anything that's relevant. This all

S. Dillon - Plaintiff - direct (Solomon) Page 2715

1 seems to be what happened. She saw something, but didn't

2 you say something different what she knew about all this

3 stuff?

4 MR. SOLOMON: It goes to the valuation of Seven

5 Springs, Your Honor. They valued it as if they could build

6 24 lots on the three properties. That's what the appraisal

7 does, which is what we will get to. However, previously,

8 they had agreed to restrict the number of lots to I think 12

9 or 13.

10 THE COURT: Okay. But what does that have to do

11 with whether she remembers what happened at a meeting?

12 MR. SOLOMON: Because this witness was the one who

13 retained the appraiser, who gave the appraiser the

14 information necessary, was the conduit for the appraiser and

15 if she knew this and didn't give it to the appraiser that's

16 relevant. If she didn't know it and other attorneys at the

17 Trump Organization knew it, that's relevant because that

18 information should have been provided to the appraisers when

19 they projected their 24 hypothetical lots by law and we have

20 an Appellate Division decision which is coming up shortly

21 which said they have -- the Seven Springs LLC entity has no

22 access through Aragon Road. So they didn't have a second

23 access and this restriction was binding on them.

24 THE COURT: Okay. It seems to me this has become a

25 game of got you, didn't you say that, didn't you say this,

S. Dillon - Plaintiff - direct (Solomon) Page 2716

1 but then you said that. I'll let you go ahead because there
 2 is no jury and I'd like to afford some leeway, but maybe if
 3 we could get to the heart of the matter quicker, Mr. Kise?
 4 MR. KISE: Your Honor, I think what the witness was
 5 trying to say -- what Mr. Solomon asked it be stricken is --
 6 THE COURT: That was a speech. That was not
 7 responsive.
 8 MR. KISE: No, I'm just saying she's explaining why
 9 what you're saying is correct that we're just going around
 10 in circles here because from a tax perspective, from an
 11 appraisal, for IRS purposes, for conservation easement you
 12 don't get into all of this stuff about whether you had this
 13 permit or didn't have this permit or what you knew or what
 14 you didn't know.
 15 If Mr. Solomon wants to use a witness to establish
 16 the points that he's making, that's fine, but this witness
 17 has said both today and before based on the testimony there
 18 that she wasn't part of the process, she didn't have
 19 anything to do with the process, she can't testify to the
 20 process and, most importantly, it would not have been
 21 relevant to her job, her role. So we are just kind of going
 22 in circular fashion here because her role is with respect to
 23 advice on conservation easements. She's already said twice
 24 it's been stricken that when you do that you're not looking
 25 at actual permits, actual this, actual that. She's the

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1 expert on that and so I think that she's testified that's
 2 why she wouldn't have a foundation here to have any of this
 3 knowledge. But if we want to continue to go around, it's
 4 their morning. I don't know that any of this has any
 5 relevance.
 6 THE COURT: I'll let the question continue in the
 7 manner that Mr. Solomon thinks is relevant.
 8 MR. SOLOMON: Your Honor, we will endeavor to move
 9 quickly on this.
 10 THE COURT: Okay. Let's get the witness.
 11 THE COURT OFFICER: Witness entering.
 12 (Whereupon, the witness enters the courtroom and
 13 approaches the witness stand.)
 14 THE COURT: I just want to make a general statement
 15 without any accusations that when a witness is asked to
 16 depart the courtroom, nobody should attempt to speak to him
 17 or her. And let's go on.
 18 MR. SOLOMON: Thank you, Your Honor.
 19 We'd ask to mark for identification PX 899.
 20 For the record, it is a July 16, 2014 e-mail on
 21 Vinson & Elkins letterhead, Ms. Dillon's letterhead in
 22 particular to David McArdle, Senior Managing Director at
 23 Cushman & Wakefield.
 24 Q Ms. Dillon, is that your signature on page four of the
 25 exhibit?

S. Dillon - Plaintiff - direct (Solomon) Page 2718

1 A Yes, it is.
 2 Q Did you send it to Mr. McArdle in or about July of
 3 2014?
 4 A I would assume so.
 5 MR. SOLOMON: We offer it into evidence.
 6 MR. ROBERT: Objection. Statute of limitations and
 7 privilege.
 8 THE COURT: Overruled. Give me a second.
 9 (Whereupon, there is a pause in the proceedings.)
 10 THE COURT: Overruled on both grounds. It's in
 11 evidence.
 12 (Whereupon, the item previously referred to is
 13 received and marked Plaintiff's Exhibit Number 899 in
 14 evidence.)
 15 Q Was this the engagement letter you were retaining
 16 Cushman and specifically Mr. McArdle to provide an estimate of
 17 the value of the potential conservation easement for the Seven
 18 Springs property?
 19 A It was to provide consulting services, yes, related to
 20 the estimated value of the potential conservation easement.
 21 Q And did he provide an analysis of the estimated current
 22 value of these lots as of a particular valuation date?
 23 A I can't recall how far along we got before the project
 24 was discontinued in 2014.
 25 Q Why was it discontinued in 2014?

S. Dillon - Plaintiff - direct (Solomon) Page 2719

1 MR. ROBERT: Objection.
 2 THE COURT: What's the objection?
 3 MR. ROBERT: Why something was done and why if a
 4 retention was discontinued is attorney/client privilege. It
 5 clearly falls within if it was a direction from the client
 6 as to do or not do something that's a continuation in the
 7 course of giving legal representation.
 8 THE COURT: It's business. Overruled.
 9 Unless you want to withdraw it on the ground --
 10 MR. SOLOMON: I've learned, Your Honor, if you rule
 11 in my favor to be quiet.
 12 THE COURT: I ruled in your favor.
 13 Why was the project discontinued?
 14 THE WITNESS: I have no specific recollection, but
 15 I can certainly give you the typical reasons projects would
 16 be discontinued.
 17 THE COURT: Do you want that or not?
 18 MR. SOLOMON: I will take the typical reasons for
 19 the moment. Thank you.
 20 A The typical reason is a landowner just isn't ready,
 21 they haven't made the determinations of what restrictions they
 22 want to put on property, which land they want to keep out of the
 23 restricted property. That's the biggest reason.
 24 Other reasons are there is just simply not enough time
 25 to get it done, but those tend to be the biggest reasons as you

S. Dillon - Plaintiff - direct (Solomon) Page 2720

1 have not yet decided what exactly you want to do with the
 2 property, whether you want to retain it because, again, it's in
 3 perpetuity, which is forever and it affects not just that
 4 landowner but all landowners.
 5 Q Is also one of the reasons for tax planning purposes?
 6 A That could be one of the considerations.
 7 Q Does it refresh your recollection as to whether in this
 8 situation it was discontinued at that time because Mr. Trump did
 9 not need additional tax deductions for tax year 2014?
 10 MR. KISE: Objection. That's -- I mean, if she
 11 wants to answer yes or no, perhaps, but once you get into
 12 the substance, that's squarely within the attorney/client
 13 privilege. I mean, I think all of it is respectfully, Your
 14 Honor, but she is a tax lawyer being engaged to provide tax
 15 advice and the conservation easement is -- the purpose of
 16 doing one is to get a tax deduction. So it's all squarely
 17 within the confines of the privilege. So I would
 18 respectfully disagree, Your Honor, it's not business. It
 19 involves business matters, but it's at the core of the
 20 attorney/client relationship with a tax lawyer.
 21 THE COURT: Overruled. The question is whether
 22 that was a factor -- if she knows whether that was a factor
 23 in why the process was discontinued.
 24 THE WITNESS: Is it time for me to answer?
 25 THE COURT: Yes, it's also a yes or no.

S. Dillon - Plaintiff - direct (Solomon) Page 2721

1 A I believe it probably was one of the considerations
 2 among many.
 3 MR. SOLOMON: Could we please put PX 133 in front
 4 of the witness? It's already in evidence.
 5 THE COURT: Five-minute warning and then we'll come
 6 back. It's not the end of the -- we started early. That's
 7 what's throwing you off.
 8 MR. SOLOMON: I'm just focused.
 9 Q Do you recognize what was marked as PX 133?
 10 A I have seen this before.
 11 Q Okay. Do you have an understanding as to why Mr. Eric
 12 Trump -- withdrawn.
 13 Do you have an understanding as to why this letter was
 14 addressed to Mr. Eric Trump at Seven Springs LLC directly when
 15 the prior letter that we saw was addressed to you?
 16 MR. ROBERT: Objection. Attorney/client privilege.
 17 THE COURT: It's from Cushman & Wakefield.
 18 Overruled.
 19 A My understanding would be at this point in time it
 20 appears that the project was still going forward and we were
 21 seeking a formal appraisal that would be provided to the
 22 Internal Revenue Service since this is being done for the
 23 purpose of federal and state income tax purposes.
 24 Q Okay.
 25 MR. SOLOMON: Can I have PX 1861? I'm jumping

S. Dillon - Plaintiff - direct (Solomon) Page 2722

1 forward.
 2 Q When the project was either terminated or put on hold
 3 in 2014, had you already learned of Mr. McArdle's estimate of
 4 the value of the lots for the potential conservation easement?
 5 A I don't remember.
 6 MR. SOLOMON: Your Honor, this may be a good point.
 7 THE COURT: Is this a good time? All right. Let's
 8 just make it 12:10 everybody and then we'll go to 12:55 or
 9 so.
 10 (Whereupon, there is a recess in the proceedings.)
 11 THE COURT OFFICER: All rise. Part 37 is back in
 12 session. Please be seated and come to order.
 13 THE COURT: Witness?
 14 MR. ROBERT: Do we have a minute before the witness
 15 comes in?
 16 THE COURT: Sure.
 17 Hold off on the witness.
 18 MR. ROBERT: Are we going to finish today with
 19 Ms. Dillon?
 20 MR. SOLOMON: In light of the Court's instruction,
 21 I have no more than 20, 30 minutes, max.
 22 MS. GREENFIELD: That's after we finish the
 23 witness?
 24 MR. ROBERT: That's fine. I just want to know who
 25 is on for Monday.

S. Dillon - Plaintiff - direct (Solomon) Page 2723

1 THE COURT: Now witness?
 2 THE COURT OFFICER: Witness entering.
 3 (Whereupon, the witness enters the courtroom and
 4 approaches the witness stand.)
 5 THE COURT: So as everyone else has just heard,
 6 we're hoping to finish with this witness this morning. So
 7 let's keep the questions moving and the answers moving.
 8 CONTINUED DIRECT EXAMINATION
 9 BY MR. SOLOMON:
 10 Q Ms. Dillon, could we please put -- I'm sorry -- PX 104
 11 in front of you?
 12 Is this an engagement letter signed by Eric Trump on
 13 behalf of Seven Springs LLC dated June 1, 2015?
 14 A Yes, it is.
 15 Q And was this engagement letter executed in connection
 16 with restarting the potential donation of a conservation
 17 easement at Seven Springs?
 18 A Yes.
 19 MR. SOLOMON: Could we please mark PX 195 for
 20 identification?
 21 Q This is an e-mail from Timothy Barnes to you and
 22 Mr. Zemil with a cc to Didi Yep. Who is Timothy Barnes?
 23 A Mr. Barnes was the lead appraiser on the Seven Springs
 24 project.
 25 Q And do you know who Didi Yep is?

S. Dillon - Plaintiff - direct (Solomon) Page 2724

1 A Yes, that was his second -- the second appraiser.
 2 Q The second e-mail draft is attached. Let me know if
 3 you have any questions. Do you see that?
 4 A I do.
 5 Q Did you see -- did you receive that in or about
 6 November of 2015? Specifically November 6th is the date of the
 7 cover e-mail?
 8 A Yes, I fully expect I received it.
 9 MR. SOLOMON: Your Honor, I offer this in evidence.
 10 MR. ROBERT: Objection. Statute of limitations and
 11 the attachment is hearsay.
 12 THE COURT: Statute of limitations overruled.
 13 What is it being offered for.
 14 MR. SOLOMON: For notice, Your Honor.
 15 THE COURT: It's in simply for notice.
 16 MR. ROBERT: Notice to whom?
 17 THE COURT: The recipients?
 18 MR. SOLOMON: Ms. Dillon and Mr. Zemil at this
 19 point in time.
 20 THE COURT: Okay.
 21 MR. ROBERT: Thank you.
 22 Q If you please turn to page 5 of 139 of this exhibit,
 23 "Value Conclusions." Do you see that?
 24 A I do.
 25 Q Is this the method that we've been talking about

S. Dillon - Plaintiff - direct (Solomon) Page 2725

1 previously where you value the property before and after the
 2 easement, make whatever adjustments are appropriate and then the
 3 difference is the value of the easement?
 4 A Yes, that is the before and after method that we talked
 5 about before.
 6 Q So the before method values the entire Seven Springs
 7 property at 56,500,000. Do you see that?
 8 A I see.
 9 Q Did you advise your client in or about November of 2015
 10 that the appraisal had valued the entirety of the property at
 11 approximately \$56.5 million?
 12 A I don't recall.
 13 Q Would it have been your practice to do so?
 14 A I don't recall if we would have had a discussion about
 15 this in November. There are thousands of e-mails and
 16 conversations about this as the process goes through, so I have
 17 no idea if I told him the before value of the property or if I
 18 told anyone -- it would have been -- I don't know. At some
 19 point I would have advised probably the value of the easement.
 20 That's what they were interested in.
 21 Q Would you have discussed how that easement was
 22 calculated with the client?
 23 A I may have.
 24 Q Okay. You say there are many e-mails back and forth
 25 and the like. When you received the first draft of an appraisal

S. Dillon - Plaintiff - direct (Solomon) Page 2726

1 the first time that you find out what the appraiser is coming in
 2 with for the value of the property and the value of the
 3 easement, would you advise your client at that point in time?
 4 A I was in touch with the appraisers on a regular basis,
 5 so I always had some understanding of where they were. At
 6 various points in time I would have explained the indicated
 7 value of the easement to someone at the organization.
 8 Q Okay. Would you have done it the first time that you
 9 found out what the value of the easement or the entirety of the
 10 property was?
 11 A Not necessarily. My practice would be to understand it
 12 and see if I thought that was reasonable, if there were facts
 13 that had been omitted, if they understood things, if they had
 14 questions. Often these values are very preliminary and we learn
 15 things as the project goes on is the things that may or may not
 16 affect value.
 17 Q So is it your testimony that you don't always keep your
 18 client informed of changes?
 19 A It is my testimony that I appropriately keep my client
 20 informed of changes and I respect all of my duties and
 21 obligations and ethics as a lawyer.
 22 Q Do you recall when you first, a general time frame,
 23 advised your client that the value of the entirety of the
 24 property was 56.5 million?
 25 MR. ROBERT: Objection. That's not the testimony.

S. Dillon - Plaintiff - direct (Solomon) Page 2727

1 THE COURT: That was just a question. Does she
 2 recall when she first notified?
 3 MR. ROBERT: The testimony was that she doesn't
 4 know if she ever told the value. She would have told them
 5 the value of the easement, not the value of the property.
 6 That was the testimony, Your Honor.
 7 MR. SOLOMON: That's an easy foundation, Your
 8 Honor.
 9 THE COURT: Okay.
 10 Q Do you believe you ever told your client what the value
 11 of the property was as reflected in the appraisal?
 12 A My expectation is I certainly would have given them the
 13 appraisal at some point so they would have had that. Probably
 14 also at some point in time I would have said here's how it was
 15 calculated, but I can't recall when and I don't know if I would
 16 have done it at various points along the way, but I would have
 17 been in fairly regular communication about the value of the
 18 easement.
 19 Q When you received this draft appraisal in or about
 20 November 2015, did you communicate with anyone at the Trump
 21 Organization as to how they were valuing Seven Springs on the
 22 statement of financial condition?
 23 A I don't recall. I don't think so, no.
 24 Q Did you ever communicate with anyone at the Trump
 25 Organization as to how they were valuing Seven Springs on the

S. Dillon - Plaintiff - direct (Solomon) Page 2728

1 statements of financial condition?
 2 A Not that I recall.
 3 MR. SOLOMON: Could we please mark PX 3114 -- I'm
 4 sorry. It's already in evidence. If we could show the
 5 witness?
 6 Q Ms. Dillon, you see this is an e-mail chain? At the
 7 top it's from Mr. Weisselberg to Rebecca Marrochio, but the ones
 8 below that it's from you to Mr. Weisselberg, Mr. Trump with a cc
 9 to Mr. Bender. Do you see that?
 10 A I'm sorry, do I see what? I was trying -- I just
 11 didn't recognize this. I was trying to see what it was.
 12 Q Take a moment to look at the document, ma'am.
 13 A All right.
 14 Q Pointing to one side, the top e-mail, in this chain
 15 that doesn't include --
 16 A That doesn't seem to be the same chain I'm looking at.
 17 I'm confused. What's on the screen doesn't seem to be what I
 18 have.
 19 Q PX 3144?
 20 A No, I have 3144. Perhaps that's the difference.
 21 THE COURT: That would make a difference.
 22 I still suggest to follow on the screen because
 23 when they highlight lines you don't have to go looking all
 24 up and down at a piece of paper. You can see the yellow,
 25 but, again, up to you.

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1 easements?
 2 A I don't know what you mean by -- could you restate --
 3 could you read back that question? It was confusing to me.
 4 MR. SOLOMON: Your Honor, may we have a read back,
 5 please?
 6 THE COURT: Please.
 7 (Whereupon, the requested portion of the
 8 proceedings was read back by the court reporter.)
 9 A Yes, but not things that necessarily looked like this.
 10 Q How would you provide those updates to your client?
 11 A More informal e-mails, conversations, things along
 12 those lines from time to time and if regular means from time to
 13 time, then from time to time. There was no set -- it's not like
 14 every Monday we talk about conservation easements or anything
 15 like that. It would have been from time to time as I had
 16 something to say.
 17 MR. SOLOMON: One moment, Your Honor.
 18 THE COURT: Sure.
 19 MR. SOLOMON: Nothing further, Your Honor.
 20 THE COURT: Wow. Where is Flores?
 21 MR. ROBERT: I was just about to bet the under.
 22 MR. SOLOMON: Nothing further, Your Honor.
 23 THE COURT: Okay.
 24 Transcript continues on the following page....
 25

S. Dillon - Plaintiff - direct (Solomon) Page 2729

1 THE WITNESS: Thank you.
 2 A Yes, we are on the same page now.
 3 Q Fair enough. Thank you.
 4 You'll see pointing to one side of the top e-mail that
 5 doesn't include you, but the one in the middle is from you to
 6 Mr. Weisselberg, Mr. Trump with a cc to Mr. Bender. Do you see
 7 that?
 8 A I do.
 9 Q And just so we're clear, it's Mr. Eric Trump; right?
 10 A Yes.
 11 Q Okay. Did you send -- and the subject is "Easement
 12 Analysis." Do you see that?
 13 A I do.
 14 Q Did you send this to Mr. Weisselberg, Mr. Eric Trump
 15 and Mr. Bender on or about September 23, 2014?
 16 A Yes.
 17 Q If you look at the chart that's attached to that, the
 18 next page, "Potential Charitable Contribution Analysis." Do you
 19 see that?
 20 A I do.
 21 Q And the next page you are suggesting topics they should
 22 keep in mind. Do you see that?
 23 A I do.
 24 Q Did you provide regular updates to your client as to
 25 the progress of conservation or potential conservation

PROCEEDINGS Page 2731

1 THE COURT: Plaintiff, are you finished with this
 2 witness?
 3 MR. SOLOMON: Yes, Your Honor.
 4 THE COURT: Good.
 5 Will there be any cross-examination despite what
 6 you said previously?
 7 MR. KISE: Not right now, Your Honor. We are going
 8 to try and streamline and determine whether we need to call
 9 the witness at all.
 10 THE COURT: We should talk scheduling, but should I
 11 let the witness go at this point?
 12 MR. KISE: Fine with us, yes, Your Honor.
 13 MR. SOLOMON: Yes, Your Honor.
 14 THE COURT: Okay. I will let the witness go.
 15 Thank you.
 16 (Witness excused.)
 17 THE COURT: Let's talk scheduling on the record.
 18 Who wants to go first? Should I ask plaintiff since it's
 19 still your case?
 20 MR. WALLACE: Thank you, Your Honor. Should we
 21 give the witness a moment to leave?
 22 THE COURT: Sure. Go ahead.
 23 MR. WALLACE: Okay, Your Honor. The next witness
 24 that we will call on Monday would be Mr. Flores returning to
 25 the stand. Our expectation is that examination would take

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1 about an hour. After that, we would have Mr. Cerrone, the
 2 City employee, who I think would also take probably about an
 3 hour at that point. My understanding is the defendants have
 4 some cross-examination planned for that witness. I think we
 5 would then propose to play the Mouradian video tape
 6 testimony which is 2 hours and 16 minutes.
 7 MS. GREENFIELD: You anticipate getting through all
 8 of that on Monday? Just wanted to be clear.
 9 MR. WALLACE: So our total time, then, would be 4
 10 hours and 15 minutes and then accepting whatever defendants
 11 choose to do with their time on those witnesses.
 12 MR. KISE: I would think Mr. Cerrone we'll have
 13 questions for, not Flores. And obviously, the video is the
 14 video, but I would -- given how our proceedings go, I think
 15 that would be a full day on Monday.
 16 THE COURT: As long as we can finish it all Monday,
 17 let's hope.
 18 MR. KISE: It would seem likely.
 19 MS. GREENFIELD: Tuesday, who do you have next?
 20 MR. WALLACE: So Tuesday would be Mr. Orowitz, Mr.
 21 Cornwell who would also be brief, and then when that
 22 is -- when those two fact witnesses are done, the People
 23 would move on to the one expert witness they are going to
 24 present as part of this section of our case in -- our case
 25 in chief, which is McCarty.

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1 THE COURT: Will there be cross-examination of the
 2 two Tuesday witnesses as best you can tell?
 3 MR. KISE: Orowitz, no. Cornwell, yes. And,
 4 obviously, the expert, yes.
 5 MR. WALLACE: I would just clarify that Mr. McCarty
 6 has been proffered as an expert in bank underwriting issues,
 7 but we will -- and issues of disgorgement. At this time,
 8 we are only planning to examine him on the issues of
 9 disgorgement. We are reserving any evidence or any
 10 presentation on bank underwriting issues until after the
 11 presentation of the defendant's case which I you understand
 12 will cover a number of bank witnesses anyway, would
 13 influence his opinion.
 14 THE COURT: That's okay. Hold on.
 15 MS. GREENFIELD: And Wednesday?
 16 MR. WALLACE: Wednesday, we will then move on to
 17 the defendants, specifically Mr. Donald Trump, Jr. Then
 18 after him, Eric Trump and presumably, depending on whatever
 19 may happen with appeals, would be Ivanka Trump. And as we
 20 have indicated to the Court, reserve Monday, November 6th
 21 for Donald J. Trump, for his testimony.
 22 THE COURT: We like to keep families together.
 23 MR. KISE: What about Garten and Brunnett? Are we
 24 not calling them?
 25 MR. WALLACE: We will not be taking Garten and

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1 Brunnett during our case in chief.
 2 MR. KISE: Okay.
 3 MR. WALLACE: Also, Mr. Greenblatt we will not be
 4 taking during our case in chief. They will be moved to our
 5 rebuttal list, but we will not be taking them at this time.
 6 MS. GREENFIELD: Do you anticipate getting Eric
 7 Trump, Donald Trump Jr., Ivanka Trump pending the appeal all
 8 in one day?
 9 MR. WALLACE: Our hope is to do one day for each of
 10 them.
 11 MS. GREENFIELD: That would be we are looking at
 12 Wednesday, Thursday, and Friday for each of the three Trump
 13 defendants. Ivanka Trump is not a defendant.
 14 MR. WALLACE: Correct.
 15 THE COURT: Will there be any cross?
 16 MR. KISE: Not -- well, I don't know about with
 17 respect to Ivanka Trump just because to minimize her travel
 18 here and I can't really -- none of us here at this table
 19 can speak for her schedule and availability next week. Mr.
 20 Moskowitz, which I don't -- I don't know if he is still
 21 here -- would have to address that. But that would be the
 22 only witness, again, just to minimize her having to come
 23 back and forth whenever it is that she appears. We may try
 24 and just do that collectively.
 25 MS. GREENFIELD: Okay. I want to -- I'm sorry,

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1 but just to be super clear, I understand that we are going
 2 to have each of the Trump witnesses on a separate day, but
 3 do we think their testimony will take the entire day or are
 4 you going to have filler witnesses or anything in between?
 5 MR. WALLACE: Our expectations, it would likely
 6 take a full day. At this point, after we call Mr. Trump, we
 7 would rest our case in chief is our expectation at this
 8 point. So there -- there's no filler witnesses remaining.
 9 MR. KISE: So a question with respect to Ivanka
 10 Trump. To the extent -- and again, I can't speak -- I have
 11 no idea what her schedule is, but is Ivanka Trump someone
 12 that the People -- because I know you're moving a number of
 13 other witnesses out of your direct case. Is that someone
 14 that you must have in your direct case?
 15 The only reason I'm asking the question, I'm not
 16 suggesting an outcome, if for whatever reason her
 17 availability becomes challenging, we certainly would be
 18 calling her now that we know she's coming and we certainly
 19 would -- I'm just trying to figure out whether we can do it
 20 all in one day, whether it is a day on their case or a day
 21 on our case on that particular witness. But if they feel
 22 that they need to have her in their case in chief, that's a
 23 determination they need to make. I just don't -- I'm just
 24 trying to minimize the schedule conflicts for that witness.
 25 THE COURT: Well, I think it would be preferable if

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1 we could get her Friday and maybe it is up to the plaintiffs
 2 to communicate with Mr. Moskowitz about her availability.
 3 If not then, when?
 4 MR. KISE: Okay. That's fine.
 5 MS. GREENFIELD: I just want to also point out that
 6 Friday is a half day, so whoever's testimony we think is
 7 going to take the least amount of time between Donald Jr.,
 8 Eric and Ivanka, that should be scheduled for Friday just
 9 for the Court's logistics.
 10 MR. ROBERT: I would need to know that now because
 11 as things stand now, Donald Trump, Jr. on Wednesday and Eric
 12 Trump for Thursday and since we need five days notice, can
 13 you confirm that now that that's your order?
 14 MR. WALLACE: We provided you guys notice earlier
 15 that we might call them as soon as Monday, but I think that
 16 is the order. I would propose that Eric Trump be ready to
 17 testify whenever Donald Trump, Jr. is completed, so that
 18 could be Wednesday. That would be the order, Donald Trump,
 19 Jr. and then Eric Trump to clarify.
 20 MR. ROBERT: And then Ivanka last?
 21 THE COURT: Yes.
 22 MR. KISE: I don't know about prior notice. I just
 23 know if we are talking about Wednesday and Thursday, that
 24 would be five days in any event, right?
 25 MR. ROBERT: That's fine.

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1 MR. WALLACE: And we can work with Mr. Moskowitz
 2 and the defendants if there are issues with Ivanka Trump or
 3 if there is some -- but we are definitely calling her as
 4 part of our case in chief.
 5 MR. KISE: Okay.
 6 THE COURT: Okay. I will say again. It is my
 7 understanding that defendants do not have a standing to
 8 object, but I don't mind them being part of the process as a
 9 courtesy, whatever. Maybe Mr. Kise is right. Maybe he does
 10 have standing.
 11 MR. KISE: They certainly objected or you allowed
 12 them to speak yesterday when I was talking about the other
 13 matter in the morning and I told you I didn't think they had
 14 a dog in the hunt, but you allowed them to speak in any
 15 event.
 16 THE COURT: In any event, Monday, ten o'clock,
 17 okay. Thanks, everybody. Great weekend.
 18 (Whereupon, the trial was adjourned to Monday,
 19 October 30, 2023 at 10:00 a.m.)
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In The Matter Of:
NYS Attorney General v.
Donald Trump, et al.

David Cerron
October 30, 2023

Janelle C. London, RMR, CRR & Nicole Robinson, SCR

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1 SUPREME COURT OF THE STATE OF NEW YORK
 2 COUNTY OF NEW YORK : CIVIL TERM : PART 37
 3 ----- X
 4 PEOPLE OF THE STATE OF NEW YORK, BY
 5 LETITIA JAMES, ATTORNEY GENERAL OF
 6 THE STATE OF NEW YORK,
 7
 8 Plaintiff,
 9
 10 -against- Index No.
 11 452564/2022
 12 DONALD J. TRUMP; DONALD TRUMP, JR.; ERIC TRUMP;
 13 IVANKA TRUMP; ALLEN WEISSELBERG; JEFFREY MCCONNEY;
 14 THE DONALD J. TRUMP REVOCABLE TRUST; THE TRUMP
 15 ORGANIZATION, INC.; TRUMP ORGANIZATION, LLC;
 16 DJT HOLDINGS, LLC; DJT HOLDINGS MANAGING MEMBER;
 17 TRUMP ENDEAVOR 12, LLC; 401 NORTH WABASH VENTURE,
 18 LLC; TRUMP OLD POST OFFICE, LLC; 40 WALL STREET,
 19 LLC.; AND SEVEN SPRINGS, LLC,
 20
 21 Defendants.
 22 ----- X
 23 60 Centre Street
 24 New York, New York 10013
 25 October 30, 2023

B E F O R E:
 HONORABLE ARTHUR F. ENGORON,
 Justice, Supreme Court

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 LOUIS M. SOLOMON, ESQ.

(Appearances continued on the next page.)

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1 THE COURT OFFICER: All rise. Part 37 is now in
 2 session. The Honorable Judge Arthur Engoron presiding.
 3 Please make sure all cell phones are on silent. Laptops and
 4 cell phones will be permitted, but only to members of the
 5 press. There is absolutely no recording or photography of
 6 any kind allowed in the courtroom. Now be seated and come
 7 to order.
 8 THE COURT: Good morning. Either the room is
 9 getting bigger or more people are showing up.
 10 In this case, as in I'm sure others, the
 11 housekeeping matters can be explored as actual testimony,
 12 not last week's, but I understand we have a couple of
 13 housekeeping matters. I'll just start with the plaintiff
 14 because they're the plaintiff.
 15 MR. WALLACE: Thank you, Your Honor.
 16 Just the primary issue is that there is a change
 17 from the end of last week is the scheduling of the testimony
 18 for Ivanka Trump. We've had a number of e-mail exchanges
 19 with Ms. Trump and her counsel over the weekend and I think
 20 we have come to an agreement we will not be able to complete
 21 her testimony on Friday, the 3rd of this week and so the OAG
 22 had proposed November 8th and 9th, but because of travel
 23 obligations of -- that Ms. Trump had, she had proposed
 24 Wednesday, November 15, which is not ideal from our
 25 perspective, but the OAG is willing to book that date and

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 Senior Court Reporters

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1 proceed with her testimony then. We would just need
 2 agreement from the Court and from defendants that our case
 3 would not actually close with our final witness of Mr. Trump
 4 but would remain open for her testimony on the 15th.
 5 THE COURT: Clearly as we work this out in that
 6 fashion, there is going to be any -- how long do you think
 7 the direct examination would be and how long do we think the
 8 cross examination will be?
 9 MR. WALLACE: I think we would certainly complete
 10 it within the day, but I don't think it would take a full
 11 trial day and that we could do it with three to four hours
 12 of testimony.
 13 THE COURT: You mean three to four hours of direct?
 14 MR. WALLACE: Correct.
 15 THE COURT: How long do you think cross
 16 examination?
 17 MR. KISE: Probably a little less than that. I
 18 think overall it will be a full trial day between the
 19 government and the defense. That's I think why the 3rd
 20 doesn't really work just because we would get started and
 21 they might even finish their direct on the 3rd, but we're
 22 fine with the proposal if the Court is okay with it.
 23 THE COURT: I have one creative thought. Let me
 24 run it by the person who sits along side of me.
 25 (Whereupon, there is a pause in the proceedings.)

Proceedings Page 2742

1 THE COURT: We have things scheduled for Friday
2 afternoon, the proverbial other cases we have. Any chance
3 of turning Friday into an all day? We would just have to
4 move things, which would be a bit of a pain, but might be a
5 better alternative. Let's hear from both sides.
6 Plaintiff?
7 MR. WALLACE: Certainly. I think we would have no
8 objection to that.
9 MR. KISE: I would have to note, for me, at least I
10 don't know about the rest of us, since that's our only
11 afternoon off for other cases, that may pose a bit of a
12 train wreck on our side just because we've got -- I know
13 it's hard to imagine there is anything else going on in the
14 world right now other than this trial. Certainly happy to
15 explore this afternoon and try and work that out. I'm not
16 philosophically opposed to it, but I just don't know
17 logistically if it's an option.
18 THE COURT: Let's talk about it after the lunch
19 break. It would be so much easier for her in particular,
20 right?
21 So other housekeeping matters by the plaintiff?
22 MR. WALLACE: That was the only issue. Otherwise,
23 we're prepared to proceed on the issue we laid out at the
24 end of last week.
25 THE COURT: What is the story with Mr. Solomon?

R. Flores - Plaintiff - direct (Amer) Page 2743

1 MR. WALLACE: We'll go off the record for this?
2 MR. KISE: Sure.
3 THE COURT: Okay.
4 (Whereupon, there is an off-the-record discussion
5 held.)
6 THE COURT: Let's call the next witness ASAP.
7 MR. AMER: Thank you, Your Honor. We recall to the
8 stand Raymond Flores.
9 THE COURT OFFICER: Witness entering.
10 (Whereupon, the witness enters the courtroom and
11 approaches the witness stand.)
12 THE COURT: I'll remind the witness, witness, as I
13 always do, you're still under oath.
14 THE WITNESS: Yes.
15 THE COURT: Please proceed. Continue.
16 CONTINUED DIRECT EXAMINATION
17 BY MR. AMER:
18 Q Welcome back, Mr. Flores. I'd like to quickly review
19 where we ended your examination a week ago last Friday.
20 We were discussing the joint venture Vegas property and
21 we had looked at the 2017 Jeff Supporting Data spreadsheet,
22 which is Plaintiff's Exhibit 719 in evidence. And if we could
23 go to Row 751, which we had looked at before.
24 It states in Row 751 that the values listed for
25 June 30, 2013 and June 30, 2014 are, quote, "based on the cash

R. Flores - Plaintiff - direct (Amer) Page 2744

1 flow from unit sales prepared by Ray Flores 10/20/2103?"
2 Do you recall that we had looked at that before?
3 A I believe so, yes.
4 Q And I believe you testified that you did recall putting
5 this together, this cash flow analysis, that's referenced in
6 line 751; right?
7 A Yes.
8 Q Were you aware in this time frame that your cash flow
9 analysis was being used for the purpose of valuing this asset
10 for Mr. Trump's statement of financial condition?
11 A No, I was not.
12 Q Now, let's go ahead and -- what was the business
13 purpose by the way for your preparation of the cash flow
14 analysis that's referenced here?
15 A I believe I was keeping track of the properties's
16 performance and that's the extent of what I thought I was doing.
17 Q And you were doing that at the direction of Eric Trump;
18 correct?
19 A I believe at this time it was David Orowitz.
20 Q And at some point in time when you were preparing the
21 cash flow analysis was it at Mr. Eric Trump's direction after
22 Mr. Orowitz left the company?
23 A It would have been -- I don't recall.
24 Q Let's go ahead and look at the 2016 Jeff Supporting
25 Data spreadsheet, which is Exhibit 742 in evidence. And if we

R. Flores - Plaintiff - direct (Amer) Page 2745

1 go to Row 816, this is now for the next two years 2015 and 2016.
2 Same note or similar note on Row 816 says "based on the cash
3 flow from unit sales prepared by Ray Flores."
4 You recall that you continued preparing this cash flow
5 analysis?
6 A Yes.
7 Q And am I correct that you were not aware in this time
8 frame that your cash flow analysis was being used for the
9 purpose of valuing this asset in Mr. Trump's Statement of
10 Financial Condition?
11 A That's correct.
12 Q Now, if we could look at the next two years the 2018
13 Jeff Supporting Data spreadsheet that's Exhibit 774 in evidence
14 and if we could go to Row 841 that's where Vegas begins.
15 And do you see, Mr. Flores, that there is no longer any
16 reliance based on the notation to your spreadsheet, your cash
17 flow analysis, rather?
18 A Can you scroll down, please?
19 (Whereupon, there is a pause in the proceedings.)
20 A Yes, that's correct.
21 Q So your cash flow analysis was no longer being
22 referenced as the basis for the valuation in either 2017 or
23 2018; correct?
24 A That appears to be the case.
25 Q Let's go ahead and pull up Plaintiff's Exhibit 1208

R. Flores - Plaintiff - direct (Amer) Page 2746

1 native. And the document I've handed you is a series of e-mail
 2 exchanges that include you as a sender and recipient; correct?
 3 A Yes.
 4 Q And you'll see the last page is an attachment that's a
 5 document prepared natively. Do you see that?
 6 A Can you show me the document, please?
 7 Q Well, just that last page is a slip sheet for an
 8 attachment?
 9 A Yes.
 10 Q Provided natively. And we'll look at that in a moment.
 11 And I just want you to notice that's a native attachment. Do
 12 you see that?
 13 A Yes.
 14 Q And you'll see in on the first page of the exhibit your
 15 e-mail in the middle of page to Mr. McConney, Jeff. "As
 16 discussed, please find the updated workbook attached," and then
 17 he forwards that on to Mr. Birney in the e-mail above that. Do
 18 you see that?
 19 A Yes.
 20 Q And the attachment, the Trump rough and financial
 21 model, that's your cash flow analysis; correct?
 22 A Yes, I believe so.
 23 Q Let's go ahead and put up the native of 1208.
 24 And do you recognize this as your cash flow analysis
 25 that was forwarded by you to Mr. McConney and that is as of

R. Flores - Plaintiff - direct (Amer) Page 2747

1 June 30, 2017?
 2 A Yes.
 3 MR. AMER: Your Honor, I ask to move into evidence
 4 Plaintiff's Exhibit 1208, including the spreadsheet.
 5 THE COURT: Granted. It's in evidence.
 6 (Whereupon, the item previously referred to is
 7 received and marked Plaintiff's Exhibit Number 1208 in
 8 evidence.)
 9 Q And if you look at Row 37 of your spreadsheet that has
 10 the cash flow to Trump; correct?
 11 A Yes, that's what the document says.
 12 Q And so the value of the cash flow to Trump for your
 13 cash flow analysis has a total value of a little over
 14 \$77 million; is that right?
 15 A Yes.
 16 Q Okay. If we could now split the screen and look at
 17 Plaintiff's Exhibit 774, which is the 2018 Jeff Supporting Data
 18 spreadsheet in evidence that we were just looking at.
 19 If we could go to Row 872 and go over to Column G.
 20 That's the June 30, 2017 value for this property which
 21 is slightly over 102 million; correct?
 22 A Yes, that's what the document says.
 23 Q Okay. And that value for the Vegas property as of
 24 June 30, 2017 is about \$25 million, more than the \$77 million
 25 value in your cash flow analysis; correct?

R. Flores - Plaintiff - direct (Amer) Page 2748

1 A Yes.
 2 Q Were you made aware, Mr. Flores, of a decision to stop
 3 using your cash flow analysis to value this Vegas asset for
 4 Mr. Trump's Statement of Financial Condition as of the 2017
 5 statement?
 6 A No, not that I recall.
 7 Q Before we move on to a new property I just wanted to
 8 quickly circle back to Niketown to see if I could refresh your
 9 recollection on a couple of points.
 10 You'll recall we had looked at the 2020 Jeff Supporting
 11 Data spreadsheet, which is Exhibit 857 in evidence and Row 88 is
 12 where Niketown begins, so if we could look there.
 13 Do you recall we had looked at this before?
 14 A Yes.
 15 Q And if you go to Rows 88 to 103 you will see that there
 16 is a method used to value the property in 2019 from Rows 88 to
 17 103 that produce a value of 445 million. Do you see that?
 18 A Yes.
 19 Q And then if we just go down to Row 106, you'll see that
 20 there is a change in methodology for 2020 that says "value per
 21 20 year discounted cash flow from Ray Flores." Do you see that?
 22 A Yes.
 23 Q And I believe your testimony was that you don't recall
 24 performing a 20 year discounted cash flow analysis for Niketown
 25 for 2020; is that right?

R. Flores - Plaintiff - direct (Amer) Page 2749

1 A Yes, that's correct.
 2 Q And then I showed you the 20 year discounted cash flow
 3 analysis for Nike for 2020 which we could put up on the screen
 4 now. It's PX 857. Anyway, I believe we put up a spreadsheet
 5 and when we looked at that spreadsheet you still did not recall
 6 whether it was your work product. Do you remember that?
 7 A Yes.
 8 Q So we're going to look at a few more pieces of evidence
 9 to see if it refreshes your recollection about the 20 year
 10 discounted analysis for 2020.
 11 MR. AMER: Let's go ahead and look at an earlier
 12 draft of the 2020 Jeff Supporting Data, which is Plaintiff's
 13 Exhibit 2293 in native and let's go ahead and look at
 14 Row 118 and actually go down a little bit further just so we
 15 can see the Niketown section. The other way. Sorry.
 16 Q You see this is the section starting at 86 that relates
 17 to Niketown. Do you see that?
 18 A Yes.
 19 Q And in this earlier draft of the Jeff Supporting Data
 20 spreadsheet for 2020 you'll see rather than reference the 20
 21 year discounted cash flow analysis, it has -- starting in
 22 Row 105 and going down, a method -- keep going -- a method that
 23 takes the net operating income shown in 117 and divides it by a
 24 cap rate of four percent to produce a value of 265.1 million.
 25 Do you see that?

R. Flores - Plaintiff - direct (Amer) Page 2750

1 A Yes.

2 Q Do you --

3 MR. AMER: Well, let me move to admit this exhibit,

4 Your Honor.

5 THE COURT: Granted. It's in evidence.

6 (Whereupon, the item previously referred to is

7 received and marked Plaintiff's Exhibit Number 857 in

8 evidence.)

9 Q Do you recall Mr. McConney asking you to come up with

10 additional reasoning -- actually, before we get there I'll

11 withdraw that.

12 If you look at line 123, you'll see it says "cap rate."

13 And you see there is a note below it for 6/30/2020 that says

14 "given the prime location in the plaza district, the proximity

15 to Trump Tower and the high profile tenant, we use the same four

16 percent cap rate as Trump Tower." Do you see that note?

17 A Yes.

18 Q Do you recall Mr. McConney asking you to come up with

19 additional reasoning to justify using the four percent cap rate

20 for Niketown in the 2020 Statement of Financial Condition

21 because Mr. Bender was pushing back on using the four percent

22 cap rate?

23 A I don't recall, no.

24 Q You don't recall that.

25 If I suggested to you that he made such a request to

R. Flores - Plaintiff - direct (Amer) Page 2751

1 you on Christmas Eve of 2020, does that ring a bell?

2 A No.

3 Q Mr. Flores, were you aware that as part of discovery in

4 this case and in the investigation you received production of

5 voicemail messages that were left on your office phone?

6 A No.

7 Q Okay.

8 MR. AMER: Your Honor, I'd like to play an audio

9 file which is a voicemail message that Mr. McConney left on

10 Mr. Flores' phone that we marked at PX 397 and then I'll ask

11 you if it refreshes your recollection.

12 THE COURT: Go ahead.

13 (Whereupon, there is a pause in the proceedings.)

14 Q I know you -- he spoke a little quickly. I don't know

15 if you need to play it over again or not, but my question is

16 whether that refreshes your recollection that Mr. McConney left

17 you a message on Christmas Eve Of 2020 asking you to come up

18 with additional reasoning to justify using the four percent cap

19 rate for Niketown?

20 A No, I don't recall that.

21 Q Okay.

22 MR. AMER: Your Honor, I ask that the voicemail

23 message be admitted into evidence.

24 THE COURT: Granted. It's in evidence.

25 (Whereupon, the item previously referred to is

R. Flores - Plaintiff - direct (Amer) Page 2752

1 received and marked Plaintiff's Exhibit Number 397 in

2 evidence.)

3 THE COURT: I don't know how these things work. Is

4 there a transcript of that that will actually be in evidence

5 or just this recording?

6 MR. AMER: We can transcribe it and put that in as

7 an exhibit as well.

8 THE COURT: Please do.

9 MR. AMER: Okay. We will.

10 Q Do you recall, Mr. Flores, that in lieu of convincing

11 Mr. Bender to accept the four percent cap rate you and others

12 working on the preparation of the 2020 Statement of Financial

13 Condition used the 20 year cash flow analysis we've been

14 discussing as an alternative method for valuing Niketown in

15 2020?

16 A I'm sorry, can you repeat the question?

17 Q Sure. Do you recall -- and we've listened to this

18 voicemail message where Mr. McConney is asking you to come up

19 with additional reasons to justify the four percent cap rate.

20 Do you recall that in lieu of trying to convince

21 Mr. Bender to accept the four percent cap rate you and others

22 working on the preparation of the 2020 Statement of Financial

23 Condition used the 20 year cash flow analysis we've been

24 discussing as an alternative method for valuing Niketown in

25 2020?

R. Flores - Plaintiff - direct (Amer) Page 2753

1 A No, I don't recall.

2 Q Let's go ahead and put up Plaintiff's Exhibit 3294 in

3 native. This is a draft 20 year cash flow analysis for Niketown

4 for 2020. Do you recall creating this analysis shortly after

5 receiving -- well, shortly after Christmas Eve of 2020?

6 A No, I don't recall that.

7 MR. AMER: Let's go ahead and mark as 3295, the

8 metadata for this spreadsheet.

9 Q Mr. Flores, this document is a printout of the metadata

10 that was produced along with the spreadsheet we were just

11 looking at. And if you go down you will see that it says the

12 author is you. Do you see that?

13 A Yes, that's what this says.

14 Transcript continues on the following page....

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R. FLORES - PLAINTIFF - DIRECT(MR. AMER) Page 2754

1 Q And you will see that the created date is December 28,
2 2020. Do you see that?
3 A Yes.
4 MR. AMER: Your Honor, I'll represent, and the
5 Court can take judicial notice, that the very first business
6 day after Christmas Eve in 2020, which fell on a Thursday,
7 is Monday, the 28th of December.
8 THE COURT: I'll assume that's correct.
9 Q So this metadata shows that the very first business day
10 after Mr. McConney left you the voicemail message that we
11 listened to, there is a 20-year cash flow analysis that the
12 metadata indicates was created by you on that date, the 28th.
13 Do you see that?
14 A That's what the document says.
15 Q Does this refresh your recollection, Mr. Flores, that
16 you prepared the 20-year cash flow analysis that we've marked as
17 Plaintiff's Exhibit 3294 shortly after Christmas Eve as an
18 alternative valuation method for Niketown because Mr. Bender was
19 pushing back on using a cap rate of four percent?
20 A No, it doesn't.
21 Q So you have no recollection of doing this work based on
22 a Christmas Eve 2020 voicemail message less than three years ago
23 today, correct?
24 A Correct.
25 Q Just to close the loop, let's compare the MPV value on

R. FLORES - PLAINTIFF - DIRECT(MR. AMER) Page 2755

1 the spreadsheet that we were looking at.
2 MR. AMER: If we could put that back up.
3 Q You'll see the MPV value in Row 14 is \$252,779,805?
4 A Correct.
5 Q And again, this is the spreadsheet that has the
6 metadata that says you are the author of this document based on
7 what we were looking at, right?
8 A That's correct. Correct.
9 Q And let's put up next to this the final 2020 Jeff
10 Supporting Data spreadsheet that is Exhibit 857 in evidence and
11 let's go to Row 86 where Niketown starts and then if you go to
12 Row 106, which has the value that is attributed to you, same
13 value that's in the spreadsheet -- sorry. The analysis that
14 the metadata says you created on December 28, 2020, correct?
15 A Yes.
16 Q Mr. Flores, having looked at a number of 20-year
17 discounted cash flow spreadsheets for Niketown, the metadata for
18 one of those spreadsheets identifying you as the author, the
19 Jeff Supporting Data spreadsheets attributing the spreadsheets
20 to you and the voicemail message that Mr. McConney left for you
21 on Christmas Eve in 2020 asking for your assistance, is your
22 recollection now refreshed that less than three years ago, you
23 created a 20-year cash flow analysis for Niketown to be used to
24 value the property in 2020 for Mr. Trump's Statement of
25 Financial Condition?

R. FLORES - PLAINTIFF - DIRECT(MR. AMER) Page 2756

1 A No, it's not refreshed.
2 Q In terms of the statements that you worked on
3 preparing, I believe you previously testified that you believed
4 you worked on the statement as of June 30, 2020, but that you
5 didn't recall if you also worked on preparing the Statement of
6 Financial Condition as of 6/30/21 before you left the company in
7 March of 2022. Did I get that right?
8 A Yes, that's correct.
9 Q Let me see if I could refresh your recollection. We
10 did receive in production along with an audio file of a phone
11 message that Mr. Birney left for you some metadata attached to
12 that audio file, all of which gets produced in something called
13 a Celebrite file.
14 MR. AMER: So I would like to mark as Plaintiff's
15 Exhibit 3300 which I'm going to hand to the witness a report
16 generated by the metadata from Celebrite file.
17 Q I may have misspoke, but this is a message that was
18 left for Patrick Birney, not by him, and based on Plaintiff's
19 Exhibit 3300, which is the report for the audio message, it says
20 that the message was left on August 2nd of 2021 and it has the
21 phone number of the message of the phone that was calling,
22 leaving the message, and you'll see it is (212) 715-7282.
23 That's your office number, isn't it?
24 A It was, yes.
25 Q And you'll see it's a 27-second message that is being

R. FLORES - PLAINTIFF - DIRECT(MR. AMER) Page 2757

1 retrieved from the phone of Mr. Birney?
2 MR. AMER: Your Honor, I'd like to have this
3 document 3300, admitted into evidence.
4 THE COURT: Granted. It is in .
5 (Whereupon, the Audio recording was marked in
6 evidence as Plaintiff's Exhibit 3300.)
7 MR. KISE: For what purpose, Your Honor?
8 THE COURT: Mr. Amer, you can say it better than I
9 can.
10 MR. AMER: We are going to play the message. This
11 tells us who the message is coming from and the date of the
12 message.
13 MR. KISE: Okay. All of these are being used,
14 though, to refresh recollection. Is there some purpose that
15 the hearsay itself is coming into evidence, the same is true
16 as the other message.
17 MR. AMER: I did not admit them for a limited
18 purpose Your, Honor. I admitted them into evidence because
19 they're all admissible for all purposes. They are party
20 admissions against interest.
21 THE COURT: Well, I don't know what this new one
22 will show, but the last one was relevant to how things were
23 playing out there, simply put.
24 MR. AMER: Is it in evidence?
25 THE COURT: The metadata?

R. FLORES - PLAINTIFF - DIRECT(MR. AMER) Page 2758

1 MR. KISE: We haven't heard it yet.
 2 MR. AMER: No.
 3 THE COURT: We could wait --
 4 MR. AMER: It was this report admitted in evidence.
 5 Now, we are going to play the message.
 6 THE COURT: If we haven't heard the metadata, we
 7 don't -- if we haven't heard the -- what you're going to
 8 play, I don't know whether the metadata is relevant. So why
 9 don't we wait until we hear.
 10 MR. AMER: Okay.
 11 Q Let's go ahead and play the voicemail message that was
 12 left from your phone number.
 13 (Whereupon, the audio recording was played.)
 14 MR. AMER: Do we need to hear it one more time?
 15 THE COURT: No, I don't. Anybody else does?
 16 Q That was your voice, Mr. Flores, was it not?
 17 A Yes.
 18 THE COURT: They're both in evidence now.
 19 MR. AMER: Thank you, Your Honor.
 20 Q You were leaving a message for Mr. Birney saying that
 21 Eric had asked you to reach out to him about preparation of the
 22 financial statement, correct?
 23 A Correct.
 24 Q And that Eric was Eric Trump, right?
 25 A Yes.

R. FLORES - PLAINTIFF - DIRECT(MR. AMER) Page 2759

1 Q And this is a phone message you were leaving for Mr.
 2 Birney in mid 2021, right?
 3 A That's what the metadata says.
 4 Q And does the fact that Eric Trump touched base with you
 5 in mid 2021 about having you work on the preparation of the
 6 financial statement refresh your recollection that you indeed
 7 were involved in the preparation of the 2021 Statement of
 8 Financial Condition?
 9 A I could have been. I don't recall.
 10 Q No doubt, though, that that was your voice --
 11 A Yes.
 12 Q -- leaving that message for Mr. Birney, correct?
 13 A Correct.
 14 MR. KISE: So Your Honor, just to clarify, I guess
 15 this is where I'm not stating it correctly. Is this message
 16 and the subsequent -- or the prior message being introduced
 17 to establish that Mr. Flores doesn't actually remember what
 18 took place? Is it being introduced to establish that it, in
 19 fact, took place? I'm just -- I think those are two very
 20 different things. If the government is trying to establish
 21 that Mr. Flores doesn't remember something that happened,
 22 because that's what the questions are.
 23 THE COURT: I'm sure that's not the reason; am I
 24 correct?
 25 MR. KISE: That's all the questions are. "Does

R. FLORES - PLAINTIFF - DIRECT(MR. AMER) Page 2760

1 this refresh your recollection." He says no and now it is
 2 in evidence for all purposes at least according to them and
 3 I'm just wondering how that can be because that's not really
 4 consistent with the line of questioning. If they're
 5 introducing hearsay to -- well, if they're introducing
 6 hearsay evidence to prove the truth of the matter asserted
 7 and not meaning the substance of the communication, not to
 8 establish either that this witness doesn't remember or not
 9 to establish that a conversation may or may not have taken
 10 place. Those are just two very different things.
 11 MR. AMER: It is absolutely being offered into
 12 evidence and has been in my view admitted into evidence to
 13 prove the truth of the matters asserted which is that what
 14 is stated in both messages is a correct statement of what
 15 was going on at the time. The fact that he doesn't
 16 remember, it is also something that's very interesting and
 17 pertinent, but it is not the sole basis for wanting to get
 18 those into evidence.
 19 THE COURT: Probably not the main basis, but in any
 20 event, I think Mr. Amer adopted my phraseology what was
 21 going on. I want to know who was talking to whom about what
 22 in terms of these financial statements, who was
 23 communicating with whom about what numbers were going to be
 24 put in place. Is that a fair statement?
 25 MR. AMER: Yes, absolutely, Your Honor.

R. FLORES - PLAINTIFF - DIRECT(MR. AMER) Page 2761

1 MR. KISE: Then with respect to the -- this
 2 statement since Mr. Flores accurately acknowledged that it
 3 was his voice on the message and, in fact, he has no reason
 4 to doubt it, then the foundation has been laid. With
 5 respect to the McConney message, which the witness doesn't
 6 remember and doesn't recall, you would need Mr. McConney
 7 here to say, yes, in fact, I left that message unless this
 8 witness can say he did leave the message. This witness
 9 can't get in a hearsay statement even if it is an admission
 10 by a party.
 11 THE COURT: Even if it is an admission by a party?
 12 That's classic --
 13 MR. KISE: But we don't know whether it is or not
 14 unless someone has authenticated it for that purpose.
 15 MR. AMER: Do you need me to respond? It is a
 16 voicemail message produced in discovery by the defendants.
 17 Mr. McConney is a defendant in this case. It is an
 18 admission against interest, clear, classic traditional to
 19 the hearsay rule.
 20 MR. KISE: I don't know why it is being admitted
 21 other than that he called Mr. Flores.
 22 MR. AMER: I think it is admitting quite a bit and
 23 that's for argument.
 24 MR. KISE: I'll leave it there.
 25 THE COURT: It is in evidence for the "quite a

R. FLORES - PLAINTIFF - DIRECT(MR. AMER) Page 2762

1 bit."
 2 MR. AMER: Thank you, Your Honor.
 3 Q We are now going to move, Mr. Flores, to a different
 4 property, Doral. Do you recall from your prior testimony
 5 discussing Poer & Company the tax certiorari firm?
 6 A Yes.
 7 Q You previously testified that the firm handled property
 8 tax assessment appeals in Florida for the Trump Organization,
 9 right?
 10 A Correct.
 11 Q You mentioned that you worked with that firm in
 12 connection with reviewing property tax assessments of Trump
 13 Organization properties in Florida, right?
 14 A Yes.
 15 MR. AMER: I'd like to introduce Plaintiff's
 16 Exhibit 3211.
 17 Q You will see that this is an e-mail from Tony Garcia at
 18 Poer & Company to you. Do you see that?
 19 A Yes.
 20 Q Is Mr. Garcia one of the individuals you interacted
 21 with on tax assessment appeal matters that Poer & Company filed
 22 on behalf of the Trump Organization?
 23 A Yes.
 24 MR. AMER: Your Honor, I ask that this be admitted
 25 into evidence.

R. FLORES - PLAINTIFF - DIRECT(MR. AMER) Page 2763

1 THE COURT: Granted. It is in.
 2 (Whereupon, the Document was marked in evidence as
 3 Plaintiff's Exhibit 3211.)
 4 Q Now, if you look at the e-mail starting with the second
 5 sentence of the first full paragraph, he says, "Per our
 6 conversation, we will withdraw the RE appeals for lack of
 7 supporting evidence."
 8 First of all, do you recall what "RE" stands for in
 9 that sentence?
 10 A Real estate.
 11 Q Real estate, okay.
 12 Do you have a recollection of having this discussion
 13 with Mr. Garcia about the real estate appeals for Doral?
 14 A This specific discussion, it seems familiar.
 15 Q And Mr. Garcia goes on to say, "Our opinion is the
 16 property was fairly too favorably assessed as of the 1/1/2020
 17 assessment date." The "YE 2019," we can agree that means year
 18 end, the year?
 19 A Correct.
 20 Q "The year end 2019 operating statement still supports
 21 the county's value as being fair." Do you see that?
 22 A Yes.
 23 Q Do you recall what the property appraiser determined
 24 was the market value of Doral for 2020?
 25 A No, I don't recall.

R. FLORES - PLAINTIFF - DIRECT(MR. AMER) Page 2764

1 MR. AMER: Let's go ahead and mark Exhibit 3209.
 2 Your Honor, this is the official notice of proposed property
 3 taxes from the Miami-Dade property appraiser that's
 4 available on the government's website and I move that this
 5 be admitted into evidence as a business record from a
 6 government website.
 7 THE COURT: Granted. It is in.
 8 (Whereupon, the Document was marked in evidence as
 9 Plaintiff's Exhibit 3209.)
 10 MR. KISE: Your Honor, just briefly. I mean, I'm
 11 assuming this is a public record, so that satisfies that
 12 basis; but I'm just wondering what's the relevance of this
 13 document. Why is this coming in?
 14 THE COURT: I guess we'll find out.
 15 MR. KISE: Okay. Subject to connection.
 16 MR. AMER: Indeed.
 17 THE COURT: Okay.
 18 Q If we go down, down the document, you'll see that
 19 there's value information column. Keep going. You see it says,
 20 "Value information, prior value 2019, current value 2020."
 21 There are two columns. Well, multiple columns. There is a
 22 market value column and then there are two assessed value
 23 columns. Do you see that?
 24 A Yes.
 25 Q And the market value in both years is \$78 million,

R. FLORES - PLAINTIFF - DIRECT(MR. AMER) Page 2765

1 correct?
 2 A Correct.
 3 Q And that is the market value that Mr. Garcia from Poer
 4 & Company was indicating in his e-mail to you as being fair,
 5 correct?
 6 A I believe so.
 7 Q Let's go ahead now and --
 8 MR. AMER: Oh, I think we had your ruling that this
 9 is admitted?
 10 THE COURT: Yes.
 11 MR. AMER: Okay.
 12 Q Let's go ahead and turn to Mar-A-Lago. And before we
 13 talk about Mar-A-Lago, I wanted to just put up plaintiff's
 14 demonstrative Exhibit 3.10, just so that we can all see the
 15 values of Mar-A-Lago for the 11-year period in the Statements of
 16 Financial Condition.
 17 THE COURT: But before we --
 18 MR. KISE: Before we get there, was that the
 19 connection? I'm lost. Was that the connection? We are
 20 moving away from this exhibit now. It was offered subject
 21 to connection. Maybe I missed the connection.
 22 THE COURT: Well, I think the connection was market
 23 value and \$78 million.
 24 MR. AMER: That's right.
 25 MR. KISE: So this is being offered as the actual

R. FLORES - PLAINTIFF - DIRECT(MR. AMER) Page 2766

1 market value of the property in this year, just so I'm
2 clear?
3 THE COURT: Well, the tax assessor's view and I
4 think Mr. Garcia's view of the market value. That's what it
5 says. Now, Mr. Kise, you can certainly argue that there are
6 different market values, but it is still relevant.
7 MR. KISE: Okay. Same objection, but thank you,
8 Judge.
9 Q I just wanted all of us to familiarize ourselves with
10 the values for Mar-A-Lago that are in this statements from 2011
11 to 2021.
12 Mr. Flores, we heard testimony from Mr. McConney that
13 every year from 2011 to 2021, Mar-A-Lago was valued as if it
14 could be sold as a private residence. Do you have an
15 understanding that Mar-A-Lago was being valued as a private
16 residence when you were working with others to prepare
17 valuations for the Statements of Financial Condition?
18 A I don't recall, no.
19 Q Do you have any reason to doubt Mr. McConney's
20 testimony that every year it was being valued as a private
21 residence?
22 A No.
23 Q Let's go ahead --
24 MR. KISE: Objection; foundation.
25 MR. AMER: I think there was foundation because the

R. FLORES - PLAINTIFF - DIRECT(MR. AMER) Page 2767

1 witness testified he was involved in discussions with others
2 about the preparation of the 2020 Statement of Financial
3 Condition. So he has a foundation for knowing if he has any
4 reason to doubt Mr. McConney's testimony.
5 MR. KISE: But he testified he doesn't know whether
6 it was valued as a private residence or not.
7 THE COURT: Well, that's his testimony.
8 MR. KISE: Right.
9 THE COURT: It doesn't mean --
10 MR. KISE: Now, any reason -- I mean, is there any
11 reason to doubt that it is raining outside? If you know,
12 you know. If you can't look out the window, you don't know.
13 This witness doesn't have any basis to know what Mr.
14 McConney was doing or what he testified to or the accuracy
15 of it. It is just sloppy, Your Honor.
16 MR. AMER: Well, I take offense to calling my
17 questions sloppy, but I think it was appropriate. I think
18 the witness said he didn't recall how Mar-A-Lago was valued
19 and it is appropriate to ask him if he has any basis to
20 dispute Mr. McConney's testimony.
21 THE COURT: He doesn't say, "I would have no way of
22 knowing that." He says, "I don't recall." The objection is
23 overruled.
24 MR. KISE: It would be better if he -- I mean,
25 does he have any understanding one way or the other is the

R. FLORES - PLAINTIFF - DIRECT(MR. AMER) Page 2768

1 question? That's the first question. Any reason to doubt?
2 I mean, he's not demonstrated that the witness has any basis
3 to know one way or the other.
4 THE COURT: Please explain the basis which I think
5 was evident.
6 MR. AMER: The basis is that this witness said he
7 was personally involved with others in the preparation of
8 the 2020 Statement of Financial Condition and I will -- if
9 you will refrain from characterizing my questions in a
10 pejorative way, I will extend you the same courtesy if and
11 when you get to the podium to question witnesses, Mr. Kise.
12 MR. KISE: But I'm still -- pejoratives aside, just
13 because he was involved in the preparation of the 2020
14 Statement of Financial Condition, there's literally hundreds
15 of properties. There's all sorts of properties. I mean,
16 the question relates to this one particular property and not
17 even that one particular property, but a particular aspect
18 of that one particular property.
19 So to say that I'm involved -- that a witness is
20 involved generally in the preparation of the Statements of
21 Financial Condition is very different than saying the
22 witness was involved specifically with respect to this asset
23 and would know specifically Mr. -- have a basis to know one
24 way or the other Mr. McConney's rationale.
25 THE COURT: Mr. Kise, I think the questions are

R. FLORES - PLAINTIFF - DIRECT(MR. AMER) Page 2769

1 perfectly appropriate. There was a basis and the witness
2 said he didn't remember, didn't know. If we're going to
3 have to go through this every time there's some -- you
4 perceive an issue with relevance, we'll be here a lot longer
5 than I think we need to be.
6 I don't want to stop you from presenting your
7 defense or questioning the plaintiff's case, but gee, save
8 it for something that matters. I don't see that this even
9 matters much less I think you're wrong on the merits. So
10 let's move on.
11 MR. AMER: Thank you, Your Honor.
12 MR. KISE: Respectfully, Your Honor, it does
13 matter. The rules matter and this witness' knowledge
14 matters. This is a highly-technical case, so all of this
15 collapsing and conflating that has been done throughout the
16 course of their case is inappropriate.
17 So I am -- respectfully, I'm not trying to take up
18 a lot of time, but I am respectfully going to have to object
19 to that. I understand the Court's position and I will just
20 make my objection and leave it there. Thank you.
21 THE COURT: Yes, the rules matter at a certain
22 point. I'm just going to say, and maybe the point is now,
23 my ruling is my ruling. I give you some leeway because you
24 know what you're doing and this is an important case and the
25 details do matter, but if I rule rather than you might just

R. FLORES - PLAINTIFF - DIRECT(MR. AMER) Page 2770

1 question whether it really matters, and "I don't know," "I
2 don't remember," "I don't think" really matters.
3 But anyway, again, a ruling is a ruling and I'll
4 give you some leeway as I have this whole trial, but let's
5 try -- both of us try to be reasonable about this, okay.
6 Let's just move on.
7 MR. AMER: Your Honor, I do have to just make a
8 simple request. In my experience, evidentiary objections
9 are very short and concise. It is the word "objection" and
10 maybe five or six words after that. I have reviewed the
11 transcripts to date and there are any number of instances
12 where Mr. Kise's evidentiary objections go on for pages in
13 the record. And then when Your Honor rules against Mr. Kise
14 and overrules the objection, it is an invitation for
15 reconsideration and we get another several pages of the same
16 objection.
17 It does three things. It interrupts the flow of
18 the examination which is unfair. It educates the witness
19 potentially which is improper, and it prolongs the trial.
20 So I'm just going to ask not for a particular ruling now,
21 but I ask that you consider whether it's now time to
22 restrict Mr. Kise when making an evidentiary objection to
23 what is the standard practice, which is very short, concise
24 statement, the word "objection," and a very quick basis of
25 what the objection is.

R. FLORES - PLAINTIFF - DIRECT(MR. AMER) Page 2771

1 THE COURT: Well --
2 MR. KISE: Most of the time, Your Honor, that's
3 exactly what happens, and then there's a colloquy about why
4 do you think -- you asked Mr. Amer how about it. You ask
5 me to explain. I mean, this is part of the give and take.
6 It is a bench trial. I'm not sure what Mr. Amer's
7 experience is and I'm not going to get into pejoratives, but
8 I have to make our record.
9 If they are now asking -- they're now asking that
10 the defense not even be allowed to make its case. They're
11 asking that the defense not be allowed to make objections.
12 They're asking that the defense not be able to make its
13 case. Why don't we just skip over the part where there is a
14 trial and just move to the ruling because that's what they
15 want to do? That's clearly what they want to do.
16 That's where they began this case from the
17 beginning. That's what they're used to in the Attorney
18 General's office, bullying people in examinations under oath
19 and now we are in open court, in an open trial, in a
20 highly-publicized case and now they're asking that the
21 lawyers not even be able to make sure arguments.
22 I think it's highly improper for them to even make
23 the request. Your Honor has done a very good job of
24 navigating and negotiating between the lawyers as to their
25 objections. They have done many similar things and so I

R. FLORES - PLAINTIFF - DIRECT(MR. AMER) Page 2772

1 would just say it is a bench trial. We'll just move on. I
2 understand the Court's direction and as always, I take it
3 under advisement.
4 THE COURT: Thank you. I won't make any such broad
5 ruling at this point.
6 Mr. Kise, obviously you're free to object, but keep
7 in mind the point about the deleterious effects of long
8 speeches, speaking objections.
9 And by the way, Mr. Amer, compared to most judges,
10 I probably do allow and actually seek more of an explanation
11 on objections. In fact, I often turn to the defense side
12 and say "what's the ground." But again, we will all try to
13 use commonsense here and let's move on.
14 MR. AMER: I appreciate, Your Honor.
15 Q Let's look at Exhibit 3214. This is an e-mail from Mr.
16 Garcia of Poer & Company to you, cc'd to Mr. Corbiciero on
17 November 13th, 2020, correct?
18 A Yes.
19 Q And you'll see that the second sentence refers to Mr.
20 Garcia getting calls from the media about the appeals for
21 Mar-A-Lago and Doral. Do you see that?
22 A Yes.
23 Q Did Poer & Company file an appeal for the 2020 tax
24 assessment for Mar-A-Lago on behalf of the Trump Organization?
25 A I don't recall.

R. FLORES - PLAINTIFF - DIRECT(MR. AMER) Page 2773

1 MR. AMER: Your Honor, I move this into evidence.
2 THE COURT: Granted.
3 (Whereupon, the Document was marked in evidence as
4 Plaintiff's Exhibit 3214.)
5 (Continued on the next page.)
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R. Flores - Plaintiff - direct (Amer) Page 2774

1 Q Let's go ahead and mark Plaintiff's Exhibit 3170.
 2 These are a series of petitions and other materials that were
 3 provided to us by the Valuation -- by the Value Adjustment
 4 Board. If you go to the second page you'll see that there is on
 5 the bottom the certification from the Board of County
 6 Commissioners and that same certification appears on the bottom
 7 of page two, the bottom of page four, the bottom of page five,
 8 the bottom of page six, and the bottom of page seven,
 9 establishing that this is the county's official records.
 10 MR. AMER: I move this into evidence, Your Honor,
 11 under the business exception -- business records exception
 12 to the hearsay rule.
 13 THE COURT: Isn't it more specific than business
 14 record exception, public document exception, something like
 15 that? Where is Mr. Robert now that we need him? He's our
 16 CPLR expert. It's in evidence. I'll just save time. Let's
 17 move on.
 18 MR. AMER: Thank you, Your Honor.
 19 THE COURT: Tell him I said so.
 20 Q Let's look at the first page of this exhibit. You'll
 21 see that this is the petition to request a hearing and you'll
 22 see that it's being filed by Mr. Corbiciero. He's the
 23 representative and it's on behalf of Mar-A-Lago Club, Inc.
 24 Do you see that?
 25 A Yes.

R. Flores - Plaintiff - direct (Amer) Page 2775

1 Q So this is the appeal that was filed, request for a
 2 hearing of the tax assessment for the 202 year; correct?
 3 A I believe so, yes.
 4 Q Did you review this petition before Mr. Corbiciero
 5 filed it with the county?
 6 A I don't believe so.
 7 Q To your knowledge did anybody review it -- anyone from
 8 the Trump Organization review it before Mr. Corbiciero filed it
 9 with the Value Adjustment Board?
 10 A I don't believe so, no.
 11 Q You don't have any reason, do you, to believe that
 12 Mr. Corbiciero would file this petition without appropriate
 13 authorization from the Trump Organization; is that right?
 14 A Correct.
 15 Q Now, if we go down to the petition you'll see -- too
 16 far -- you'll see there is a section that says "type of
 17 property." Do you see that?
 18 A Yes.
 19 Q And can you tell us the type of property Mr. Corbiciero
 20 checked for Mar-A-Lago?
 21 A Says "commercial."
 22 Q So he's in an official filing with the Valuation Board
 23 denoting Mar-A-Lago as a commercial property; correct?
 24 A Correct.
 25 Q And that's consistent with your understanding of what

R. Flores - Plaintiff - direct (Amer) Page 2776

1 Mar-A-Lago was; right? It was a commercial property being used
 2 as a social club; right?
 3 A Correct.
 4 Q And there were boxes that would have permitted
 5 Mr. Corbiciero to indicate that the property was residential;
 6 right? There is a box next to "type of property" that says "RES
 7 one to four units" and "RES five plus units;" right?
 8 A Correct.
 9 Q So he could have designated it as a residential
 10 property if he checked those boxes, but he did not; right?
 11 A That's correct.
 12 Q Okay. And so if we go to the last page of the document
 13 you'll see this is a withdrawal petition. Do you recall that
 14 the petition appealing the assessment was withdrawn?
 15 A Yes, I believe so.
 16 Q And the reason for the withdrawal if you go down a
 17 little bit there is a box checked, says "the petitioner agrees
 18 with the determination of the property appraiser or tax
 19 collector." Do you see that?
 20 A Yes.
 21 Q And so was it your understanding that the appeal was
 22 withdrawn because the Trump Organization agreed with the
 23 determination of the property appraiser?
 24 A Yes.
 25 Q And that determination was based on Mar-A-Lago being

R. Flores - Plaintiff - direct (Amer) Page 2777

1 categorized as a commercial property; correct?
 2 A Yes.
 3 Q Let's go ahead and look at Plaintiff's Exhibit 1382.
 4 You'll see the e-mail that begins in the middle of the page is
 5 from Mr. Corbiciero to you copied to Mr. Garcia dated
 6 November 17, 2021 and the subject is "Mar-A-Lago Homestead
 7 Exemption." Do you see that?
 8 A Yes.
 9 Q Now you go ahead and pass along Mr. Corbiciero's e-mail
 10 to Eric Trump and Allen Weisselberg in the e-mail above; right?
 11 A That's what the document says, yes.
 12 Q Do you recall reading Mr. Corbiciero's e-mail before
 13 you passed it on to your boss Eric Trump and Mr. Corbiciero?
 14 A No, I don't recall.
 15 Q Can we agree that you would have reviewed the e-mail
 16 before passing it along to your boss Eric Trump and
 17 Mr. Weisselberg?
 18 A Yes.
 19 Q And you ask and you tell them that they should let you
 20 know if they would like to discuss further; right?
 21 A Yes.
 22 Q So can we agree that at the time you passed along
 23 Mr. Corbiciero's e-mail about the homestead exemption you were
 24 prepared to discuss it with them if they so chose?
 25 A Yes.

R. Flores - Plaintiff - direct (Amer) Page 2778

1 MR. AMER: Your Honor, I move to admit this exhibit
2 into evidence.
3 THE COURT: Granted. It's in.
4 (Whereupon, the item previously referred to is
5 received and marked Plaintiff's Exhibit Number 3170 in
6 evidence.)
7 Q Let's look at the second sentence in this e-mail from
8 Mr. Corbiciero. He says "last year we briefly discussed the
9 possibility of filing for a homestead exemption on the
10 Mar-A-Lago property since President Donald Trump had legally
11 declared Palm Beach and the Mar-A-Lago property as his permanent
12 residence." Do you see that?
13 A Yes.
14 Q Do you have any reason to doubt that you did in fact
15 discuss this possibility with Mr. Corbiciero the prior year?
16 A No.
17 Q Let's look at the second paragraph.
18 "In order to do this Mr. Trump would have to do certain
19 things to establish residency" and I'm going to -- it says
20 "since the private club is currently owned by a corporation, the
21 property ownership would need to be changed/transferred into his
22 name as an individual and not under a corporation."
23 Do you recall being aware of that point that
24 Mr. Corbiciero was mentioning?
25 A I believe so, yes.

R. Flores - Plaintiff - direct (Amer) Page 2779

1 Q And he goes on to say "if he was to meet all these
2 requirements then the part of the property that he uses as a
3 residence would be eligible for homestead. The property
4 appraiser would need to come out and do a property inspection
5 and measure the residential area and that portion of the
6 assessment would receive the homestead exemption."
7 You understood what he was explaining to you when you
8 received this e-mail; correct?
9 A I believe so.
10 Q And let's look at the next paragraph.
11 "Currently, this property is assessed as a private club
12 with the current assessed value at \$359 per square foot. The
13 surrounding residential properties are assessed on average of
14 over 2,000 per square foot with a recent sale with just 3,000
15 per square foot. If the property appraiser were to separately
16 assess the residential portion of Mar-A-Lago in order for it to
17 qualify for homestead, we believe this would result in a much
18 higher assessment and therefore outweigh the potential tax
19 savings from the \$50,000 homestead exemption in the immediate
20 future. Please let us know if you have any questions or
21 concerns."
22 Mr. Flores, did you understand from this e-mail from
23 the company's tax advisor that Mar-A-Lago was currently assessed
24 as a private club and not a private residence?
25 A Yes.

R. Flores - Plaintiff - direct (Amer) Page 2780

1 Q And did you understand, sir, that as a result of being
2 assessed as a private club and not a private residence, it was
3 assessed at a much lower price per square foot?
4 A That's what the e-mail says. I don't recall.
5 Q And that's what you were to understand when you
6 received this e-mail and read it?
7 A Correct.
8 MR. AMER: Your Honor, the Court can check my math,
9 but based on the numbers in Mr. Corbiciero's e-mail and
10 going off of the \$3,000 per square foot figure, private
11 residences are assessed at almost eight and a half times the
12 price of a private club based on just the math and I think
13 the Court can take judicial notice of the math.
14 THE WITNESS: I'll take judicial notice subject to
15 any contradictory views.
16 Q And you understood that Mr. Corbiciero was saying it's
17 not worth the \$50,000 homestead exemption because of the
18 increase in the assessment of the residential portion of
19 Mar-A-Lago were that to be carved out and designated at a
20 private residence; right?
21 A Correct.
22 Q And that's because private residences are assessed at a
23 much higher rate than a private club; correct?
24 A That's what the --
25 MR. KISE: Objection. Foundation.

R. Flores - Plaintiff - direct (Amer) Page 2781

1 MR. AMER: He received this e-mail, Your Honor.
2 THE COURT: Let's ask. I think the question was
3 basically do you understand it that way and he says that's
4 what the e-mail says.
5 Mr. Flores, aside from the fact that's what the
6 e-mail said, is that what you understood, which is what the
7 question was?
8 THE WITNESS: I don't know.
9 Q But isn't that what you would have understood from
10 reading this e-mail?
11 A Yes, that's what this e-mail says.
12 MR. KISE: That's an entirely different question.
13 MR. AMER: I'm happy with the question I asked and
14 the answer I got.
15 THE COURT: And any objection overruled.
16 Q Did Eric Trump or Allen Weisselberg ever get back to
17 you to discuss this e-mail further?
18 A Not that I recall.
19 Q To your knowledge, did Donald J. Trump ever apply for
20 the homestead exemption?
21 A Not that I recall.
22 THE COURT: Five-minute warning.
23 Q When you participated in the preparation of the
24 Statement of Financial Condition, do you recall that Mar-A-Lago
25 continued to be valued as a private residence while being taxed

R. Flores - Plaintiff - direct (Amer) Page 2782

1 as a commercial property?
 2 A No.
 3 Q You don't know one way or the other?
 4 A No.
 5 Q We can agree that in 2020 it was being taxed as a
 6 commercial property based on what Mr. Corbiciero had designated
 7 the property as in the petition; correct?
 8 A Correct.
 9 Q You mention that your job entailed conducting financial
 10 analyses on real estate investments, including new acquisitions
 11 and development opportunities; is that right?
 12 A Correct.
 13 Q And in connection with doing that work, you were
 14 required to analyze future cash flows; correct?
 15 A Correct.
 16 Q And we've looked at some examples of discounted cash
 17 flow analyses you prepared over the years at the direction of
 18 Mr. Orowitz and Eric Trump; correct?
 19 A Correct.
 20 Q And so that is a type of analysis that is discounting
 21 cash flows to present value that you knew how to do as part of
 22 your job at the Trump Organization; right?
 23 A Yes.
 24 Q And you shared some of your discounted cash flow
 25 analyses with Mr. Weisselberg?

R. Flores - Plaintiff - direct (Amer) Page 2783

1 A Yes.
 2 Q And you shared some of your discounted cash flow
 3 analyses with Mr. McConney; correct?
 4 A Yes.
 5 MR. AMER: Let's go ahead and put up the 2020 Jeff
 6 Supporting Data spreadsheet, which is Exhibit 1352, native.
 7 If we could go to rows 311 to 316.
 8 Q You'll see that they calculate the profit for the sale
 9 of 71 mid rise units approved but put on hold and it comes to
 10 over \$90 million in 2020 and over \$86 million for 2021. Do you
 11 see that?
 12 A Yes, that's what the -- that's what the document says.
 13 Q In connection with your work on the Statement of
 14 Financial Condition were you asked to review the assumptions for
 15 the portion of the valuation of this asset that involves the
 16 sale of 71 mid rise units?
 17 A What is this asset?
 18 Q This asset is Briarcliff.
 19 A Then, no, I don't believe so.
 20 Q Did anyone ever ask for your input on whether the
 21 profit attributable to the sale of these 71 units should be
 22 discounted to present value?
 23 A No.
 24 Q Let's turn to Row 453, which begins "the valuation for
 25 the LA golf course." And if we look at Row 475 to 492 you'll

R. Flores - Plaintiff - direct (Amer) Page 2784

1 see it indicates on Row 480 23 lots are being valued at roughly
 2 \$63 million. Do you see that? Actually, it's for 2021.
 3 And if you go down to Row 490, the same 23 lots are
 4 being valued at about 53 million for 2020. Do you see that?
 5 A Yes.
 6 Q Did any of the individuals you identified as working
 7 with you on the preparation of the Statement of Financial
 8 Condition ask you to perform -- ask you to review the
 9 assumptions involved in the sale of the 23 lots for this asset?
 10 A No.
 11 Q Did any of the individuals you identified as working
 12 with you on the preparation of the Statement of Financial
 13 Condition ask you to perform a discounted cash flow analysis for
 14 the sale of these 23 lots?
 15 A No.
 16 Q Did any of them ask for your input on whether the
 17 profit from these lot sales should be discounted to present
 18 value?
 19 A Not that I recall.
 20 Q Mr. Flores, would you agree that future cash flows need
 21 to be discounted to present value?
 22 A Yes.
 23 MR. AMER: That's all I have, Your Honor.
 24 THE COURT: That's it for this witness?
 25 MR. AMER: Right on schedule.

Proceedings Page 2785

1 THE COURT: Any cross examination at this time?
 2 No? Okay. The witness is excused. I'll ask again that the
 3 defense side check in to whether Friday is a possibility as
 4 an all day under the assumption that we could finish it in
 5 one day, and we'll come back at 11:35.
 6 (Whereupon, the witness is excused from the witness
 7 stand and there is a recess in the proceedings.)
 8 THE COURT OFFICER: All rise. Part 37 is back in
 9 session. Please be seated and come to order.
 10 THE COURT: Would plaintiff like to call her,
 11 their, its next witness?
 12 MR. AMER: I do have one quick housekeeping matter.
 13 THE COURT: Okay.
 14 MR. AMER: Just about an exhibit. I showed
 15 Mr. Flores it was Exhibit 1352. That was the 2021
 16 supporting data spreadsheet. I mistakenly believe it had
 17 been admitted into evidence, but it's the Whitley Penn
 18 document that was admitted whereas the one I showed
 19 Mr. Flores was the one produced by the Trump Organization,
 20 so I think for the sake of good order we should just get the
 21 one I used with the witness admitted and, again, that's
 22 Plaintiff's Exhibit 1352.
 23 THE COURT: Granted. You'll just make sure it
 24 happens. Okay.
 25 MR. GABER: People call David Cerron.

D. Cerron - Plaintiff - direct (Gaber) Page 2786

1 THE COURT OFFICER: Witness entering.
 2 (Whereupon, the witness enters the courtroom and
 3 approaches the witness stand.)
 4 THE COURT: I thank the court officers for their
 5 alacrity.
 6 THE COURT OFFICER: Remain standing and raise your
 7 right hand.
 8 Do you solemnly swear or affirm any testimony you
 9 give will be the truth the whole truth and nothing but the
 10 truth?
 11 D A V I D C E R R O N, called by and on behalf
 12 of the Plaintiff, having been first duly sworn, was examined and
 13 testified as follows:
 14 THE WITNESS: I do.
 15 THE COURT OFFICER: Please state your name and
 16 either business or home address on the record.
 17 THE WITNESS: My name is David Cerron. Business
 18 address 830 Fifth Avenue, New York, New York 10065.
 19 THE COURT: Okay. Counselor, please proceed.
 20 DIRECT EXAMINATION
 21 BY MR. GABER:
 22 Q Good morning, Mr. Cerron. Can you please state your
 23 employer and title for the record?
 24 A My employer is the City of New York. I work for the
 25 New York City Department of Parks and Recreation. I am the

D. Cerron - Plaintiff - direct (Gaber) Page 2787

1 assistant commissioner for business development and special
 2 events.
 3 Q And until recently, New York Department of Parks and
 4 Recreation had a concession agreement with the Trump
 5 Organization; is that correct?
 6 A That's correct.
 7 Q Could you give me some of your professional background
 8 within the Parks Department, please?
 9 A Sure. I've had the privilege of working for Parks in
 10 the city for just over 21 years. I started there working in our
 11 citywide services office, so that was doing a variety of
 12 different programs with our parks enforcement; with the Green
 13 Thumb Organization, which is community gardening; with arts and
 14 antiquities, variety of different operations there.
 15 I moved -- I worked in public programs, which does all
 16 the recreation centers in the city and I had a chance to work on
 17 their after-school programming and other different events and
 18 I've worked in our transitional job programming, parks
 19 opportunity program and with the concessions team and have been
 20 there since about 2007, 2008.
 21 Q And can you tell me at a high level what your role has
 22 been as a member of Parks and Recreation with respect to the
 23 Ferry Point Golf Course?
 24 A So my role has been to work with colleagues in the
 25 concessions division on contract administration. So contract

D. Cerron - Plaintiff - direct (Gaber) Page 2788

1 administration is effectively the oversight of the terms of the
 2 contract. So we'll focus on things related to operations, you
 3 know, is the operation -- and in this case Ferry Point.
 4 Is it open to the public seven days a week; when does
 5 the day start, when does the day end; are we sure that it's
 6 being operated that time; when does the season end for most of
 7 our golf courses, effectively all of them.
 8 They have a season, so the weather has changed, but
 9 they could be open until September or October, sometimes later
 10 and then they'll kind of start a new season in the spring.
 11 We'll go over reports that are due to us. We want to
 12 make sure they have insurance. We want to make sure they're
 13 charging the right rates if rates go up, which they tend to. We
 14 want to review those rates and we have to approve them, so those
 15 sorts of things.
 16 Q And at what point in the history of the concession
 17 agreement for Trump Ferry Point did you become directly involved
 18 in the --
 19 A I became involved once the license was registered by
 20 the New York City Comptroller's Office and the agency had issued
 21 a notice to proceed. So that was when the contract commenced in
 22 I believe it was like the spring of 2015.
 23 Q Were you in the office, though, during the period when
 24 the request for offers was issued and being considered?
 25 A I was.

D. Cerron - Plaintiff - direct (Gaber) Page 2789

1 Q And did you have familiarity with that process?
 2 A I was -- you know, I was there during that process and
 3 certainly remember, you know, colleagues talking about it. I
 4 was not involved in the selection.
 5 Q Not formally involved?
 6 A Not formally involved.
 7 Q Can you describe what a request for offers is in terms
 8 of city procurement? Your understanding?
 9 A So it's an -- it's under the other procedures under the
 10 city's Franchise and Concession Review Committee rules, so
 11 that's the -- for short, the FCRC is the acronym that we use.
 12 Typically, when the city does its solicitation to have
 13 an operator provide a public service that includes fees we would
 14 use two methods: A request for proposals, an RFP, or request
 15 for bid, an RFB. Generally those are going to be the methods
 16 that we'll use. There are instances where we will use either a
 17 sole source where there is no competitive process and we go
 18 through a process instead to award it directly to one operator.
 19 We can just -- this operator is uniquely qualified to provide
 20 that service and that, you know, the deal offered to the city is
 21 sufficient for that justification.
 22 And then in other circumstances we'll go through
 23 another process. And this RFO, requests for offers, is part of
 24 the other process and to the best of my recollection this is the
 25 only time that the agency has done an RFO.

D. Cerron - Plaintiff - direct (Gaber) Page 2790

1 MR. KISE: Your Honor, just -- very briefly just so
2 we avoid interruptions. One thing I notice on the record,
3 it's f-e-r-r-y, not f-a-i-r-y. And the other is that I just
4 want to have a standing objection so we can avoid on statute
5 of limitations and relevance to this line of questioning,
6 this testimony for this witness. Thank you.
7 THE COURT: We certainly want to get the spelling
8 correct and the objections are considered standing and
9 overruled.
10 Q Can you give me some background maybe about the --
11 before we get further into the request for offers, some
12 background about the genesis of the Ferry Point Park Golf
13 Course?
14 A So the Ferry Point site, the scenario before it was a
15 golf course was a municipal landfill and this was something that
16 when I was working with the city under the Bloomberg
17 administration was a priority for the agency to convert this
18 landfill into a golf course and that was something that, you
19 know, the city had attempted to do through a private operator.
20 We had issued other RFPs and solicitations to try and achieve
21 that goal and ultimately were not able to. So the city
22 invested, you know, approximately \$120 million, I think, over
23 that in order to, you know, design and construct the golf
24 course.
25 MR. GABER: So at this point I'd like to bring up

Page 2792

1 was not a sole source, so this was the other -- and in this case
2 the other was the RFO.
3 Transcript continues on the following page....
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D. Cerron - Plaintiff - direct (Gaber) Page 2791

1 Plaintiff's Exhibit 3289 for identification.
2 Q So Mr. Cerron, there is some addition. It was publicly
3 filed in a different legal proceeding, but the document in chief
4 begins on page two of four of this exhibit and I just ask that
5 once you've had a chance to take a look at it to let me know if
6 you recognize this document.
7 A Yes. This is a pre-solicitation review, what we call a
8 PSR, and this is part of the documentation that we have to
9 submit to the mayor's office of contract services before we can
10 formally issue a solicitation, in this case, the RFO.
11 MR. GABER: I'd ask this be moved into evidence.
12 THE COURT: Granted. It's in.
13 MS. HERNANDEZ: Objection. Statute of limitations.
14 THE COURT: Standing objection overruled. It's
15 understood.
16 (Whereupon, the item previously referred to is
17 received and marked Plaintiff's Exhibit Number 3289 in
18 evidence.)
19 Q And Mr. Cerron, could I ask you to describe your
20 understanding from this document of the selection procedure
21 that's being outlined here?
22 A So, the selection procedure is along the lines of what
23 we had just discussed a few minutes ago. It is neither a
24 competitive sealed bid, which is an RFB or competitive sealed
25 proposal, which is an RFP. We did a different procedure that

D. CERRON - PLAINTIFF - DIRECT(MR. GABER) Page 2793

1 Q So this would be followed by your request for offers?
2 A Correct.
3 MR. GABER: I ask to bring up Plaintiff's 3290 for
4 identification.
5 Q Again Mr. Cerron, once you've had a chance to review
6 this document, can you, please, tell me if you recognize this
7 document?
8 A This is the RFO document that was issued after the
9 approval of the PSR that we just discussed.
10 MR. GABER: I'd ask this be moved into evidence.
11 MS. HERNANDEZ: Objection. Statute of limitations.
12 THE COURT: Overruled. It's in.
13 (Whereupon, the Document was marked in evidence as
14 Plaintiff's Exhibit 3290.)
15 Q Mr. Cerron, I'd like to direct your attention on page
16 two of this document, the underlined header, "Goals for Request
17 for Offers." Starting at the end of the second line, "Parks is
18 seeking innovative offers from entities that can demonstrate
19 substantial experience in the operation of golf courses and
20 management of large scale events and significant financial
21 capability to operate and maintain this concession at the
22 highest level."
23 So can you, I suppose, tell me your understanding of
24 the goals of this RFO based on this language here?
25 A Yeah. The agency was seeking an operator that had

D. CERRON - PLAINTIFF - DIRECT(MR. GABER) Page 2794

1 experience and I think that can be interpreted in a few ways,
 2 but mainly operation of a golf course and a golf course that had
 3 hosted, you know, major tournaments from the PGA or LPGA and
 4 then have an entity that has the financial wherewithal to ensure
 5 that the course is maintained at a high level and also any other
 6 capital work that would be necessary.

7 Q Can you turn to page 3 of 8 under, "Content of offers,"
 8 item number five, it says, "Financial capability, including
 9 financial statements and other supporting documentation of the
 10 responder's financial worth."
 11 Is that what you were just referring to I think in
 12 terms of the wherewithal to operate the concession?
 13 A Yes.
 14 Q And then moving forward to page seven of the document,
 15 and we'll go between seven and eight. So there's here, it
 16 discusses scoring, I believe in the document, of the offers that
 17 are received; is that correct?
 18 A If you could scroll I guess -- scroll down a little,
 19 so I can -- or the other way. Sorry. Okay. "The conditions
 20 based on the following criteria," is that the --
 21 Q Yes, "conditions based on the following criteria." Do
 22 you understand that to be the criteria on which offers would be
 23 scored?
 24 A Yes.
 25 Q And you see there it says, "Financial ranking, ten

D. CERRON - PLAINTIFF - DIRECT(MR. GABER) Page 2795

1 percent financial capability." Can you, I guess, provide your
 2 understanding of how financial capability would be scored in a
 3 request for offer such as this?
 4 A So this is -- this is a category that, you know, we
 5 would look for documentation verifying someone's finances to
 6 move forward with the commitments that they're making in their
 7 offer.
 8 You know, there's a number of different documents that
 9 we would -- could review depending on what someone provides.
 10 It could be tax returns. It could be bank statements. It could
 11 be financial statements. It could be attestation letters. It
 12 is a variety of different things.
 13 Q I think you said this a little bit before, but can you
 14 explain Parks' interest in ensuring that an offerer has
 15 sufficient financial capability?
 16 A Well, I think generally for any project that we want to
 17 do, we want to work with someone that we're sure has the money
 18 or the financing to be able to deliver on what will be
 19 obligations under the contract and I think specifically given
 20 this -- the history of this course and the fact that we ended
 21 up doing an RFO, I think the city was even more focused because
 22 this was a tough one to get -- to get accomplished and to
 23 actually complete.
 24 Q Can you elaborate what you mean by "tough one to
 25 accomplish"?

D. CERRON - PLAINTIFF - DIRECT(MR. GABER) Page 2796

1 A As I mentioned, we had tried a handful of times through
 2 an RFP to find an operator for this course and to have someone
 3 else perhaps help with the construction or do the construction.
 4 The city ended up investigating over \$120 million and there was
 5 a certainly a sense of importance placed on making sure that
 6 this course was open and available to the public. And in doing
 7 so, we wanted to be sure that whoever we had operating the
 8 course had the financial capability to deliver on their
 9 obligations including making sure the course was operating and
 10 working every day.
 11 Q Do you have a sense of how many offers were submitted
 12 in response to this RFO?
 13 A My recollection is that there were four offers.
 14 MR. GABER: I'm going to now pass up PX 1331 for
 15 identification.
 16 Q Mr. Cerron, please let me know if you recognize this
 17 document once you've had a chance to read it.
 18 (Witness reviewing document.)
 19 A This is the response to the RFO from the Trump
 20 Organization.
 21 MR. GABER: I'd ask this document be moved into
 22 evidence.
 23 MS. HERNANDEZ: Objection. Statute of limitations.
 24 THE COURT: Overruled. It is in evidence.
 25 (Whereupon, the Document was marked in evidence as

D. CERRON - PLAINTIFF - DIRECT(MR. GABER) Page 2797

1 Plaintiff's Exhibit 1331.)
 2 Q Mr. Cerron, if I could point you to page four of this
 3 document, heading "F, financial capability." It says, "We have
 4 enclosed a statement from the certified public accounting firm
 5 of Weiser, L.L.P. indicating a net worth in excess of \$3 billion
 6 and cash on hand in excess of \$200 million. As such, we will
 7 easily be able to meet any and all financial obligations under
 8 this contract."
 9 Just to move to page seven of the document, there's a
 10 letter here from Weiser L.L.P. that I think says substantially
 11 the same. So Mr. Cerron, is this the type of documentation of
 12 financial capability that the city would use in considering
 13 offers submitted to it?
 14 A Yes.
 15 Q And the city did consider this letter in reviewing the
 16 request for offers?
 17 A I believe so.
 18 MS. HERNANDEZ: Objection; foundation.
 19 THE COURT: Do you want him to ask if he knows?
 20 MS. HERNANDEZ: He already testified that he was
 21 not involved in the bid process.
 22 MR. GABER: I believe he testified that he was not
 23 formally involved, but he had an understanding of process
 24 both generally as a Parks employee familiarity, but also
 25 specifically in discussions with colleagues. I can ask him

D. CERRON - PLAINTIFF - DIRECT(MR. GABER) Page 2798

1 what his understanding is or if he knows whether --
 2 THE COURT: Let's start with does he know and then
 3 what is his understanding.
 4 Q Mr. Cerron, do you know if this document was considered
 5 as part of the offer from the Trump Organization?
 6 A I believe it was.
 7 MR. GABER: At this time, I'd like to hand up this
 8 document Plaintiff's Exhibit 3291. It is entitled,
 9 "Recommendation for Award of Concession Agreement,
 10 Responsibility Determination."
 11 Q Mr. Cerron, let me know if you recognize this document,
 12 please.
 13 A Yes, I recognize it.
 14 Q What is this document?
 15 A This is the request for award. This is what we refer
 16 to as an RFA and this is part of the documentation that we have
 17 to provide to the mayor's office of contract services to
 18 formalize the award of a license agreement.
 19 Q So if you look there, there's a box here. It says,
 20 "This is to certify that I have determined that the subject
 21 concessionaire has the capability in all respects to perform
 22 fully the concession requirements and the business integrity to
 23 justify the private use of city-owned property and is,
 24 therefore, responsible." And it appears to be signed by
 25 Elizabeth W. Smith, Assistant Commissioner for Revenue and

D. CERRON - PLAINTIFF - DIRECT(MR. GABER) Page 2799

1 Marketing.
 2 So Mr. Cerron, does this certification mean that NYC
 3 Parks is recommending that Trump Ferry Point, LLC be awarded the
 4 concession?
 5 A Yes.
 6 Q So if we go down to the second -- page three of the
 7 document, under the header, "Financial Resources, Adequate and
 8 Accounting Procedures", the document says here, "Trump has
 9 provided Parks with documentation from WeiserMazars, LLP,
 10 certified public accountants, stating that Donald J. Trump, the
 11 president of Trump, has a substantial net worth and cash
 12 position as set forth in Exhibit V to the concession agreement.
 13 There is also a personal guaranty from Donald J. Trump regarding
 14 payment obligations and the completion of capital improvements.
 15 Trump's offer includes setting aside three percent of gross
 16 receipts towards a capital reserve fund in years 5 through 12
 17 and two percent in years 13 through 15 of the term of the
 18 concession agreement."
 19 Mr. Cerron, can you explain your understanding of this
 20 paragraph here and how it relates to the recommendation?
 21 A So this part of the -- this part of recommendation is
 22 kind of just verifying to the mayor's office that we believe
 23 that this elected operator has the financial resources, the
 24 wherewithal and organization to competently run this concession.
 25 Q Could I ask you why did the city need to see, I guess,

D. CERRON - PLAINTIFF - DIRECT(MR. GABER) Page 2800

1 a demonstration of assets of Donald J. Trump in order to grant
 2 the concession to Trump Ferry Point, LLC?
 3 A I mean, in terms of why they needed to see it, this was
 4 part of the financial capability section. And as I had
 5 mentioned, this was a course that the city wanted to open for
 6 quite some time and we wanted to be sure as we would always that
 7 the operator in place had the funds to deliver on their
 8 obligations under the license.
 9 Q I think -- let me rephrase my question. The
 10 concessionaire here formally is Trump Ferry Point, LLC. The
 11 paragraph here is referring to the net worth and cash position
 12 of Donald J. Trump personally.
 13 Do you understand why the recommendation for award here
 14 is interested in Mr. Trump's personal financial position and not
 15 that of the entity?
 16 A Well, in his personal position, it relates to the
 17 personal guaranty from Mr. Trump, which was to
 18 I think -- again, very important and helpful in helping the
 19 city feel comfortable that all of the obligations were indeed
 20 going to be met.
 21 Q The next two headers, I just like to briefly ask you
 22 about. They are "business integrity" and "other sources of
 23 responsibility information." Can you just to a high explain
 24 what these categories refer to?
 25 A This is -- this is a section where the agency will

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1 look for adverse information. So are there outstanding tax
 2 liens due to the state, due to the city? Are there outstanding
 3 lawsuits going back to a certain period of time? Are there
 4 other kind of like, you know, workplace violations or other
 5 issues that are available on any databases that we would need to
 6 identify and discuss before moving forward with an award.
 7 Q So going back to the certification at the -- on page
 8 two of this document, at the top of the recommendation, is
 9 that -- are those two sections we just looked at responding to,
 10 I guess, the discussion of business integrity to justify the
 11 private use of city-owned property and is, therefore,
 12 responsible. That's what's being --
 13 A Yes.
 14 Q -- analyzed there?
 15 A Yes.
 16 Q And so business integrity and responsibility of a
 17 concessionaire are important to the city?
 18 A Yes.
 19 Q So was it important in recommending the award for Parks
 20 & Recreation to receive truthful, accurate and complete
 21 information from offerers?
 22 A Yes.
 23 Q Based on the submissions here, the offer that we just
 24 looked at and the additional determinations described in the
 25 recommendation for award, did the city and the Department of

D. CERRON - PLAINTIFF - DIRECT(MR. GABER) Page 2802

1 Parks & Recreation believe that it was receiving truthful,
 2 accurate and complete information from the offerers?
 3 A Yes.
 4 Q I'm going to hand you a very voluminous exhibit marked
 5 Defendant's 981. Let me know if you recognize this document.
 6 A This is the license agreement between Trump Ferry
 7 Point, LLC and the City of New York.
 8 MR. GABER: I'd ask that this be moved in evidence.
 9 THE COURT: Granted. It is in.
 10 MS. HERNANDEZ: Objection; statute of limitations.
 11 THE COURT: You really don't have to do that every
 12 time. It is a standing objection, if that phrase means
 13 anything.
 14 Go ahead, Mr. Kise.
 15 MR. KISE: As to the testimony, the standing
 16 objection, but the documents, we need to object one by one
 17 like we've been doing throughout the trial.
 18 THE COURT: Why is that? Don't the documents
 19 always or almost always have the date of them?
 20 MR. KISE: Again, I mean, we -- not to belabor it,
 21 but our research has concluded that there's no standing
 22 objection with respect to documents, but with respect to
 23 testimony, yes, but with respect to document by document,
 24 no.
 25 THE COURT: Well, Cliff isn't here, so we can't

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1 consult him, but I'll assume -- I'll let you do whatever
 2 you need to do, okay.
 3 (Whereupon, the Document was marked in evidence as
 4 Plaintiff's Exhibit 981.)
 5 MR. GABER: I realize I may not have admitted
 6 Plaintiff's 3291. I move to admit 3291, plaintiff's.
 7 MS. HERNANDEZ: Objection. Statute of limitations.
 8 THE COURT: Overruled. It is in.
 9 (Whereupon, the Document was marked in evidence as
 10 Plaintiff's Exhibit 3291.)
 11 Q Can I just quickly -- I just want to direct your
 12 attention to pages 103 and 104 of this document. Just to
 13 confirm that this is a signed version of a license, so this
 14 would be the final agreement between the city or Parks &
 15 Recreation and Trump Ferry Point, LLC?
 16 A Yes.
 17 Q With respect to the trees that went into printing this
 18 out, I'm going to move on to Plaintiff's Exhibit 3283. Let me
 19 know if you recognize this document, Mr. Cerron.
 20 A Yes. This is the personal guaranty made by Mr. Trump.
 21 Q Is it your understanding that this personal guaranty
 22 was a condition of the license that we just looked at?
 23 A Yes.
 24 Q If you look, Mr. Cerron, at page eight and nine of this
 25 document, you'll see that it is signed by Donald J. Trump as

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1 guarantor and then there is the signature of Ms. Smith, the
 2 Assistant Commissioner of Revenue, correct?
 3 A Correct.
 4 Q So I'd like to draw your attention, Mr. Cerron, to page
 5 three of this document; heading four there, "Financial
 6 Covenants." Well, actually before that, can you just explain
 7 your understanding of this guaranty, the personal guaranty here
 8 as it relates to what we have been discussing, financial
 9 capability and Ferry Point license.
 10 A Just generally, that it is -- it's a guaranty to meet
 11 the financial obligations of the license. So effectively, that
 12 was the biggest part of the obligation was the clubhouse and the
 13 concessionaire was obligated to design and construct clubhouse
 14 for the golf course and that would also host catered events in
 15 the amount minimum of \$10 million.
 16 Q So the city or Parks & Recreation asked for a guaranty
 17 in order to ensure that the concessionaire would meet those
 18 obligations?
 19 A Correct.
 20 Q And so under Section A here of heading four, it says,
 21 "Until the guaranteed obligations are released or terminated,
 22 within 120 days of the end of each calendar year, guarantor
 23 shall be required to furnish Parks with a letter from
 24 guarantor's accountant stating that there has been no material
 25 adverse change in guarantor's net worth (such letter a "No MAC"

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1 letter)."
 2 Can you explain the purpose of these "No MAC" letters
 3 on an ongoing basis?
 4 A That it was an annual letter that was to be sent to the
 5 city to just reaffirm that the initial financial statements that
 6 were shared with the city during the award process were in
 7 material respects the same.
 8 Q And would you expect those letters to be true, complete
 9 and accurate?
 10 A Yes.
 11 Q Would submission of false or fraudulent information in
 12 those "No MAC" letters be a matter of concern to Parks?
 13 A Yes.
 14 Q Can you elaborate on that, what type of concern would
 15 be raised?
 16 A I think, you know, for -- I guess the first concern
 17 would be our questioning of whether or not the financial
 18 obligations under the license could continue to be met. And
 19 then I think the second concern would be if this was not
 20 accurate, are there other documents, other reports that were
 21 provided to the city that were also not accurate.
 22 Q As a general matter, does Parks & Recreation have
 23 procedures or mechanisms in place for reporting suspected or
 24 actual false or fraudulent submissions if you know about them?
 25 A If we become aware of something that was reported

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1 falsely, yes. Generally, that's a matter we would refer to our
2 counsel's office and then potentially to the city's department
3 of investigation.
4 Q So, Mr. Cerron, I'm just going to ask you before I let
5 you -- before I'm concluded to just take a look at a number of
6 documents and tell me if you recognize them. They're going to
7 look substantially similar. This is Plaintiff's 3282. It is a
8 letter from WeiserMazars dated December 21, 2011. Just let me
9 know if you recognize this document, Mr. Cerron.
10 this is -- this is an e-mail and then starting on page two is
11 the letter. I'm sorry. It is an e-mail with an attached
12 letter.
13 A This is one of the "No MAC" letters that were
14 referenced in the personal guaranty that you just had up.
15 Q Okay.
16 MR. GABER: I'd ask that this be moved into
17 evidence.
18 MS. HERNANDEZ: Objection. Statute of limitations
19 and foundation.
20 THE COURT: Overruled on statute of limitations.
21 What's the foundation?
22 MR. GABER: The foundation is -- I can ask a
23 question just to --
24 THE COURT: Sure.
25 Q Mr. Cerron, is it your understanding that this letter,

D. CERRON - PLAINTIFF - DIRECT(MR. GABER) Page 2807

1 which I believe you yourself said is the "No MAC" letter, was
2 submitted to the city?
3 A Yes.
4 MR. GABER: I move to admit it.
5 MS. HERNANDEZ: Objection, Your Honor. He
6 testified he doesn't recognize the first page of the
7 exhibit, only the second page.
8 MR. GABER: It was produced as a family with the
9 cover e-mail that's an internal Trump Org document. I'm
10 happy to admit only as to the letter at this time just to
11 obviate.
12 THE COURT: Okay. Then that's what we will do.
13 Just submit it as to the letter.
14 MR. GABER: Although, I will note that the e-mail
15 is from Mr. McConney and so to the extent that it's a party
16 admission, perhaps we just seek to have it admitted for all
17 purposes at this point and Mr. Cerron is only testifying as
18 to his knowledge.
19 THE COURT: It is admitted all pages for all
20 purposes.
21 MR. GABER: Once again, I think I need to admit
22 3283 the previous exhibit as well into evidence.
23 THE COURT: Sorry. Say it again.
24 MR. GABER: 3283, I may not have moved that in
25 formally. It is the previous.

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1 THE COURT: All in for all evidence for all
2 purposes.
3 (Whereupon, the Documents were marked in evidence
4 as Plaintiff's Exhibits 3282 & 3283.)
5 MS. HERNANDEZ: Just note our objection. Statute
6 of limitations.
7 THE COURT: Overruled.
8 Q Mr. Cerron, first paragraph here, the last sentence
9 refers to -- well, let me start with the whole first paragraph.
10 "We are the accountants for Mr. Donald J. Trump and have
11 previously compiled his Statement of Financial Condition as of
12 June 30, 2011 as indicated in our accountant's compilation
13 report dated October 6, 2011. This compiled financial statement
14 showed a net worth in excess of \$4 billion and cash and
15 marketable securities in excess of \$250 million."
16 So Mr. Cerron, would the city expect that
17 representation to be true, complete and accurate?
18 A Yes.
19 MR. GABER: I would now move on to Plaintiff's
20 Exhibit 3286 for identification.
21 Q Do you recognize this document, Mr. Cerron?
22 A Yes.
23 Q Can you tell me what it is?
24 A This was -- this was a proposal from the
25 concessionaire at the time to extend, if memory serves, the 18th

D. CERRON - PLAINTIFF - DIRECT(MR. GABER) Page 2809

1 hole and perhaps the 17th hole into what is now a passive
2 waterfront park that is approximately 19.5 acres.
3 Q And this was sent to the Department of Parks &
4 Recreation?
5 A Yes.
6 Q I direct your attention to page seven of this document.
7 Section F there, "financial capability." "We have enclosed as
8 attachment F a statement from the certified public accounting
9 firm of Weiser, LLP indicating a net worth in excess of
10 approximately \$5 billion and cash on hand in excess of
11 \$330 million. As such, we will easily be able to meet any and
12 all financial obligations under this extension proposal" and
13 then it is signed at the bottom there, "Donald J. Trump."
14 MR. GABER: I'd ask this be moved into evidence.
15 MS. HERNANDEZ: Objection, Your Honor; relevance,
16 statute of limitations and beyond the proffer that we
17 received for this witness.
18 THE COURT: Would you have done anything
19 differently if you had received their proffer in the sense
20 that it is now being offered?
21 MS. HERNANDEZ: Yes, Your Honor. We had a
22 deposition on Monday, last Monday of this witness. We would
23 have asked more questions. That was the intention of the
24 proffer.
25 MR. GABER: How is this beyond the proffer? I

D. CERRON - PLAINTIFF - DIRECT(MR. GABER) Page 2810

1 believe that we had a pretty broad proffer related to the
2 "No MAC" letters and the maintenance and administration of
3 the --
4 MS. HERNANDEZ: This was a proposal for extension,
5 so it doesn't relate to the maintenance of the Ferry Point
6 property.
7 MR. GABER: But it does contain a letter from
8 Mazars and it reflects the -- contains a letter from Mazars
9 which reflects the financial capability of the guarantor.
10 MS. HERNANDEZ: The proffer doesn't specifically
11 mention the WeiserMazars letters. It is a little bit
12 different. I don't know how much of this we want to get
13 into in front of the witness, but this is beyond the scope
14 of the proffer we received.
15 THE COURT: Was it beyond the scope of the proffer?
16 MR. GABER: We don't believe so.
17 THE COURT: I don't think so either. Overruled on
18 all three grounds. So it is in for -- the document is in
19 for all purposes. Signed by -- apparently signed by Donald
20 J. Trump.
21 (Whereupon, the Document was marked in evidence as
22 Plaintiff's Exhibit 3286.)
23 Q So I would just like to have you look at page 21 of the
24 document now, Mr. Cerron. This is a letter from WeiserMazars,
25 LLP dated October 29, 2013. It is addressed to Ms. Smith, the

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1 assistant commissioner of revenue again. It says, "Dear, Ms.
2 Smith. We are the accountants for Mr. Donald J. Trump and have
3 previously compiled his Statement of Financial Condition as of
4 June 30, 2013. As indicated in our accountants' compilation
5 report dated October 28, 2013, this compiled financial statement
6 showed a net worth in excess of \$4,900,000,000 and cash and
7 marketable securities in excess of \$330 million."
8 Mr. Cerron, would the city expect this to be true,
9 complete and accurate representation?
10 A Yes.
11 (Continued on the next page.)
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D. Cerron - Plaintiff - direct (Gaber) Page 2812

1 Q I'd like to now hand the witness Plaintiff's
2 Exhibit 3284 for identification. Again, this was produced as a
3 family with a cover e-mail, but I'm only going to be asking the
4 witness about page three of three here.
5 Do you recognize this letter dated March 28, 2016 from
6 WeizerMazars LLP, Mr. Cerron?
7 A Yes.
8 Q What do you recognize this to be?
9 A A No Mac letter.
10 Q For what year?
11 A For the year ending December 31, 2015.
12 Q Okay. Thank you.
13 So this letter states in the second paragraph:
14 "While we have not reviewed computations of value since
15 the aforementioned June 30, 2015 financial statement, based on
16 discussions with Mr. Trump and his advisors, we are not aware of
17 any matters that would indicate a significant change in
18 Mr. Trump's net worth as of this date or as of December 31,
19 2015."
20 Mr. Cerron, the city expects this to be true, complete
21 and accurate as to the representations in this letter?
22 A Yes.
23 THE COURT: I'll ask the witness to speak a little
24 louder and closer to the microphone, directly in.
25 THE WITNESS: Sorry. Yes.

D. Cerron - Plaintiff - direct (Gaber) Page 2813

1 THE COURT: Much better.
2 MR. GABER: Does it to every witness.
3 THE COURT: And usually much earlier, right?
4 MR. GABER: And I'd like to move this into
5 evidence, Plaintiff's Exhibit 3284.
6 THE COURT: Granted. It's in evidence.
7 (Whereupon, the item previously referred to is
8 received and marked Plaintiff's Exhibit Number 3284 in
9 evidence.)
10 MS. HERNANDEZ: Sorry. Objection also they're only
11 showing the third page of a three-page exhibit. The first
12 two pages he does not have knowledge of and there is no
13 foundation to admit those.
14 MR. GABER: I said I'm only showing him the third
15 page and that there is an e-mail there that at this point
16 I'm only admitting it as to the --
17 THE COURT: The third page. Okay. So it's only as
18 to the third page.
19 Q So Mr. Cerron, I'm going to hand you Plaintiff's
20 Exhibit 3285, and again, this was produced as a family, so I'm
21 only going to be making reference to page two of two of this
22 document at this time.
23 Do you recognize this document, Mr. Cerron?
24 A Yes. This is a No Mac.
25 Q I don't think we -- so Mr. Cerron, do you know what

D. Cerron - Plaintiff - direct (Gaber) Page 2814

1 year this No Mac letter is for?
 2 A Just a moment. I believe this is for June 30, 2016.
 3 Q The 2016 calendar year?
 4 A Or I believe if they have a financial year that ends
 5 June 30th.
 6 MR. GABER: Okay. So the second paragraph here,
 7 I'd ask that this letter, page two, be moved into evidence.
 8 THE COURT: You ask that it be admitted into
 9 evidence? Granted. It's in evidence.
 10 (Whereupon, the item previously referred to is
 11 received and marked Plaintiff's Exhibit Number 3285 in
 12 evidence.)
 13 Q This paragraph, second paragraph here, says, "While we
 14 have not reviewed computations of value since the aforementioned
 15 June 30, 2016 financial statement, based on discussions with the
 16 trustees of the Donald J. Trump Revocable Trust dated April 7,
 17 2014, as amended, and their advisors, we are not aware of any
 18 matters that would indicate a significant change in Mr. Trump's
 19 net worth as of this date."
 20 Mr. Cerron, would the Department of Parks and
 21 Recreation expect this representation to be true, complete and
 22 accurate?
 23 A Yes.
 24 Q I'm now going to hand you Plaintiff's Exhibit 3280 for
 25 identification. Again, this was produced with a transmittal

D. Cerron - Plaintiff - direct (Gaber) Page 2815

1 e-mail, so I'm only going to ask you to look at page two of two.
 2 Do you recognize this document, Mr. Cerron?
 3 A Yes. This is a No Mac letter for the year ending
 4 June 30, 2017.
 5 Q This contains similar language in the second full
 6 paragraph as to the last letter I read.
 7 MR. GABER: The -- first, I'd ask this be moved
 8 into evidence -- admitted into evidence.
 9 THE COURT: Quick learner. Yes, granted. It's in
 10 evidence over an objection.
 11 MS. HERNANDEZ: Just the second page?
 12 THE COURT: Yes, just the second page.
 13 (Whereupon, the item previously referred to is
 14 received and marked Plaintiff's Exhibit Number 3280 in
 15 evidence.)
 16 Q And so this is -- I believe this is the same language
 17 as in the previous letter we read; is that correct? Same or
 18 substantially the same?
 19 A It seems so, yes.
 20 Q And would the City and/or Department of Parks and
 21 Recreation expect this representation to be true, complete and
 22 accurate?
 23 A Yes.
 24 Q I'd like to hand the witness Plaintiff's Exhibit 3281
 25 for identification.

D. Cerron - Plaintiff - direct (Gaber) Page 2816

1 Do you recognize this document, Mr. Cerron?
 2 A Yes. This is a No Mac letter for the year ending
 3 June 30, 2020.
 4 MR. GABER: I'd ask that this be admitted into
 5 evidence.
 6 THE COURT: Granted. It's in. Can't object on
 7 statute of limitations grounds.
 8 MS. HERNANDEZ: No objection.
 9 (Whereupon, the item previously referred to is
 10 received and marked Plaintiff's Exhibit Number 3281 in
 11 evidence.)
 12 Q So here, this is substantially similar to what we've
 13 read. I'll note that the last sentence of the last paragraph
 14 says that this compiled financial statement showed a net worth
 15 in excess of \$3 billion in cash and cash equivalents in excess
 16 of \$90 million.
 17 Mr. Cerron, would the Department of Parks and
 18 Recreation expect the representations in this letter to be true,
 19 complete and accurate?
 20 A Yes.
 21 MR. GABER: I believe I have no further questions
 22 for the witness. Is this in evidence?
 23 THE COURT: It's in.
 24 Will there be any cross examination?
 25 MS. HERNANDEZ: Yes, Your Honor.

D. Cerron - Plaintiff - direct (Gaber) Page 2817

1 THE COURT: I look forward to it.
 2 You know, before you start I have a few quick
 3 questions. I won't disturb your situation.
 4 You described the property before it became a golf
 5 course as landfill; correct?
 6 THE WITNESS: Correct.
 7 THE COURT: And can you in one or two sentences
 8 describe what material was there? What was the fill?
 9 THE WITNESS: Municipal waste, people's garbage.
 10 THE COURT: Yes. It was what we would call a
 11 garbage dump as I remember it from many, many years ago,
 12 which might have made turning it into a golf course
 13 difficult if it was just grass or sod or something.
 14 Anyway, okay. Cross examination. Let's begin.
 15 MS. HERNANDEZ: Your Honor, for the record, my name
 16 is Jennifer Hernandez on behalf of the various corporate
 17 defendants, our first time officially meeting.
 18 THE COURT: Welcome to Room 300.
 19 MS. HERNANDEZ: Thank you.
 20 CROSS EXAMINATION
 21 BY MS. HERNANDEZ:
 22 Q So Mr. Cerron, you were not involved in the award
 23 process to Trump Ferry Point LLC for the Ferry Point property?
 24 A Correct.
 25 Q And you only later became involved in the

D. Cerron - Plaintiff - cross (Hernandez) Page 2818

1 administration of the license when the license was entered into
 2 between Trump Ferry Point LLC and the city?
 3 A Correct.
 4 Q And you are aware that the award to Trump Ferry Point
 5 was made pursuant to a request for offers process; correct?
 6 A Correct.
 7 Q And that is different from the request for proposal or
 8 request for bid process; correct?
 9 A Correct.
 10 Q And in your experience with Parks this is the only time
 11 you are aware of a request for offers being utilized in the
 12 concessions division for an award process; correct?
 13 A Correct.
 14 Q And so we're going to now pull up PX 3290, which has
 15 already been admitted into evidence. And can you go to the next
 16 page?
 17 And this is the request for offers that you took a look
 18 at earlier today; correct, Mr. Cerron?
 19 A Correct.
 20 Q And if we could go to page seven? And right there in
 21 the middle of the page, you see that it says "Selection
 22 Committee will evaluate the resulting concession offers and will
 23 select or award the entity that proposes the best overall terms
 24 and conditions based on the following criteria." Do you see
 25 that?

D. Cerron - Plaintiff - cross (Hernandez) Page 2819

1 A Yes.
 2 Q And this selection criteria, similar criterias used in
 3 a request for proposal process; correct?
 4 A Correct.
 5 Q And the bulk of the criteria here, 60 percent of it was
 6 based on the planned operations and operating experience;
 7 correct?
 8 A Correct.
 9 Q And then 15 percent was for the investment and design
 10 submitted?
 11 A Correct.
 12 Q 15 percent was for the compensation to the city?
 13 A Correct.
 14 Q And then ten percent was for the financial capability
 15 of the offer; correct?
 16 A Correct.
 17 Q And that is the lowest percentage of the selection
 18 criteria; correct?
 19 A Correct.
 20 Q It had the highest importance to the Selection
 21 Committee; correct? Sorry. Excuse me. The lowest importance
 22 to the Selection Committee; correct?
 23 A This was weighted the lowest.
 24 Q And from your experience with the selection criteria in
 25 the request for proposal context the Selection Committee scores

D. Cerron - Plaintiff - cross (Hernandez) Page 2820

1 in accordance with this criteria; correct?
 2 A Correct.
 3 Q Thank you.
 4 MS. HERNANDEZ: And so we're going to now move to
 5 PX 3291, which I think it's already been admitted. And so
 6 we could go -- could you go to the next page, Nate?
 7 Q And so this is the recommendation -- this is the
 8 recommendation for -- award for the Trump Ferry Point -- for
 9 Trump Ferry Point LLC; correct?
 10 A Correct.
 11 Q And if we can go to the bottom of this page, this is a
 12 the technical qualification section; correct?
 13 A Correct.
 14 Q And as we saw in the request for offers, the operating
 15 experience of the offer was 30 percent of the selection
 16 criteria; correct?
 17 A Correct.
 18 Q And this technical qualification section generally
 19 explains why the agency moved forward with an operator; correct?
 20 A This is part of why the agency moved forward with the
 21 operator, correct.
 22 Q And that is the experience of the operator in running
 23 high-end golf courses; correct?
 24 A Correct.
 25 Q And here, the operator, just to be clear, is Trump

D. Cerron - Plaintiff - cross (Hernandez) Page 2821

1 Ferry Point LLC; correct?
 2 A Yes.
 3 MS. HERNANDEZ: And so if we could move to the next
 4 page right where it says "financial resources."
 5 Q And the financial resources section here is meant to
 6 provide as much assurance to Parks as possible that the operator
 7 is able to meet the financial commitments under the license;
 8 correct?
 9 A Correct.
 10 Q And for this section I believe you testified there is
 11 no one-size-fits-all requirement for the type of financial
 12 information required?
 13 A Correct.
 14 Q Concessionaire to provide a tax return, a bank
 15 statement or other documentation to provide financial
 16 information to Parks; correct?
 17 A Correct, the committee that is reviewing these
 18 documents collectively has to decide that they're comfortable
 19 with what's been submitted.
 20 Q And you were not involved in that committee; correct?
 21 A Correct.
 22 Q And so if we could move -- well -- and parties after
 23 this recommendation entered into a license agreement; correct?
 24 A Correct.
 25 MS. HERNANDEZ: And so if we could move to D 981,

D. Cerron - Plaintiff - cross (Hernandez) Page 2822

1 which is already in evidence.
 2 Q And this is the license agreement between Trump Ferry
 3 Point LLC and the City of New York Department of Parks and
 4 Recreation; correct?
 5 A Correct.
 6 Q And it's for the operation management and maintenance
 7 of an "18 hole Jack Nicklaus signature golf course, lighted
 8 driving range and ancillary facilities and the design
 9 construction operation management and maintenance of a permanent
 10 clubhouse at Ferry Point Park;" correct?
 11 A Correct.
 12 Q And we're going to go to page 52 of the License
 13 Agreement. 52, sorry, right. Thank you.
 14 This is the capital improvements portion of the License
 15 Agreement; correct?
 16 A Correct.
 17 Q And here it says: "Licensee shall during the term at
 18 its sole cost and expense perform and complete all costs to be
 19 performed and completed the capital improvements described
 20 conceptually on the schedule capital improvements annexed to" --
 21 "annexed hereto as Exhibit F."
 22 And if we move forward a little bit, "licensee shall
 23 spend or cause to be expended capital improvements costs of at
 24 least ten million dollars;" correct?
 25 A Yes.

D. Cerron - Plaintiff - cross (Hernandez) Page 2823

1 Q And so under this section the licensee is Trump Ferry
 2 Point LLC; correct?
 3 A Correct.
 4 Q And the most relevant element of the required capital
 5 improvement was the clubhouse; correct?
 6 A Correct.
 7 Q And so Trump Ferry Point LLC agreed to spend at least
 8 \$10 million to construct the clubhouse and any other capital
 9 improvements; correct?
 10 A Correct.
 11 Q And did Trump Ferry Point spend at least \$10 million on
 12 those capital improvements?
 13 A Yes.
 14 Q In fact, Trump Ferry Point LLC spent more than
 15 \$10 million on the capital improvements; correct?
 16 A Yes.
 17 Q And so we're going to go to page 319 of this exhibit
 18 now and so this is Exhibit 5, the Guaranty Agreement; correct?
 19 MR. GABER: Objection. I believe it's Exhibit V
 20 just for clarity of the record.
 21 MS. HERNANDEZ: Sorry?
 22 MR. GABER: I believe it's not Roman V. I believe
 23 it's Exhibit V.
 24 MS. HERNANDEZ: So that's news to me.
 25 Q So Exhibit V is the Guaranty Agreement?

D. Cerron - Plaintiff - cross (Hernandez) Page 2824

1 A Correct.
 2 Q And so this is --
 3 MS. HERNANDEZ: Can we go to the next page, Nate?
 4 Q This is a Guaranty Agreement between Donald J. Trump
 5 and the city; correct?
 6 A Correct.
 7 Q And at the end of the page, it says "guaranteed
 8 obligations;" correct?
 9 A Are you referring to --
 10 Q B?
 11 A Correct.
 12 Q And so B is guaranteed obligations. Are the
 13 obligations under the License Agreement that Donald J. Trump
 14 guaranteed; correct?
 15 A Can you repeat that, please?
 16 Q These guaranteed obligations are the obligations that
 17 Donald J. Trump guaranteed under the License Agreement; correct?
 18 A Correct.
 19 Q And so if it's not under this list, under V, he didn't
 20 guarantee it; correct?
 21 A I believe so. I'd have to take a look at the whole
 22 document, but I believe so, yes.
 23 Q We're going to run through some of it now.
 24 So here in romanette i, President Trump guaranteed the
 25 payments of all due and unpaid license fees to the city;

D. Cerron - Plaintiff - cross (Hernandez) Page 2825

1 correct?
 2 A Correct.
 3 Q And those yearly license fees were usually in the
 4 neighborhood of approximately \$300,000 a year; correct?
 5 A That's correct with the caveat that the first -- if
 6 memory serves, the first five years there were no license fees
 7 due.
 8 Q Understood. And were there any unpaid license fees for
 9 Trump Ferry Point LLC?
 10 A No, there were not.
 11 Q So the guaranty was never invoked for payment of any
 12 license fees; correct?
 13 A Correct.
 14 Q And so we're going to move down to romanette ii now and
 15 so under Section 2, President Trump guaranteed any unpaid
 16 deposits to the capital reserve fund less any credit Trump Ferry
 17 Point was entitled to; correct?
 18 A Correct.
 19 Q And were there ever any unpaid deposits under the
 20 license agreement?
 21 A No, there were not. Again, just with the caveat as we
 22 had discussed during the deposition that there was a credit
 23 related to --
 24 Q Correct, which we're going to get to. Thank you.
 25 So the guarantee was never invoked under this section;

D. Cerron - Plaintiff - cross (Hernandez) Page 2826

1 correct?
 2 A Correct.
 3 Q And Section 3, romanette iii, President Trump
 4 guaranteed the payment of a one-time design review fee; correct?
 5 A Correct.
 6 Q And was the design review fee paid?
 7 A Yes.
 8 Q So the guarantee was never invoked for payment of the
 9 design review fee; correct?
 10 A Correct.
 11 Q And moving to --
 12 MS. HERNANDEZ: We're going to put them up
 13 together, Nate, Section 4 and 5.
 14 Q And under Section 4 and 5, President Trump guaranteed
 15 any unpaid portion of insurance premiums and deductible under
 16 either the license agreement or the development agreement;
 17 correct?
 18 A Correct.
 19 Q And was the guarantee ever invoked to pay any unpaid
 20 insurance premiums or deductibles?
 21 A No.
 22 Q And then under Section 6, President Trump guaranteed
 23 any unpaid grow-in costs beyond the cap of \$750,000; correct?
 24 A Correct.
 25 Q And grow-in costs relates to the costs the

D. Cerron - Plaintiff - cross (Hernandez) Page 2827

1 concessionaire takes over for the city to grow and preserve the
 2 grass on the golf course?
 3 A Correct. This was before the course opened.
 4 Q Right. And these grow-in costs were capped at \$750,000
 5 under the contract from the city and Trump Ferry Point LLC;
 6 correct?
 7 A Correct.
 8 Q And anything over the \$750,000 cap was reimbursed to
 9 Trump Ferry Point LLC through a credit that would apply to
 10 license fees in future years; correct?
 11 A Correct.
 12 Q And the city performed an informal review to determine
 13 the grow-in costs Trump Ferry Point LLC incurred; correct?
 14 A Correct.
 15 Q Do you recall what year that was done?
 16 A To the best of my memory it would have been
 17 approximately 2015 or 2016. Sorry, sorry. It couldn't have
 18 been -- probably 2016 or 2017 because the course opened in 2015
 19 and up until that point the costs would have still been
 20 accumulated.
 21 Q Got it. And so the informal review that the city
 22 performed was to see how much Trump Ferry Point LLC expended
 23 beyond the cap; correct?
 24 A Correct.
 25 Q And the review showed that Trump Ferry Point LLC

D. Cerron - Plaintiff - cross (Hernandez) Page 2828

1 expended approximately 5 to \$7 million more than the \$750,000
 2 grow-in cap; correct?
 3 A Correct.
 4 Q And as a result, Trump Ferry Point LLC received a 5 to
 5 \$7 million credit to any license fees; correct?
 6 A Correct.
 7 Q And --
 8 MR. GABER: I'm just going to briefly object. This
 9 is beyond the scope of direct it feels like at this point,
 10 so I just want to launch that objection.
 11 MS. HERNANDEZ: It goes to exactly what was
 12 guaranteed, Your Honor, and the scope of their agreement and
 13 -- with Trump Ferry Point LLC.
 14 THE COURT: Well, I don't think it matters much.
 15 They could always call him as their witness, so as a
 16 practical matter, overruled.
 17 MS. HERNANDEZ: And we're trying not to call
 18 Mr. Cerron again.
 19 MR. GABER: Under that representation, I will
 20 reserve any further scope objections.
 21 Q So the 5 to \$7 million credit, did it cover all of the
 22 license fees due under the agreements?
 23 A I'm sorry. I don't believe I fully understand the
 24 question.
 25 Q The 5 to \$7 million credit we just discussed did it

D. Cerron - Plaintiff - cross (Hernandez) Page 2829

1 cover all of the license fees that were due under the agreement?
 2 A It covered all the license fees that were due under the
 3 agreement up until the point that the license was assigned.
 4 Q Correct. So Trump Ferry Point LLC never had to pay any
 5 license fees under the agreement; correct?
 6 A Correct.
 7 Q And so moving back to the guarantee, there was no
 8 unpaid grow-in costs beyond the cap for President Trump to pay;
 9 correct?
 10 A There were no fees that were due to the city from this
 11 license.
 12 Q And so President Trump's guaranty was never invoked for
 13 -- under this section; correct?
 14 A Correct.
 15 THE COURT: Try not to comment on the answer like
 16 "right."
 17 MS. HERNANDEZ: Sorry, Your Honor. Understood.
 18 Q So moving to Section 7, President Trump guaranteed
 19 payment of any due and unpaid late charges; correct?
 20 A Correct.
 21 Q And were there ever any due or unpaid late charges
 22 imposed on Trump Ferry Point LLC?
 23 A Not that I recall.
 24 Q Okay. And then moving to Section 8, President Trump
 25 guaranteed any other due and unpaid financial obligations under

D. Cerron - Plaintiff - cross (Hernandez) Page 2830

1 the license agreement or development agreement, which -- and
 2 you'll see there at the end "at no time shall exceed \$150,000 in
 3 the aggregate;" correct?
 4 A Correct.
 5 Q And were there ever any due and unpaid obligations
 6 under these agreements?
 7 A No.
 8 Q And then finally on Section 9, President Trump
 9 guaranteed the completion of the required capital improvements;
 10 correct?
 11 A Correct.
 12 Q And as we discussed, the required capital improvements
 13 were completed in accordance with the contract; correct?
 14 A Correct.
 15 Q And so the guaranty was never invoked under this
 16 section; correct?
 17 A Correct.
 18 Q And President Trump's guaranty was never invoked under
 19 these agreements; correct?
 20 A Correct.
 21 Q Because Trump Ferry Point LLC met all of their
 22 financial obligations under the contracts; correct?
 23 A There was not a need to invoke the personal guaranty.
 24 Q Because Trump Ferry Point LLC met all their --
 25 A They were met.

D. Cerron - Plaintiff - cross (Hernandez) Page 2831

1 THE COURT: If you asked that question 20 minutes
 2 ago, we could have saved a lot of time. I understand you
 3 had a need to go through it all, so.
 4 Q So moving to page three of the guaranty -- or I think
 5 we are on page three.
 6 Under Section 4 where it says "financial covenants."
 7 MS. HERNANDEZ: If you could blow that up, Nate.
 8 Q So under the guaranty, President Trump was prior
 9 required to furnish a letter from his accountant saying there
 10 has been no material adverse change in his net worth; correct?
 11 A Correct.
 12 Q And those are referred to as No MAC letters; correct?
 13 A Correct.
 14 Q And there is no requirement that President Trump submit
 15 his statements of financial condition to Parks; correct?
 16 A I'm sorry. I'm missing that here.
 17 Q I'm asking whether there is any requirement that
 18 President Trump submit his Statement of Financial Condition to
 19 Parks under the guaranty.
 20 A I'm not recalling a provision in the license that
 21 required it.
 22 Q And you've never reviewed President Trump's Statement
 23 of Financial Condition in connection with the Ferry Point
 24 agreements; correct?
 25 A I have not.

D. Cerron - Plaintiff - cross (Hernandez) Page 2832

1 Q And moving --
 2 MS. HERNANDEZ: Could we pull B up between page
 3 three and four?
 4 THE COURT: Five-minute warning.
 5 MS. HERNANDEZ: Thank you, Your Honor.
 6 Q "And under the guaranty, in the event that guarantor
 7 does not finish" -- "furnish," excuse me, No MAC letter as
 8 required here, Parks' sole remedy is to increase the security
 9 deposit;" correct?
 10 A Correct.
 11 Q And the security deposit can -- "in no event" --
 12 looking to the last section, "in no event shall guarantor be
 13 required to pay any additional security deposit after the
 14 security deposit has been increased to \$470,000 pursuant to this
 15 Section B regardless of any additional guarantor MAC failures;
 16 correct?
 17 A Correct.
 18 Q So the sole remedy for failure is to submit the No MAC
 19 letter with an increase of the security deposit to a maximum of
 20 \$470,000; correct?
 21 A Correct.
 22 MS. HERNANDEZ: Your Honor, I think that's a good
 23 point to stop.
 24 THE COURT: But you have more after lunch?
 25 MS. HERNANDEZ: Yes, unfortunately.

D. Cerron - Plaintiff - cross (Hernandez) Page 2833

1 THE COURT: Okay. Any progress or responses on the
 2 question about Ivanka Trump's testimony on Friday's
 3 schedule?
 4 MR. KISE: We're waiting to hear back, Your Honor.
 5 Hopefully by the lunch hour. We've been in contact with
 6 her. We're working out -- as I mentioned to Mr. Wallace,
 7 we're working on a solution.
 8 THE COURT: Great. The witness is excused. I'll
 9 direct him not to discuss the case, his testimony or
 10 anything related until he's fully excused, so no talk.
 11 We'll see everybody at 2:15.
 12 (Whereupon, there is a luncheon recess in the
 13 proceedings.)
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D. CERRON - PLAINTIFF - CROSS(MS. HERNANDEZ) Page 2834

1 AFTERNOON SESSION
2 * * * * *
3 THE OFFICER: All rise. Part 37 is back in
4 session. The Honorable Arthur Engoron presiding. Now,
5 please be seated and come to order.
6 THE COURT: Let's hear from the defense about
7 Friday's schedule.
8 MR. KISE: About what?
9 THE COURT: Friday's schedule.
10 MR. KISE: Oh, Friday's schedule. I think we
11 reached an agreement on the 8th, doing Ms. Trump's testimony
12 on the 8th. She's going to move her trip around. That way
13 if we start, we can finish that day and if we don't -- and
14 if we don't finish that day, we will have the night to
15 rollover.
16 THE COURT: Okay.
17 MR. KISE: I think at least with Mr. Wallace -- I
18 haven't spoken --
19 MR. AMER: That's fine with us, but I thought the
20 Court was inquiring whether the 3rd was possible if we did a
21 full day rather than a half day.
22 THE COURT: That was the original idea.
23 MR. KISE: Well, for the logistical reasons and
24 otherwise I pointed out at least from my end, our end, the
25 3rd represents a challenge so -- and I don't know that

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1 we'll get to her. I know we all have these lofty plans when
2 we start early in the week to get through witnesses, but I'm
3 not entirely sure we'll get through the expert, Don, Jr. and
4 Eric by Friday in any event.
5 MS. HABBA: I just talked to them about the
6 schedule. We were just going back and forth. I don't know
7 about the 3rd. I'm not Bennet Moskowitz. That's her
8 attorney. But I know the way the schedule would work now,
9 we have Don Wednesday, Eric Trump --
10 THE COURT: Thursday.
11 MS. HABBA: -- Thursday. I think they're
12 representing Eric might be longer than Don. If we have
13 Donald Trump on Monday, then at least there's a day off and
14 a clean break that we have. Ivanka goes into the next day.
15 She is here and can do two full days and then they rest.
16 THE COURT: Do we know who's going to cross-examine
17 Ivanka?
18 MS. HABBA: I don't.
19 MR. KISE: I don't know that's been decided that we
20 will, but I'm sure -- without Mr. Robert here, I don't want
21 to say anything at all about that decision because I haven't
22 spoken to him about that.
23 THE COURT: Mr. --
24 MR. AMER: I wanted to mention one thing, so we are
25 clear. My understanding is Eric Trump will testify when

D. CERRON - PLAINTIFF - CROSS(MS. HERNANDEZ) Page 2836

1 Donald Trump Jr. is finished. Now, that may be Thursday,
2 but it may also be Wednesday afternoon. I think we don't
3 want to have dead time --
4 THE COURT: Dead time.
5 MR. KISE: That seems awfully optimistic. I know
6 they've been eternally optimistic. We never have met those
7 expectations.
8 MR. AMER: I'm putting the marker down because I
9 don't want to hear that we weren't on notice that he could
10 go as early as Wednesday afternoon. I don't know --
11 MR. KISE: Oh, that. I don't think that's an
12 issue.
13 THE COURT: Well --
14 MR. KISE: Without Mr. Robert being here, I can't
15 represent anything, but I don't -- I don't know. I don't
16 anticipate that's going to be that big of an issue.
17 THE COURT: Well, will Eric be here on Wednesday?
18 MR. KISE: As far as I know, he will. But again,
19 I'm not representing anything without Mr. Robert here.
20 MR. AMER: Mr. Farina is here. We have somebody
21 who is representing Eric Trump here. I just -- I mean, my
22 understanding is that we start Donald Trump, Jr. Wednesday
23 morning. I don't think we have a full day with him. I
24 think he could be shorter than a full day, so I think in
25 order to not waste time, Eric Trump should be available to

D. CERRON - PLAINTIFF - CROSS(MS. HERNANDEZ) Page 2837

1 start whenever we finish Donald Trump, Jr.
2 MR. KISE: Well, we'll have an answer for you by
3 tonight or tomorrow morning, well in advance of Wednesday.
4 I just don't want to give you an answer that I can't give
5 you only to have to retreat from.
6 THE COURT: I think we are all okay with Ivanka on
7 the 8th, Wednesday. What will we do Friday? What can we
8 accomplish?
9 MR. KISE: My questions is we're going to be -- it
10 is an educated guess after what we've been through that we
11 will need Friday to finish the witnesses that are already on
12 deck. I'm pretty sure. Nothing ever goes according to
13 plan.
14 THE COURT: S-N-A-F-U I think they call that.
15 MR. AMER: I don't disagree. We don't have any
16 witness between Eric Trump and Donald Trump. So whenever we
17 finish Eric Trump, I think we're not going to have anything
18 else to put on until Donald Trump goes the following Monday,
19 which is the only day he's available as I understand it.
20 THE COURT: So we'll leave Friday as a big question
21 mark and we will all agree Ivanka Wednesday, the 8th and
22 possibly Thursday?
23 MR. KISE: Yes, Your Honor, that's fine.
24 THE COURT: Okay. Let's get the witness back.
25 THE COURT OFFICER: Witness entering.

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1 THE COURT: I will remind the witness, as I always
2 do, that he's still under oath. Let's continue with the
3 cross-examination.
4 Q Mr. Cerron, have you spoken to the Attorney General
5 since your deposition on Monday October 23rd?
6 THE COURT: Or anybody from her office.
7 Q Or anybody from her office?
8 A Yes.
9 Q Who did you speak to from the Attorney General's
10 office?
11 A Mr. Gaber.
12 Q When did you speak to Mr. Gaber?
13 A Approximately -- last week if I'm not mistaken, on
14 Thursday.
15 Q How long was that conversation?
16 A Approximately 45 minutes.
17 Q And what did you speak to with Mr. Gaber -- speak about
18 with Mr. Gaber?
19 A Regarding testimony today.
20 Q What specifically --
21 THE COURT: I'm not sure the microphone --
22 MS. HERNANDEZ: I don't know if it is working now.
23 THE COURT: Now it --
24 MS. HERNANDEZ: Is that better?
25 THE COURT: Yes.

D. CERRON - PLAINTIFF - CROSS(MS. HERNANDEZ) Page 2839

1 Q So what did you speak to about Mr. Gaber more
2 specifically about your testimony?
3 A Predominantly, it was a review of many of the documents
4 that we've seen here today and kind of generally on questions
5 that I may be asked --
6 Q So he --
7 A -- by him.
8 Q So he walked you through the direct examination that
9 you all did earlier today, correct?
10 A We went through some of those documents, yes. I mean,
11 not exactly, but yes.
12 Q Was there anyone else there other than Mr. Gaber?
13 A I believe there was another gentleman, but I don't
14 remember his name.
15 Q And is that the only instance that you spoke to anyone
16 from the Attorney General's office since your deposition?
17 A Yes.
18 Q You testified --
19 A Just if I could correct.
20 Q Go ahead.
21 A We did text this morning just to let them know that I
22 was here, procedural stuff, nothing of materiality.
23 Q Got it. So you testified on direct examination that
24 Ferry Point was a tough one to accomplish, correct?
25 A Correct.

D. CERRON - PLAINTIFF - CROSS(MS. HERNANDEZ) Page 2840

1 Q But Trump Ferry Point, LLC did accomplish the goals of
2 the contract, correct?
3 A In which respect?
4 Q The clubhouse was built, correct?
5 A The clubhouse was built, correct.
6 Q The golf course was maintained, correct?
7 A And the golf course was maintained, correct.
8 Q And the grass was grown in correctly, correct?
9 A The grass was grown in correctly, that's correct.
10 Q Mr. Trump put more money in the property than was
11 required under the contract, correct?
12 A To the best of my recollection, the capital commitment
13 exceeded the obligated amount, that's right.
14 Q And Trump Ferry Point, LLC met all of their
15 obligations, all of its obligations under the contract, correct?
16 A With regard to the items that we discussed. I don't
17 want to give a blanket, correct, to a pretty sizable document,
18 but with regard to the capital, with regard to the grow-in, with
19 regard to the clubhouse, those were all obligations that were
20 met, yes.
21 Q Are you aware of any obligation that was not met by
22 Trump Ferry Point, LLC as you sit here today?
23 A There's not a firm capital obligation that comes to
24 mind that was not met.
25 THE COURT: Can you just hit your microphone again.

D. CERRON - PLAINTIFF - CROSS(MS. HERNANDEZ) Page 2841

1 We'll call the tech guy.
2 MS. HERNANDEZ: It says it is on. It's in and out.
3 THE COURT: Some drunk who's losing consciousness
4 is becoming conscious.
5 MS. HERNANDEZ: I'll try to project either way.
6 Q We are going to pull up PX 1331 which is already in
7 evidence. This is Trump's response to request for offers,
8 correct?
9 A Correct.
10 Q And you testified on direct examination that you
11 believe this letter was relied on by -- sorry. Go to page
12 seven before I ask this question.
13 You testified on direct examination that you believe
14 this letter was relied on by Parks, correct?
15 A Correct.
16 Q But you weren't involved in the award process, correct?
17 A Correct.
18 Q And so you don't know for certain what was relied on by
19 Parks during the award process, correct?
20 A I was -- I was not on -- I was not on the selection
21 committee, so to the extent that that is the definitive marker
22 of whether I know something or I don't and how they made that
23 determination, you know, I would agree, but I think when we're
24 talking about this process that -- of awarding concessions that
25 I've been involved in for over a decade and I look at the

D. CERRON - PLAINTIFF - CROSS(MS. HERNANDEZ) Page 2842

1 requests for recommendation for award, and it cites the content
 2 of this letter. In knowing that process, I do believe that this
 3 was part of that determination for, you know -- to help them
 4 feel comfortable with financial capability.
 5 MS. HERNANDEZ: Your Honor, I'd like to move to
 6 strike that answer as non-responsive. It was a yes or no
 7 whether he is aware for certain what was relied on in the
 8 award.
 9 THE COURT: Well, off the record.
 10 (Whereupon, a discussion was held off the record.)
 11 THE COURT: I'll ask for a readback and I believe
 12 that counselor is correct that part of the answer was
 13 non-responsive.
 14 (Whereupon, the requested portion of the record was
 15 read back.)
 16 THE COURT: Can you answer that yes or no?
 17 A Correct.
 18 MS. HERNANDEZ: So we are going to now pull up PX
 19 3258 which is already in evidence.
 20 THE COURT: And the earlier answer is stricken
 21 because some of it was non-responsive.
 22 MR. GABER: I believe Mr. Cerron on direct
 23 testified as to the basis for his understanding as to what
 24 was and wasn't relied on.
 25 THE COURT: He did, but --

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1 MR. GABER: He laid a foundation that I think
 2 allows this to be considered responsive.
 3 THE COURT: You can re-direct him if you want.
 4 Q So can we go to page two. So this was admitted. Page
 5 two of this document was admitted earlier today and I want to
 6 point your attention to the third paragraph there. "This letter
 7 should be read in conjunction with Mr. Trump's above-referenced
 8 Statement of Financial Condition as of June 30, 2016." Do you
 9 see that?
 10 A Yes.
 11 Q And are you aware of any instance where the city
 12 requested a Statement of Financial Condition from President
 13 Trump in connection with the maintenance of the Ferry Point
 14 contract?
 15 A Can you repeat that question, please.
 16 Q Sure. Are you aware of any instance where the city
 17 requested a Statement of Financial Condition from President
 18 Trump in connection with the maintenance of the Ferry Point
 19 contract?
 20 A So this is not a yes or a no. It's the last part of
 21 that question is a little bit confusing, so I'm sorry if I'm not
 22 able to answer this on the first -- on the first try. But with
 23 connection with the maintenance of the course, there
 24 was -- there's an annual income statement that's submitted by
 25 the concessionaire at the end of each -- at the end of each

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1 operating year, which we would review. And that would have
 2 information on the costs related to the maintenance of the golf
 3 course and it would also have the revenues that would either
 4 support that cost or which would not and they might be at a loss
 5 or gain depending on how things shook out, but we would not have
 6 requested it -- we did not request, you know, certified
 7 financial statements, but it would not have been related to
 8 maintenance because the maintenance is something we would have
 9 seen in the financial statements that they would have sent us
 10 purely related just to the course, not to any other business
 11 dealings.
 12 Q What you're describing is financial statements from
 13 Trump Ferry Point, LLC, correct?
 14 A Correct.
 15 Q So did you ever receive President Trump's Statement of
 16 Financial Condition during the maintenance?
 17 A No. During the term of the license or related to
 18 maintenance, no.
 19 Q And did anyone from Parks ever request the Statement of
 20 Financial Condition?
 21 A Not that I'm aware of.
 22 Q And so when you reviewed these "No MAC" letters, you
 23 did not review them to determine whether President Trump had the
 24 financial capability to perform the contract, correct?
 25 A Correct.

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1 Q The determination of whether someone has the financial
 2 capability to perform under the contract is largely made during
 3 the award process, correct?
 4 A Correct.
 5 Q And your interest in reviewing the "No MAC" letters is
 6 making sure that all of the obligations under the contract are
 7 being completed, correct?
 8 A Our interest in reviewing the "No MAC" letters is
 9 simply just to confirm that what was is what is. So I think
 10 that's correct.
 11 Q He was required to submit it and he submitted it,
 12 correct?
 13 A Correct.
 14 Q And at the time of this letter, it is dated April 22,
 15 2017, correct?
 16 A Correct.
 17 Q At the time of this letter, there was a rent credit in
 18 favor of Trump Ferry Point, LLC, correct?
 19 A Correct. And my apologies. I think at this point,
 20 there might have not -- there might have been before the rent
 21 kicked in.
 22 Q You're not sure?
 23 A If it was '15, '16, '17, this would have been before
 24 rent was due because the first five years of the license, there
 25 was no rent.

D. CERRON - PLAINTIFF - CROSS(MS. HERNANDEZ) Page 2846

1 Q So when you were reviewing this letter, there was no
2 rent due under the license agreement?
3 A Correct.
4 Q And as you sit here today, you're not aware of any
5 false statements in this "No MAC" letter issued by Mazars, LLP,
6 correct?
7 A Other than, you know, this -- I think the -- some of
8 basis for this trial, but no, I am not aware of, you know, if
9 there's been -- if it's been revised or anything else.
10 MS. HERNANDEZ: So we're going to move to PX 3280
11 which is also in evidence. Can you go to the second page,
12 Nate. Only the second page is in evidence.
13 Q So this is another "No MAC" letter, correct?
14 A Correct.
15 Q And this one is dated April 5, 2018, correct?
16 A Correct.
17 Q And so highlighting that third paragraph, it says,
18 "This letter should be read in conjunction with Mr. Trump's
19 above-referenced Statement of Financial Condition as of June 30,
20 2017," correct?
21 A Correct.
22 Q At the time of this letter, so April 5, 2018, was there
23 a rent credit in favor of Trump Ferry Point, LLC?
24 A I believe so, yes.
25 Q And so the rent credit basically means that the city

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1 owed Trump money under the contract, correct?
2 A It meant that he had a rent credit. I defer to our
3 attorneys if somehow the license was terminated, whether the
4 city owed money or not, but it meant that the concessionaire had
5 a rent credit.
6 Q A rent credit because he --
7 A Because related to the grow-in, so there was -- once
8 after the five years -- once the license fees were billed, they
9 were billed against a credit of several million dollars that he
10 had, so we would just be drawing down on that credit month over
11 month.
12 Q Because Trump Ferry Point, LLC and President Trump
13 spent more than what was required under the contract, correct?
14 A For the grow-in, correct. Right.
15 Q As you sit here today, you're not aware of any false
16 statements in this "No MAC" letter issued by Mazars, correct?
17 A Correct.
18 Q So we are going to move to PX 3281 which is already in
19 evidence. And so the second paragraph in this one says, "This
20 letter should be read in conjunction with Mr. Trump's
21 above-referenced Statement of Financial Condition including
22 notes and narratives included therewith as of June 30, 2020,"
23 correct?
24 A Correct.
25 Q And at the time of this letter --

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1 MS. HERNANDEZ: If you can scroll up a little,
2 Nate.
3 Q This is dated February 26, 2021, correct?
4 A Correct.
5 Q And at the time of this letter, the rent credit that
6 we've been discussing was already in place, correct?
7 A Correct.
8 Q And so as you sit here today, you're not aware of any
9 false statements in this "No MAC" letter issued by Mazars,
10 correct?
11 A I think as I mentioned, I'm not aware of them except
12 for my understanding is part of the basis of this trial is that
13 these were not -- these were not accurate. So I have not
14 received a letter saying, "Here is a revised statement" or "Here
15 is what the numbers should be." So when I say correct, I'm not
16 aware of it. That's because nothing's been brought to me, but
17 it is something that obviously seems like an outstanding
18 question.
19 MS. HERNANDEZ: I would move to strike that as
20 non-responsive. It is just whether he is aware of it or
21 not.
22 THE COURT: I understand where both of you are
23 coming from. Why don't we do this. Can I deem the question
24 withdrawn and you will ask it more precisely if you think
25 you can.

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1 MS. HERNANDEZ: I can try.
2 Q So as you sit here today, aside from any allegations in
3 this case, are you aware of any actual false statements in this
4 "No MAC" letter issued by Mazars?
5 A I haven't received a correction letter. I have not
6 received anything from Mazars to say that this is -- this is
7 being -- this is being -- these numbers are being corrected.
8 I just -- I feel uncomfortable saying like there's nothing
9 inaccurate here even if I don't know precisely what it is. I'm
10 just not in a position to have the knowledge to know, precisely
11 know what it is and that's part of why I think there is this
12 trial. So I wish I could be more helpful to just in general to
13 anyone in answering that question, but I don't want to represent
14 that my understanding is that there are no misstatements here
15 because I'm just not -- I'm just not sure at this point what
16 the facts are.
17 MS. HERNANDEZ: Your Honor, could I move to strike
18 that answer as well?
19 THE COURT: Granted. If you listen to the
20 question, we'll get a --
21 MR. GABER: If we're talking about any of the other
22 allegations in this trial, then the question is no longer
23 relevant.
24 THE COURT: Disagree.
25 MS. HERNANDEZ: I'm asking what Mr. Cerron is aware

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1 of.

2 THE COURT: Well -- but it is a lot more limited

3 than that.

4 MS. HERNANDEZ: Correct. Correct.

5 Q What you are actually aware of? Are you actually aware

6 of any false statements that are in this "No MAC" letter issued

7 by Mazars in 2021?

8 A I am not aware of any other statements regarding this

9 financial -- these financial documents during this time period.

10 MR. HERNANDEZ: Okay. Thank you. We can take that

11 down now.

12 Q So you are familiar with the assignment of the

13 concession for the Ferry Point property from Trump Ferry Point,

14 LLC to Bally's, correct?

15 A Correct.

16 Q You were involved in working with counsel's office on

17 that deal, correct?

18 A I worked with our -- with the agency's general

19 counsel.

20 Q So you were involved in that deal, correct?

21 A Yes.

22 Q And Bally's paid Trump Ferry Point, LLC approximately

23 \$60 million for the assignment of this concession, correct?

24 A That is my understanding, correct.

25 Q And so I'm going to show you what's already in evidence

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1 judicial notice of it, then I have no further questions.

2 THE COURT: Okay. Any re-direct?

3 MR. GABER: No, Judge. Thank you.

4 THE COURT: Okay. We are all finished with this

5 witness, I assume.

6 Thank you, witness. You're excused.

7 (Witness excused.)

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1 as PX 1501.

2 MS. HERNANDEZ: The native, Nate, please.

3 Q So I'm going to represent to you that this is the 2021

4 supporting data for the Statement of Financial Condition. And

5 I'm going to direct your attention to Row 575 of the supporting

6 data. Do you see there where it says, "Trump Golf Links Ferry

7 Point"?

8 A I do.

9 MR. GABER: I'm going to object to foundation here.

10 The witness -- the witness is incompetent to testify on an

11 internal valuation document from the Trump Organization.

12 THE COURT: The question was simply did he

13 see -- does he see it. So objection overruled without

14 prejudice to see where it goes.

15 MR. GABER: Okay.

16 MS. HERNANDEZ: And on Row 584, you could highlight

17 that, Nate.

18 Q You see the value in 2021 is \$22,548,589?

19 A I do.

20 Q And the \$22,548,589 is significantly less than the

21 \$60 million that you just testified Bally's paid Trump Ferry

22 Point LLC for the assignment of the concession, correct?

23 THE COURT: I'll take judicial notice that the

24 \$22 million is less than the \$60 million.

25 MS. HERNANDEZ: Okay. If Your Honor will take

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1 THE COURT: Am I correct that the next witness we

2 are going to hear from via recorded -- video recorded

3 testimony?

4 MR. AMER: That's right, Your Honor. I think we

5 clocked the video at two hours and 16 minutes. I don't

6 think with our afternoon break we're going to be able to

7 play the entire video given our timing, but if we have to

8 spill over until tomorrow morning, then we can just finish

9 it then.

10 THE COURT: And why are we not hearing live

11 testimony, which I'm on record as wanting -- valuing?

12 MR. AMER: We were in agreement that the witness is

13 unavailable. She is not in New York, she doesn't work in

14 New York and she is also in her -- knew she was going to be

15 nine months pregnant around the time of the trial.

16 THE COURT: And defendants, there is no issue, I

17 assume?

18 MR. KISE: No, not at this time, Your Honor, no.

19 THE COURT: Okay. Let's play the movie.

20 (Whereupon, there is a pause in the proceedings

21 while the video recorded testimony is played in open court.)

22 THE COURT: Okay. We're going to take a ten-minute

23 break, so I'll see you back here in 15 minutes.

24 MS. GREENFIELD: Just Counselors for the AG, I know

25 that the exhibits for this deposition were marked as

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1 deposition exhibits. Would it be possible to get a list of
 2 the corresponding Plaintiff's Exhibit number that that
 3 corresponds to?
 4 MR. AMER: I have that and I was going to move all
 5 of the exhibits into evidence as soon as the video is over.
 6 MS. GREENFIELD: Fantastic.
 7 THE COURT: So we'll get that in the record. So
 8 15 minutes from now.
 9 (Whereupon, there is a recess in the proceedings.)
 10 THE COURT OFFICER: All rise. Part 37 is back in
 11 session. Please be seated and come to order.
 12 THE COURT: I hope you enjoyed the intermission.
 13 Let's go back to the movie.
 14 MR. AMER: Before we start, I want to confirm you
 15 see the table of exhibits?
 16 THE COURT: Thank you very much.
 17 MS. FAHERTY: No problem.
 18 THE COURT: Okay. Let's play the feature film.
 19 (Whereupon, there is a pause in the proceedings
 20 while the video recorded testimony is played in open court.)
 21 THE COURT: We just want to discuss witnesses for
 22 tomorrow.
 23 MR. AMER: So the completion of Ms. Mouradian's
 24 video deposition -- video de benne esse testimony then we
 25 have Mr. Cornwell is next followed by Mr. Orowitz followed

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1 THE COURT: Okay. That's it. Ten o'clock
 2 tomorrow. See you all.
 3 Whereupon, the trial proceedings are adjourned to
 4 October 30, 2023 at 10:00 a.m.
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1 by Mr. McCarty.
 2 THE COURT: And we going to finish all of them?
 3 MR. AMER: I don't know.
 4 THE COURT: That's a lot more than we've ever done
 5 in a day.
 6 MR. AMER: My understanding is there will be cross
 7 examination of Mr. Cornwell. I don't believe there is cross
 8 examination of Mr. Orowitz; is that right?
 9 MS. HERNANDEZ: That's my understanding as well.
 10 MR. AMER: And there certainly will be cross
 11 examination of Mr. McCarty, who is our banking expert
 12 although, I will say his examination is going to be shorter
 13 than it otherwise would have been but for the summary
 14 judgment ruling, so we're obviously taking that into account
 15 in terms of what is now relevant for him to testify to.
 16 MS. GREENFIELD: Assuming we don't finish all of
 17 these witnesses tomorrow, are they available to resume
 18 Friday since that morning is now available? You don't have
 19 to answer right now, but if you can find out.
 20 MR. AMER: Yes. I mean, I think the idea was to
 21 have them finish and have Donald Trump, Jr. start when
 22 Mr. McCarty is finished.
 23 MS. GREENFIELD: Okay. So it could be Donald
 24 Trump, Jr., would start later in the day on Wednesday?
 25 MR. AMER: It could be.

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In The Matter Of:
PEOPLE OF THE STATE OF NEW YORK v.
DONALD J. TRUMP, et al.

VIDEO DEPO OF C. MOURADIAN, D. CORNWELL, D. OROWITZ
October 31, 2023

NICOLE C. ROBINSON

Original File 103123TRUMP.txt

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1 SUPREME COURT OF THE STATE OF NEW YORK
 2 COUNTY OF NEW YORK : CIVIL TERM : PART 37
 3 ----- X
 4 PEOPLE OF THE STATE OF NEW YORK, BY
 5 LETITIA JAMES, ATTORNEY GENERAL OF
 6 THE STATE OF NEW YORK,
 7
 8 Plaintiff,
 9
 10 Index No.
 11 -against- 452564/2022
 12 DONALD J. TRUMP; DONALD TRUMP, JR.; ERIC TRUMP;
 13 IVANKA TRUMP; ALLEN WEISSELBERG; JEFFREY MCCONNEY;
 14 THE DONALD J. TRUMP REVOCABLE TRUST; THE TRUMP
 15 ORGANIZATION, INC.; TRUMP ORGANIZATION, LLC;
 16 DJT HOLDINGS, LLC; DJT HOLDINGS MANAGING MEMBER;
 17 TRUMP ENDEAVOR 12, LLC; 401 NORTH WABASH VENTURE,
 18 LLC; TRUMP OLD POST OFFICE, LLC; 40 WALL STREET,
 19 LLC.; AND SEVEN SPRINGS, LLC,
 20
 21 Defendants. ----- X
 22 Supreme Courthouse
 23 60 Centre Street
 24 New York, New York
 25 October 31, 2023

BEFORE:
 HONORABLE ARTHUR F. ENGORON,
 Justice, Supreme Court

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PROCEEDINGS

1 THE COURT OFFICER: All rise. Part 37 is now in
 2 session. The Honorable Arthur Engoron presiding. Make sure
 3 all cellphones are on silent. Laptops and cellphones will
 4 be permitted, but only to members of the press. There's
 5 absolutely no recording or photography of any kind allowed
 6 in the courtroom. Now, be seated and come to order.
 7 THE COURT: Good morning, everyone. Last night,
 8 defendants filed a motion in liminae to preclude the
 9 plaintiff's expert, Michiel McCarty, from testifying.
 10 Defendants first assert, despite repeated rejection from
 11 this Court and the First Department, that disgorgement of
 12 profits are not available as a remedy in a "purely Executive
 13 Law Section 63 (12) case."
 14 For reasons this Court has explained ad naseum,
 15 that is simply incorrect, and this Court will not belabor
 16 the point here. Disgorgement is clearly an available remedy
 17 under Executive Law 63 (12) case.
 18 Defendants next assert that the expert testimony
 19 seeks to rely on facts not supported by the record, and that
 20 the expert will rely on cherry-picked facts from the
 21 Attorney General's office. For example, defendants assert
 22 that "the Attorney General certainly could have asked Mr.
 23 Haigh whether additional information would have, in fact,
 24 altered the loan approvals and/or the pricing. But now,
 25 after avoiding what is no doubt unfavorable testimony from

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 Senior Court Reporters

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PROCEEDINGS

1 those directly responsible for approving the loans and
 2 determining the terms and pricing, she seeks to fill the
 3 factual void in her case with 'expert' testimony amounting
 4 to no more than speculation as to what 'might' have
 5 happened."
 6 First, obviously plaintiff has free reign to build
 7 the record it believe supports its case, as defendants are
 8 free to do the same. To that end, defendants' argument that
 9 the Attorney General should have asked Mr. Haigh other
 10 questions is as a non-starter, as defendants were free to
 11 ask Mr. Haigh those questions on cross-examination. The
 12 plaintiff is not obligated to ask questions that inure to
 13 the defendants' benefit.
 14 Second, contrary to defendant's assertion, the
 15 proffered expert testimony relies upon facts that are in the
 16 record, not mere speculation. Several witnesses have
 17 testified that they would have acted differently had they
 18 known that the Statements of Financial Condition were
 19 fraudulent.
 20 Further, to the extent that the defendants wish to
 21 cross-examine Mr. McCarty about other facts that they
 22 believe are in the record, they may do so. Moreover, the
 23 proffered expert testimony is not subjective. It is based
 24 on four decades of banking expertise, an evaluation of
 25 Deutsche Bank's contemporaneous internal communications and

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1 documents, and research into available public sources. If
 2 the Court, as the trier of fact, does not find the expert
 3 testimony reliable or credible, it may choose to disregard
 4 it.
 5 Furthermore, as plaintiff has pointed out, when
 6 employing the equitable remedy of disgorgement of profits,
 7 precision is not required. As the Second Circuit held in
 8 Sec. & Exch. Comm'n v. Fowler, 6 F. 4th 255, 267 (2d Cir
 9 2021), "In general, the amount of disgorgement ordered need
 10 only be a reasonable approximation of profits causally
 11 connected to the violation. If the disgorgement amount is
 12 generally reasonable, any risk of uncertainty about the
 13 amount falls on the wrongdoer whose illegal conduct created
 14 that uncertainty."
 15 Finally, to the extent defendants assert that
 16 McCarty's expert testimony should be precluded because it is
 17 beyond the scope of the statute of limitations, as has been
 18 explained many times, the statute of limitations bars
 19 claims, not evidence. Where, as here, disgorgement of
 20 profits is an available remedy, the Court may, depending
 21 upon the circumstances, be permitted to look at any
 22 "ill-gotten gains" for the entire life of the loan, so long
 23 as the final damages award is appropriately prorated to
 24 include only such ill-gotten gains that occurred within the
 25 statute of limitations.

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1 And this is all done this morning, by the way.
 2 There may be some meaty issues to look into, but this is my
 3 current understanding. The motion to preclude is denied and
 4 if defendants want to put their objections on the record,
 5 they may do so now.
 6 MR. KISE: Thank you, Judge. I'll be brief, but I
 7 think I want to at least point out a few things that Your
 8 Honor mentioned. First of all, I think you know this, but I
 9 just want to make it clear on the record. The issue about
 10 disgorgement not being available was not our first argument.
 11 It is just simply for not to belabor the point and that's
 12 why it is in the footnote.
 13 THE COURT: I appreciate that.
 14 MR. KISE: The fundamental difference here, I guess
 15 the disconnect is there's no establishment in the record
 16 that the gains are ill-gotten. That's really the issue
 17 here. They haven't established that they're ill-gotten.
 18 They haven't established that something would have actually
 19 been different and that's a very different thing than the
 20 SEC case and the other cases they cite. Those cases are
 21 traditional fraud cases and materiality and reliance and all
 22 of that has been established and so that's what's not been
 23 established here.
 24 The purpose of 63 (12) is essentially two-fold.
 25 It's one, to stop conduct that the Attorney General -- give

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1 the Attorney General the ability to stop conduct that she
 2 thinks may be harming the public. None of that conduct has
 3 actually harmed the public or not. That's why in the first
 4 instance, to stop the conduct, there doesn't have to be any
 5 demonstration that someone has actually been hurt yet.
 6 So using our example, if the Attorney General
 7 thinks that someone is using a financial statement in a way
 8 that could theoretically harm someone, then she goes to
 9 court and says, "You're using a financial statement in a way
 10 that could theoretically harm someone." "There is a false
 11 or misleading statement, you know, something false or
 12 misleading contained in the financial statement.
 13 Something's in there and you shouldn't be doing that."
 14 Now, as you know, we disagree with whether or not
 15 it is false or misleading, but setting that aside, that's
 16 one aspect of the statute. That's one reason it exists, is
 17 to stop someone, so the court can issue an order saying stop
 18 issuing those false and misleading financial statements.
 19 You defendants, stop doing that. That's a very separate
 20 issue, though, from the other piece which -- and again, I'm
 21 not belaboring this point, but restitution, which we think
 22 is allowable under the statute, disgorgement, accepting Your
 23 Honor's views at this point without waiving our position,
 24 but in order to get there, you have to now establish that
 25 something actually took place and the restitution in

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1 disgorgement, you can't just assume theoretically that
 2 something is ill-gotten in the disgorgement context.
 3 You can't assume in the restitution context that
 4 someone has lost money based on the conduct. You have to
 5 actually establish that and that's the part that the
 6 Attorney General is skipping over. This ill-gotten concept
 7 that their whole case is premised on, the fact that the
 8 defendants secured more favorable loan and insurance terms
 9 and then retained those terms with each statement, with each
 10 submission of the statement ongoing, but that premise
 11 assumes something that hasn't been proven.
 12 That's the whole purpose of bringing Mr. McCarty in
 13 here. They are assuming that the defendants received
 14 something. They secured more favorable loan or insurance
 15 terms that they wouldn't have otherwise received. There's
 16 just no evidence in the record. And the point about Mr.
 17 Haigh's testimony is not to say, well, they could have asked
 18 this question or they could have asked that. The point is
 19 to demonstrate that Mr. Haigh's testimony is squarely
 20 counter to their position in the case.
 21 Mr. Haigh never said that something would have
 22 actually been different. Mr. Haigh never said because they
 23 didn't ask him, no, these loans would not have been issued.
 24 So they have -- without that testimony, they haven't
 25 established that the loan wouldn't have been issued anyway.

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1 And if the loan would have been issued anyway, there is no
 2 ill-gotten gain. It's not possible to have. The bank's
 3 role is to make the decision and as Mr. Haigh testified,
 4 there's myriad factors. There's multiple, multiple factors.
 5 So the bank's role is to make the decision.
 6 The same with the pricing of the loan. The pricing
 7 of the loan is something within the bank's determination.
 8 Unless the bank comes into court and says, "Yes, I would
 9 have priced this loan differently," there's no basis upon
 10 which Mr. McCarty can testify as to what that would look
 11 like. If the loans would have been the same anyway,
 12 then -- and the pricing would have been the same anyway,
 13 while an Attorney General can certainly stop someone upon
 14 proof from issuing financial statements that contain
 15 something false or misleading, a premise we disagree with,
 16 but that's very different than now saying that we can
 17 recover money under anything, whether it be damages,
 18 disgorgement, restitution, without that necessary element of
 19 proof because, otherwise, the statute becomes limitless.
 20 Now, we're dealing with the -- the Attorney
 21 General called it in their letter response that I saw this
 22 morning a counterfactual world. I'm not talking about a
 23 counterfactual world. I'm talking about the real world. In
 24 the real world, the banks make these decisions. In the real
 25 world, the banks evaluate the decision. In the real world,

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1 the banks determine the pricing for loans. That's what
 2 happens in the real world.
 3 The Attorney General can postulate, anyone can
 4 postulate that something might be different; but unless the
 5 bank says it would have been different, meaning that they
 6 would have decided something differently, an expert can't
 7 come in and now introduce his or her own opinion as to what
 8 he or she might have done under the circumstances because
 9 there's no room for that sort of -- it renders the statute
 10 at that point limitless and I would say respectfully
 11 unconstitutional as vague.
 12 There's no way -- there's no way parameters around
 13 what conduct it is that's required. So the Attorney General
 14 is not allowed at this phase to simply presume and have the
 15 Court presume that the Statements of Financial Condition
 16 here were relied on, that that was -- and that was material
 17 and that that reliance and that materiality then made a
 18 difference in the loans. Because again, there's nothing
 19 ill-gotten if they haven't proven that anything would have
 20 been any different.
 21 That's not a counterfactual world. That's the real
 22 world. That's how -- that's how loan transactions works.
 23 That's how the capital markets work and what the Attorney
 24 General wants to do now is say forget about what the real
 25 world thinks, forget about what the bank actually decided on

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1 its own, forget about all this criteria. I mean, Mr. Haigh
 2 talked about both on direct, and I won't put it in here, it
 3 is in our papers, both on direct and on cross that the
 4 approvals terms and pricing were based on multiple factors,
 5 innumerable factors. They are all in the credit memos.
 6 He also testified that the relevant approvals year
 7 after year after year were based on their own internal
 8 analysis. That's not testimony that the Attorney General is
 9 free to simply ignore. There has to be something in the
 10 record that establishes that something would have been
 11 different here because if you don't establish that there was
 12 real harm, any real world impact, you can't have an expert
 13 come in and say, "Okay. Well, now here is the document."
 14 What the expert is testifying to is a penalty. The
 15 expert is now testifying as to a penalty. We think -- the
 16 AG says, "We think the conduct of using these financial
 17 statements was wrong. We don't care whether anything would
 18 have been different factually. We don't care whether the
 19 banks would have done something differently. We think it is
 20 wrong and here is what we think the ill-gotten gains are."
 21 That's -- it's beyond counterintuitive to contend
 22 that what the bank actually thinks and what the bank
 23 actually did is irrelevant and immaterial to the analysis.
 24 So to allow this testimony and to allow this theory,
 25 frankly, to advance is to substitute a decade later,

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1 post-closing of the loan transactions the Attorney General's
 2 opinion or her expert's opinion, in this case, for what the
 3 bank might or might not have done.
 4 I just want to put on the record briefly the
 5 cases -- the case law on this is very straightforward and
 6 again, the case law that the Attorney General cites, the SEC
 7 cases and the one Your Honor cited, those are
 8 traditional -- that's where there has been an establishment
 9 that there was reliance and materiality and things would
 10 have, in fact, been different.
 11 There, the issue is we can't get precise, but the
 12 Gathers case, 242 AD2d 506, a First Department case,
 13 reversed admission of expert testimony because the expert
 14 reached his conclusion by assuming material facts not
 15 supported by the evidence. That's exactly what Mr. McCarty
 16 is going to do here. He is going to assume that the gains
 17 are ill-gotten.
 18 They're skipping over the part where they have to
 19 establish that the gains are ill-gotten, meaning that the
 20 loans would not have been issued in the first place or that
 21 the terms would have been different. There's nothing for
 22 him to testify on otherwise and an expert is not entitled to
 23 just flatly contradict the record evidence. They can't
 24 substitute their opinion for what actually is in the record.
 25 The other case that I'll cite in addition to the

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1 ones that are in there in the brief is the Ortiz case, 19
 2 AD3d 239, another First Department case. There, the issue
 3 is whether or not an accident reconstructionist could come
 4 in and reconstruct the accident in a way different than the
 5 two eyewitnesses that actually testified to.
 6 And so again, that's what McCarty is going to do
 7 here. He's going to come in and reconstruct the financial
 8 analysis irrespective of what the bank would have done, and
 9 that's just plainly impermissible because the gains are not
 10 ill-gotten until you prove that something would have been
 11 different. There's no basis for restitution or, as the
 12 Court is saying, disgorgement. There's no basis in the law.
 13 THE COURT: Those are very different --
 14 MR. KISE: I understand that, but both of them
 15 hinge on the same underlying premise, though. They
 16 are -- the proof is different, but they center around the
 17 same underlying premise that something happened that
 18 shouldn't have taken place in the first place, that there's
 19 already been proof that the gains were ill-gotten. There's
 20 already been proof that someone was deprived of something
 21 that they shouldn't have. There's already been proof in the
 22 case of restitution that someone paid something that they
 23 shouldn't have paid and they're entitled to get that money
 24 back.
 25 Here, the Attorney General wants to skip over all

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1 of that without any introduction in the record about whether
 2 or not the gains themselves are ill-gotten. So experts come
 3 in to analyze, evaluate, explain facts that are in the
 4 record. They don't substitute their own facts for what's in
 5 the record. They opine on the factual predicate as it
 6 exists in the case. They don't supply the factual
 7 predicate.
 8 So here, what Mr. McCarty is doing, what the
 9 Attorney General wants Mr. McCarty to do and is asking this
 10 Court to accept, to substitute a factual predicate, to have
 11 the Court presume, which he's doing, that the gains are, in
 12 fact, ill-gotten before that's ever been established
 13 anywhere in the record. And so it's one thing for the Court
 14 to say as it has, again reserving our objection, that these
 15 statements are false, stop doing them, stop. I'm going to
 16 tell you not to do that in the future, and here is the
 17 things I'm going to do to keep you from doing it in the
 18 future.
 19 All of that is step one, but before any dollars and
 20 cents can be computed under any theory, there has to be some
 21 showing that the gains were ill-gotten. The Attorney
 22 General is not simply allowed to substitute her own judgment
 23 for that of the bank and using an expert to do that doesn't
 24 make it any more proper than it would have in the abstract.
 25 Then I'll make just a final comment on what Your

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1 Honor said at the end about the pre- versus post-statute of
 2 limitations period. To the extent that this Court is, in
 3 fact, going to pro rate, meaning look at the arguments that
 4 we've made --
 5 THE COURT: Subject to some further research on
 6 this, of course.
 7 MR. KISE: -- then we can be heard on that later,
 8 but yes, I mean, if you want to hear evidence as you've been
 9 doing. I mean we object to it, but that's a very different
 10 ruling than saying, okay, not only am I going to listen to
 11 it, but I'm actually going to come up with a number based on
 12 dollars and cents that took place prior to in this instance
 13 July 13, 2014.
 14 Our position is, as it must be, that anything that
 15 happened with respect to the loan approval or the pricing
 16 and terms was set as of the date of the closing. So those
 17 subsequent submissions could not possibly have altered that.
 18 They would not have changed the pricing decision that was
 19 made in 2011, 2012, 2013. They wouldn't have changed those
 20 pricing decisions, so there's no -- there's no basis to
 21 then assume, again, that there's ill-gotten gain because the
 22 subsequent submission of the certification has nothing to do
 23 with the initial pricing. That's all wrapped up in the loan
 24 agreement.
 25 So there isn't any monetary calculus to be made

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1 with respect to the subsequent certifications. This
 2 is -- this goes back to our whole position as to why the
 3 subsequent certifications are not false statements in the
 4 first place. We're not going to go there today, but because
 5 there's no -- it is not connected to any activity, it is
 6 not connected to any claim, it is just out there in the
 7 abstract.
 8 So for these reasons, Your Honor, most notably that
 9 there hasn't been any proof that anything is ill-gotten and
 10 that the Attorney General is not allowed to skip over that,
 11 we think the admission of Mr. McCarty's opinion is purely
 12 speculative and hypothetical. Thank you.
 13 THE COURT: Question for Mr. Robert. Did your
 14 colleague start out by saying he would be brief?
 15 MR. ROBERT: It is all relevant, Your Honor.
 16 THE COURT: I would say relative to the
 17 Lincoln-Douglas debates of the 1850s in Illinois, which went
 18 on for four hours or something. They would talk for two
 19 hours and the other guy would talk for two hours.
 20 MR. KISE: I think I kept it under seven pages.
 21 Mr. Amer set the bar yesterday.
 22 MR. AMER: I don't think you did. We clocked it at
 23 15 minutes.
 24 THE COURT: I'll be brief. First of all, I
 25 apologize for mispronouncing Haigh's name right. It was

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1 Haigh, not Haigh. I think to a certain extent the
 2 defendants are whistling past the graveyard here.
 3 they -- they think that all of these financial statements,
 4 the people, the employees submit numbers, McConney puts
 5 together a spreadsheet. It goes -- it gets reviewed. It
 6 goes to Mazars to put together a compilation or they compile
 7 these data. They send it to the banks. Nobody relies on
 8 them. It's -- I'm sorry. It is a fantasy world.
 9 These things, obviously, are done for reasons and
 10 we've had testimony that says, yeah, we looked at that, we
 11 relied on that. I don't know whether Haigh ever said we
 12 would have done things differently. Of course, defendants
 13 could have asked him that. The videotaped testimony we are
 14 listening to, she said, "I wish I had known what I know
 15 now."
 16 I will leave it at that. I don't want to get into
 17 the weeds here. In the motion papers that were filed last
 18 night and in what Mr. Kise just said this morning said there
 19 were many factors. Nobody is saying, and I'm certainly not
 20 saying, that the financial statements were the only factor,
 21 but they are a factor. To me, that's -- again, without
 22 getting too deep into proximate cause whether the financial
 23 statements were "false and misleading," I'll let my 35-page
 24 decision and order of September 26th stand on its own.
 25 I think they were clearly false and misleading is a

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1 that's going to come in today, if we have enough time, is I,
 2 think, admissible and it is up to the Court to accord it
 3 whatever weight it decides when it is reaching its final
 4 decision.
 5 THE COURT: Okay. Back to Tuesday morning at the
 6 movies. Is that what we are?
 7 MR. AMER: Yes, Your Honor. We will continue
 8 playing the video of Ms. Mouradian. I believe we have just
 9 under 50 minutes left to the video and then we'll move in
 10 some exhibits.
 11 THE COURT: Okay. Let's do it.
 12 (Whereupon, the video was played.)
 13 (Continued on the next page.)
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1 little bit more subjective statement, but I think the
 2 statute covers false. I think -- I think there's
 3 also -- there may also be documentary evidence about the
 4 internal analysis by Deutsche Bank and maybe some of the
 5 other financial institutions about what their statements of
 6 finance conditions said. What were they looking at these
 7 things for without relying on them? So if the Attorney
 8 General wants to say something on the record, I stand by my
 9 decision; but for the record, do you agree with me or Mr.
 10 Kise?
 11 MR. WALLACE: As to whether or not the defendants
 12 are whistling past the graveyard, 100 percent. There is a
 13 decision, Your Honor has highlighted it, saying that the
 14 statements are false and misleading, and that they were used
 15 in business to obtain these loans. I understand
 16 Mr. Kise's arguments. I expect to hear them again at
 17 closing. I expect to read them in his post-trial brief. I
 18 expect to see them if they challenge this decision to the
 19 First Department, but the question before us this morning is
 20 can an expert witness come in and tell you the difference
 21 between a commercial real estate loan price and a private
 22 wealth bank price. And the Court is free to say, "I think
 23 that's a fair measure of disgorgement" or "I'm going to find
 24 some other measure of disgorgement or "I don't think
 25 disgorgement is appropriate in this case," but this evidence

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1 MR. AMER: Your Honor, we do have some exhibits to
 2 move in to evidence. First of all, because this wasn't
 3 being transcribed, we need to move into evidence the
 4 actual --
 5 THE COURT: Video.
 6 MR. AMER: -- designations of what we were just
 7 playing. So we've marked that as Plaintiff's Exhibit 3324
 8 and ask that it be admitted into evidence.
 9 THE COURT: Granted. It's in evidence.
 10 (Whereupon, the item previously referred to is
 11 received and marked Plaintiff's Exhibit Number 3324 in
 12 evidence.)
 13 MR. AMER: And then we have Deposition Exhibit 1,
 14 which we've marked as Plaintiff's Exhibit 1540. We ask that
 15 that be admitted into evidence.
 16 MS. HERNANDEZ: No objection.
 17 THE COURT: Granted.
 18 (Whereupon, the item previously referred to is
 19 received and marked Plaintiff's Exhibit Number 1540 in
 20 evidence.)
 21 MR. AMER: Deposition Exhibit 2, that's Plaintiff's
 22 Exhibit 1548. We ask that that be admitted into evidence.
 23 MS. HERNANDEZ: No objection.
 24 THE COURT: Granted.
 25 (Whereupon, the item previously referred to is

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1 received and marked Plaintiff's Exhibit Number 1548 in
2 evidence.)
3 MR. AMER: Deposition Exhibit 3, we marked as
4 Plaintiff's Exhibit 1552, and ask that be admitted into
5 evidence.
6 MS. HERNANDEZ: No objection.
7 THE COURT: Granted.
8 (Whereupon, the item previously referred to is
9 received and marked Plaintiff's Exhibit Number 1552 in
10 evidence.)
11 MR. AMER: Deposition Exhibit 4, Plaintiff's
12 Exhibit 2313, and we ask that that be admitted into
13 evidence.
14 MS. HERNANDEZ: No objection.
15 THE COURT: Granted.
16 (Whereupon, the item previously referred to is
17 received and marked Plaintiff's Exhibit Number 2313 in
18 evidence.)
19 MR. AMER: Exhibit 5, Deposition Exhibit 5 is
20 Plaintiff's Exhibit 1542, and we ask that that be admitted
21 into evidence.
22 MS. HERNANDEZ: No objection.
23 THE COURT: Granted.
24 (Whereupon, the item previously referred to is
25 received and marked Plaintiff's Exhibit Number 1542 in

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1 evidence.)
2 MR. AMER: Deposition Exhibit 6, Plaintiff's
3 Exhibit 1561, we ask that that be admitted.
4 MS. HERNANDEZ: No objection.
5 THE COURT: Granted.
6 (Whereupon, the item previously referred to is
7 received and marked Plaintiff's Exhibit Number 1561 in
8 evidence.)
9 MR. AMER: And Deposition Exhibit 7, Plaintiff's
10 Exhibit 3014, we ask that be admitted into evidence.
11 MS. HERNANDEZ: So that one we have an objection
12 to, as sad as I am to break up that little routine we had
13 going.
14 To PX 3014 has a cover e-mail that was not shown to
15 Ms. Mouradian, so I don't have an objection to the
16 remainder of the exhibit coming in, but that cover e-mail
17 was not part of the deposition.
18 MR. AMER: We're fine if we put it in without the
19 cover e-mail because it wasn't anything that she was asked
20 about.
21 THE COURT: Okay. Granted, but only as to or
22 except as to the cover e-mail.
23 (Whereupon, the item previously referred to is
24 received and marked Plaintiff's Exhibit Number 3014 in
25 evidence.)

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1 MR. AMER: There were two other deposition exhibits
2 which were excerpts, one from the complaint and one from the
3 deposition of Mr. Weisselberg. Those were read into the
4 record, so they'll be in the exhibit we've admitted, which
5 is Exhibit 3324.
6 THE COURT: Sounds right.
7 MS. HERNANDEZ: That's fine.
8 THE COURT: Okay. Granted.
9 (Whereupon, the item previously referred to is
10 received and marked Plaintiff's Exhibit Number 3324 in
11 evidence.)
12 MS. HERNANDEZ: And, Your Honor, we would also like
13 to move in the two defense exhibits that were used, so we
14 would like to move into evidence D 969, which was Defense
15 Exhibit A in the deposition.
16 MR. AMER: No objection.
17 THE COURT: Granted.
18 (Whereupon, the item previously referred to is
19 received and marked Defendant's Exhibit Number D 969 in
20 evidence.)
21 MS. HERNANDEZ: And we'd like to move D 970, which
22 was Defendant's Exhibit B.
23 MR. AMER: No objection.
24 THE COURT: Granted.
25 (Whereupon, the item previously referred to is

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1 received and marked Defendant's Exhibit Number D 970 in
2 evidence.)
3 MR. AMER: That concludes the movie, Your Honor.
4 THE COURT: Okay. Is anybody hungry? Tired?
5 Okay, 15-minute break or ten-minute break over the next
6 15 minutes. See you in 15 minutes.
7 (Whereupon, there is a recess in the proceedings.)
8 THE COURT OFFICER: All rise. Part 37 is back in
9 session. Please be seated and come to order.
10 THE COURT: Would the Plaintiff like to call the
11 next witness?
12 MR. FINKELSTEIN: The People call K. Don Cornwell
13 to the stand.
14 THE COURT: Okay. Let's get the witness.
15 THE COURT OFFICER: Witness entering.
16 (Whereupon, the witness enters the courtroom and
17 approaches the witness stand.)
18 THE COURT OFFICER: Please raise your right hand.
19 Do you solemnly swear or affirm that the testimony you give
20 will be the truth, the whole truth and nothing but the
21 truth?
22 K. D O N C O R N W E L L, called by and on behalf of
23 the Plaintiff, having been first duly sworn, was examined and
24 testified as follows:
25 THE WITNESS: Yes.

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1 THE COURT OFFICER: Please have a seat. State your
 2 name and either home or business address for the record.
 3 THE WITNESS: Don Cornwell. I live at 90 Furman
 4 Street, Brooklyn, New York, Apartment 1004.
 5 THE COURT: But before you do, to quote Groucho
 6 Marx, "A hot dog stand would clean up around here."
 7 Please proceed.
 8 DIRECT EXAMINATION
 9 BY MR. FINKELSTEIN:
 10 Q Good morning, Mr. Cornwell.
 11 A Morning.
 12 Q Can you please describe your educational background
 13 post high school?
 14 A Sure. I attended Harvard College where I studied
 15 government, graduated from there 1992. Then, I went to Stanford
 16 for business school where I received an MBA. I graduated 1998.
 17 THE COURT: Please speak a little louder. You have
 18 to go right into the microphone like that and we'll be good.
 19 THE WITNESS: Is that better?
 20 THE COURT: Now we're in business.
 21 THE WITNESS: All right.
 22 Q Can you provide a brief overview of your employment
 23 history post college?
 24 A Sure. Post Harvard I worked at McKinsey Management
 25 Consulting Company for two years in New York. After that, I

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1 worked for two years at the National Football League, '94 to
 2 '96. Post business school starting 1998 I was at Morgan Stanley
 3 for 17 years until 2015. 2015, I left Morgan Stanley for a firm
 4 called PJT Partners. I was there for eight years and for the
 5 last year I've run a private equity firm called Dynasty Equity.
 6 Q And what is PJT Partners?
 7 A It's an investment bank.
 8 Q And where is that based?
 9 A New York City.
 10 Q And what was your role at PJT Partners?
 11 A I was a partner doing MNA work around sports and
 12 gaming.
 13 Q And after that you went to Dynasty Equity. What is
 14 Dynasty Equity?
 15 A Dynasty Equity is an investment firm focused on sports.
 16 Q What is your role at Dynasty Equity?
 17 A Cofounder and CEO.
 18 Q Focusing your time at Morgan Stanley, what titles or
 19 positions did you hold there?
 20 A I started there in the summer of 1997 as a summer
 21 associate while in business school. 1998, I was an associate
 22 eventually getting promoted to managing director in 2007.
 23 From 2007-2015, I was a managing director and certain
 24 times towards the last five years I was the global head of
 25 sports investment banking.

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1 Q And what were your duties and responsibilities as an
 2 associate at Morgan Stanley?
 3 A Hard work. I executed transactions. So in any given
 4 deal, you have a deal team. For the most part the associate did
 5 a lot of the analytics, a lot of putting together presentations
 6 and the like.
 7 Q And how, if at all, did your responsibilities change
 8 upon becoming managing director in and around 2007?
 9 A I actually progressed through you start to lead teams
 10 and be responsible for revenue generation and getting new
 11 clients.
 12 Q And do -- you also mentioned the title "head of global
 13 sports investment banking?"
 14 A Yes.
 15 Q Did your responsibilities change with that title?
 16 A No, same thing. I was just the lead investment banker
 17 on all sports deals.
 18 Q Did there come a time when Morgan Stanley was tapped to
 19 assist the Wilson estate in selling the Buffalo Bills?
 20 A Yes.
 21 Q Who are the Buffalo Bills?
 22 A They are a franchise in the National Football League.
 23 Q How did Morgan Stanley become involved in the Buffalo
 24 Bills transaction?
 25 A So the estate of Ralph Wilson was looking to sell the

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1 team and as part of that process they needed to hire an
 2 investment bank. They invited several different firms to give a
 3 presentation about their credentials and Morgan Stanley was one
 4 of those participants.
 5 Q What was Morgan Stanley's role in the transaction once
 6 it was picked by the Wilson estate?
 7 A Yes, we led the transaction and assisted with the
 8 estate, the trustees, to help them find a buyer for the team.
 9 MR. FINKELSTEIN: I'd like to hand up PX 980 to the
 10 witness for identification.
 11 Q Do you recognize this document?
 12 A I do.
 13 Q What do you recognize it to be?
 14 A This is an e-mail -- well, it's an e-mail thread, but
 15 the e-mail is from me to one of my colleagues discussing our
 16 first round bid letters in the Buffalo Bills process.
 17 Q So you just referenced the bid letter. What do you
 18 mean by that?
 19 A So this MNA process is one which is very common where
 20 we had two steps and what happens is you have interested buyers,
 21 people who indicated they'd like to learn more about the asset
 22 that you're selling. You've signed a non-disclosure agreement,
 23 you give them information, they provide you a bid, a first round
 24 bid based on information you've received. Then what happens is
 25 you review the bids and you take some or all of the folks who've

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1 submitted bids letters into the next phase of the process where
 2 they get to have the opportunity to do diligence, take site
 3 tours and decide if they want to further acquire the asset they
 4 have.
 5 Q So is there any process to screen through the letters
 6 you received in the first step?
 7 A I'm sorry, say again.
 8 Q My question was did the Morgan Stanley have any process
 9 to screen through the letters that you received in the first
 10 step that you just described?
 11 A Yes, absolutely. We obviously read the letters and
 12 what we're trying to achieve in the process is really two
 13 things: We want the highest value and certainty of closing and
 14 so what we look for in those letters is, number one, what they
 15 think valuation is; number two, we start the process of
 16 understanding what their ability to close will be.
 17 Q So in this first message that's shown on the screen
 18 there are several attachments. I would like to just direct your
 19 attention to two of those attachments.
 20 So if we could turn to page eight? Do you recognize
 21 this letter?
 22 A I do.
 23 Q What do you recognize it to be?
 24 A This was the bid -- first round bid letter that we
 25 received from the Trump Organization.

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1 Q And this letter is addressed to you at Morgan Stanley?
 2 A That is correct.
 3 Q And what is the date of this letter?
 4 A July 29, 2014.
 5 Q What was your understanding of the purpose of this
 6 letter?
 7 A This letter was to indicate that the Trump Organization
 8 would like to buy the Buffalo Bills for \$1 billion.
 9 Q And turning to the second paragraph of the letter, the
 10 letter states: "I have a net worth in excess of \$8 billion
 11 (financial statements to be provided upon request)."
 12 Does -- was that representation considered by Morgan
 13 Stanley in the bidding process?
 14 A It was, although we also received another letter that
 15 was very important. In our bid instructions we ask people to
 16 provide us proof of funds.
 17 Q Did Morgan Stanley ever request financial statements
 18 from Donald Trump?
 19 A Yes.
 20 Q I would like to direct your attention to the third
 21 paragraph on the bottom, the next page, page nine. It says,
 22 "Please feel free to call Rosemary Vrablic, managing director of
 23 Deutsche Bank's private wealth management; Mr. Allen
 24 Weisselberg, chief financial officer of the Trump Organization;
 25 or me directly if you have any questions about this bid."

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1 Do you ever recall speaking with Rosemary Vrablic
 2 regarding this bid?
 3 A I don't recall.
 4 Q Do you recall ever speaking with Allen Weisselberg
 5 regarding this bid?
 6 A I don't recall.
 7 Q Do you recall ever speaking with Donald J. Trump
 8 regarding this bid?
 9 A Yes.
 10 Q What do you recall about that?
 11 A Not much.
 12 Q So I would like to now turn to page 20 of the exhibit.
 13 So you had mentioned earlier that there was a second
 14 letter. Does this appear to be that letter?
 15 A Yes, it does.
 16 Q What do you recognize this letter to be?
 17 A This was a letter we got from Deutsche Bank indicating
 18 something about Donald Trump's net worth.
 19 Q And was it your understanding that Deutsche Bank
 20 provided this letter to you at the behest of Donald Trump?
 21 A Yes.
 22 Q And in the third paragraph the letter reads:
 23 "Our understanding is that Mr. Donald J. Trump has made
 24 or intends to make a bid for the Buffalo Bills in the amount of
 25 \$1 billion in the aggregate. Based upon our preliminary review

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1 of the current financial information of Mr. Donald J. Trump made
 2 available to us, including liquidity and asset value, it is our
 3 assessment that Mr. Donald J. Trump would have the financial
 4 wherewithal to fund his bid."
 5 Did you have any understanding of what financial
 6 information Mr. Trump made available to Deutsche Bank?
 7 A I did not.
 8 Q Was the representation I just read important to Morgan
 9 Stanley in its role in managing the bidding process for the
 10 Buffalo Bills?
 11 A Yes.
 12 Q Why was it important?
 13 A We asked for some proof of funds and at this stage of
 14 the process a letter from a credible, reputable bank sufficed.
 15 MR. FINKELSTEIN: Your Honor, I would like to move
 16 to admit PX 980 into evidence.
 17 MR. ROBERT: Objection. Relevance and statute of
 18 limitations.
 19 THE COURT: Overruled. Granted. It's in.
 20 (Whereupon, the item previously referred to is
 21 received and marked Plaintiff's Exhibit Number 980 in
 22 evidence.)
 23 MR. FINKELSTEIN: If we can set that aside and move
 24 on to a new document? I'm handing to the witness through
 25 the court officer for identification PX 3274.

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1 MR. ROBERT: Your Honor, in that last exhibit I saw
2 there were a series of attachments in the PDF. Since it was
3 just electronic, what's being moved in, just recovery e-mail
4 and the one attachment referenced or all the attachments?
5 MR. FINKELSTEIN: I believe the witness has
6 foundation so that we can move in the whole thing.
7 MR. ROBERT: Can we look at it and see what it is?
8 Because they look like bids from other people.
9 THE COURT: Those would probably not be relevant.
10 MR. FINKELSTEIN: At a minimum we would like to
11 move in the e-mail and both of the letters we just looked
12 at.
13 THE COURT: Those are granted -- that's granted.
14 Those are in.
15 Q Do you recognize PX 3274 in front of you?
16 A I do.
17 Q What do you recognize it to be?
18 A Looks like an e-mail from Michael Cohen to my
19 colleague, Alex Hill.
20 Q Do there appear to be additional messages in this
21 thread?
22 A Yes. There is some back and forth between Alex and
23 Michael.
24 Q So I'd like to direct your attention to page four.
25 There is an e-mail from Michael Cohen to Alex Hill with you

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1 cc'd. Do you see that?
2 A Yes, yes.
3 Q And who is Alex hill?
4 A Alex was a colleague of mine, somebody -- a member of
5 my team at Morgan Stanley.
6 Q The e-mail says: "Alex, Jason Greenblatt and I just
7 dropped off a packet with Margay at your office for Don. Can
8 you please ensure he receives it and advise me so I can confirm
9 to Mr. Trump its receipt? Thank you."
10 What is your understanding of what Michael Cohen meant
11 when he said he dropped off the packet for Don?
12 A The bid package.
13 Q And the bid -- what did the bid package contain?
14 A I know it contained a letter, the two letters that we
15 saw. I don't know if there is anything else.
16 Q So in the middle of page three, Alex Hill sends a
17 message to Michael Cohen and to you saying "regarding management
18 presentation dates, would you all be able to do August 6th in
19 Detroit?" What is a management presentation as described in
20 this e-mail?
21 A Sure. So as I talked about in the second part of the
22 MNA process as part of diligence we would provide potential
23 bidders an opportunity to meet with the management team.
24 Typically, what happens in those meetings is the management team
25 presents the story of the asset. So in this case it was the

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1 team CEO talking about the future of the Buffalo Bills and why
2 it's such a great asset.
3 Q Did the Trump Organization in fact receive a management
4 presentation?
5 A They did.
6 Q Were you present?
7 A I was.
8 Q Who from the Trump Organization do you recall
9 attending?
10 A I know Donald Trump was there. I don't recall who
11 else. He had people with him, but I don't recall those people
12 were.
13 Q What, if anything, do you recall being discussed at the
14 management presentation?
15 A We talked about the Buffalo Bills and lots of topics.
16 We talked about the USFL, we talked about lots of things, but it
17 was sort of a wide-ranging conversation.
18 Q Do you recall whether Mr. Trump provided any documents
19 to you at the presentation?
20 A He gave us handouts of the Forbes list of top paid
21 entertainers.
22 Q On page two of the e-mail Alex hill writes a message to
23 Jason Greenblatt and Michael Cohen with you cc'd that says:
24 "One near term NFL item we would like you all to fill out and
25 have Mr. Trump sign is the attached Authorization and Consent to

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1 Release Records." What is the Authorization and Consent to
2 Release Records?
3 A So in order to purchase an NFL team you have to go
4 through a very thorough financial review with the league office.
5 As we progressed through the process we want to make sure that
6 bidders are getting the appropriate paperwork into the league so
7 they can begin that process because it does take sometime so
8 that Authorization and Consent to Release Records is something
9 we need from each perspective bidder so therefore the NFL can go
10 and start doing their diligence.
11 Q So at the very first message in this document is a
12 message from Michael Cohen that says "after some internal
13 deliberation, we feel it is premature to sign the consent to
14 release forms until such time as we know that Mr. Trump is the
15 final bidder." Do you recall learning in or about August 2014
16 that the Trump Organization was refusing to sign the consent to
17 release records?
18 A I do.
19 Q Did Morgan Stanley ever receive signed consent to
20 release records forms?
21 A We did not.
22 Q After the management presentation that we just
23 discussed did the bidding process continue?
24 A It did.
25 Q What happened next?

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1 A We continued having those meetings with other parties.
 2 Several parties took stadium tours. We then asked for final
 3 bids. I don't recall the exact date. We got those final bids
 4 and we decided on the winning bidder. That winning bidder then
 5 went through the NFL approval process and became owners of the
 6 team I believe in October that year.
 7 MR. FINKELSTEIN: Before we get to that really
 8 quickly, Your Honor, I move to admit PX 3274 into evidence.
 9 THE COURT: Granted.
 10 MR. ROBERT: Objection. Relevance. Statute of
 11 limitations.
 12 THE COURT: Overruled. Granted. It's in.
 13 (Whereupon, the item previously referred to is
 14 received and marked Plaintiff's Exhibit Number 3274 in
 15 evidence.)
 16 Q I'll now hand the witness for identification a document
 17 marked PX 3219. Do you recognize this document?
 18 A I do.
 19 Q What do you recognize it to be?
 20 A This is a letter or an e-mail from Daniel Barzac, who
 21 is a member of my team, to me discussing a draft of what we call
 22 fairness materials.
 23 Q What are fairness materials?
 24 A So in certain circumstances an investment bank will
 25 provide what's called a fairness opinions to -- mostly a board

D. Cornwell - Plaintiff - direct (Finkelstein) Page 2894

1 of directors, but in this case we were providing that fairness
 2 opinion to the trustees of Ralph Wilson's estate.
 3 Q So on page five of this exhibit there is a slide titled
 4 "Evolution of Participants."
 5 A That's a good title.
 6 Q The slide states that nine parties gave initial
 7 indications. Was Donald Trump one of those nine parties?
 8 A He was.
 9 Q The slide states that five parties received management
 10 presentations. Was Donald Trump one of those five parties?
 11 A He was.
 12 Q The slide states that six parties gave final offers.
 13 Was Donald Trump one of those parties?
 14 A Don't recall the nature of his final offer.
 15 Q But he is?
 16 A Listed, yes.
 17 Q Is Donald Trump's name listed?
 18 A Yes, it is.
 19 Q Do you have any reason to dispute that Donald Trump
 20 provided a final --
 21 A No.
 22 Q So going back to page four, the slide is titled
 23 "Summary of Key Transaction Terms." Do you see that?
 24 A I do.
 25 Q Who is the purchaser of this bid on this page?

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1 A Terry and Kim Pegula.
 2 Q How much is the purchase price listed?
 3 A \$1.4 billion.
 4 Q Did the Pegulas in fact purchase the Bills for
 5 \$1.4 billion?
 6 A Yes.
 7 Q Does this -- do these attached fairness materials
 8 accurately summarize the terms of the transaction?
 9 A Yes.
 10 MR. FINKELSTEIN: Your Honor, I move to admit PX
 11 3219 into evidence.
 12 MR. FIELDS: Objection. Statute of limitations.
 13 THE COURT: What's the relevance of this? This
 14 particular page, let's say?
 15 MR. FINKELSTEIN: So this page was just to
 16 summarize the final result of the transaction and the other
 17 page was to show that Donald Trump participated in all three
 18 stages of the bidding process, even though his bid did not
 19 turn out to be the final.
 20 MR. FERIS: Your Honor, it's the defendants's
 21 position none of this is relevant to any cause of this case.
 22 We agree with Your Honor here. This is completely
 23 irrelevant.
 24 THE COURT: I just asked the question. What's the
 25 relevance of the final bid? We know the successful bid.

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1 Attorney General?
 2 MR. FINKELSTEIN: I am offering it for
 3 clarification just to show the full story on the Bills'
 4 transaction. The amount of the bid is not necessarily
 5 relevant, just I was just trying to show that Donald Trump
 6 was not the ultimate buyer.
 7 THE COURT: I'll let it in. There is no jury,
 8 doesn't really matter, but I understand you're completing
 9 the circle.
 10 (Whereupon, the item previously referred to is
 11 received and marked Plaintiff's Exhibit Number 3219 in
 12 evidence.)
 13 MR. FINKELSTEIN: That's all. And I have no
 14 further questions.
 15 THE COURT: Okay. Any cross examination?
 16 MR. FERIS: Yes, Your Honor.
 17 THE COURT: Counselor, I don't believe we ever met.
 18 MR. FERIS: My name is Ivan Feris, Your Honor.
 19 Can you hear me, Your Honor?
 20 THE COURT: Loud and clear.
 21 MR. FERRIS: Awesome. As I was saying, my name is
 22 Ivan Feris, and I'm here on behalf of several of the
 23 corporate defendants in this matter.
 24 THE COURT: Welcome.
 25 MR. FERRIS: Thank you.

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1 And if it may please the Court, I would like to
 2 proceed.
 3 THE COURT: Please do so.
 4 DIRECT EXAMINATION
 5 BY MR. FERIS:
 6 Q Hello, Mr. Cornwell.
 7 A How are you?
 8 Q As you heard, my name is Ivan Feris. I'm going to ask
 9 you a series of yes-or-no questions and to the best of your
 10 ability, please try to answer them with yes or no, okay?
 11 So, we just heard from you that President Trump was not
 12 the ultimate buyer of the Bills; correct?
 13 A Yes.
 14 Q I want to talk a little bit about how the process of
 15 selling a professional football team works.
 16 You told us here in your direct examination that Morgan
 17 Stanley had to compete for a spot to sell the Bills?
 18 A Yes.
 19 Q And the process started somewhere in April of 2014 or
 20 closer to that date; right?
 21 A I don't exactly recall.
 22 Transcript continues on the following page....
 23
 24
 25

D. CORNWELL - PLAINTIFF - CROSS(MR. FERIS) Page 2898

1 Q And you as a member of Morgan Stanley and Morgan
 2 Stanley as a bank had to participate in what is known as a bake
 3 off for the opportunity, right?
 4 A Yes.
 5 Q Okay. So this bake off, Morgan Stanley would gather a
 6 list of potential buyers and eventually make a pitch to the
 7 seller of the team, correct?
 8 A No.
 9 Q You told us here on your direct that you would gather
 10 potential buyers and that was Morgan Stanley's role, right?
 11 A We did more than that, yes. We presented our
 12 credentials.
 13 Q That was part of what you did, though, right, gather
 14 the list of buyers?
 15 A Yes.
 16 Q And other banks did the same thing?
 17 A I don't know.
 18 MR. FERIS: Can I pull up document D1001, please.
 19 Q I'm showing you this document, Mr. Cornwell, to see if
 20 it refreshes your recollection. Right at the top, it says,
 21 "From Cornwell K. Don." That's you, right?
 22 A Yes.
 23 Q It says, "Three banks invited including us" in the
 24 second bullet point. Do you see that there?
 25 A Yes.

D. CORNWELL - PLAINTIFF - CROSS(MR. FERIS) Page 2899

1 Q You said that your "best guess is GS, JPM based on
 2 their experience and league relationships," right?
 3 A Yes, that's what I wrote.
 4 Q So other banks were involved in the bake off, right?
 5 A Yes.
 6 Q Correct. So -- and Morgan Stanley was ultimately the
 7 bank chosen out of the options?
 8 A Yes.
 9 Q And Morgan Stanley had an incentive to put a list
 10 together of suitable buyers, right?
 11 A I don't understand the question.
 12 Q You weren't just going to put anybody on that list?
 13 A No, I wouldn't just put anybody on the list.
 14 Q Morgan Stanley had to stand by that list, right?
 15 A No, nothing binding about the list.
 16 Q Nothing binding, but Morgan Stanley's name was on the
 17 list, right, that it submitted?
 18 A We would not have been a buyer of the Buffalo Bills.
 19 Q Can you repeat that?
 20 A Morgan Stanley would not have been -- I don't
 21 understand the question.
 22 Q Morgan Stanley would submit the list of buyers on
 23 behalf of Morgan Stanley trying to get chosen as the bank who
 24 would broker the sale, right?
 25 A Yeah. The process wasn't one where we submitted a

D. CORNWELL - PLAINTIFF - CROSS(MR. FERIS) Page 2900

1 list.
 2 Q You didn't submit a list? What --
 3 A That's not how that works.
 4 Q We'll come back to that later, sir.
 5 In the list of buyers that you did put together, you
 6 placed Donald Trump, the President of the United States later,
 7 he later became the president on the list, right?
 8 A Yes. He had publicly indicated he was interested in
 9 the team.
 10 Q And the list was eventually submitted to the CFO of the
 11 Bills, right?
 12 A Presented to.
 13 Q Presented.
 14 A To the trustees.
 15 Q And it was also presented to the NFL eventually?
 16 A It was discussed with the NFL.
 17 Q And even before Morgan Stanley was chosen, you knew
 18 President Trump was, right?
 19 A Yes.
 20 Q That's right. And his name came to your mind even
 21 before Morgan Stanley was chosen as the bank that would broker
 22 the sale, right?
 23 A He probably stated he was interested. He was Tweeting
 24 about it.
 25 Q But in your mind, Donald Trump was not an option as a

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1 buyer, right?
 2 A So you're referring to what I wrote here, "Donald Trump
 3 is not an option"?
 4 Q Correct.
 5 A The NFL had or still has a rule around people involved
 6 in gaming being prohibited from buying NFL teams. So this was a
 7 discussion that needed to happen with the NFL, his suitability
 8 for NFL ownership because of his affiliation with casinos.
 9 Q So in your mind, he wasn't an option at the time,
 10 right?
 11 A At that time, yes.
 12 Q So one of the things that you said that you looked at
 13 was certainty of closing, correct?
 14 A Yes.
 15 Q But before you started the process, you knew that Trump
 16 President Trump was not likely to close; am I right?
 17 A We needed to have a conversation with the National
 18 Football League.
 19 Q Is that a yes, sir?
 20 A No.
 21 Q But he wasn't an option to you. You admitted that
 22 much, right?
 23 A We needed to have a conversation actually both with the
 24 National Football League and with the Trump Organization to
 25 understand where they sat in the gaming world. His affiliations

D. CORNWELL - PLAINTIFF - CROSS(MR. FERIS) Page 2902

1 were unclear to us.
 2 Q Regardless of how you felt about him, his name came to
 3 mind when Morgan Stanley was competing for the chance to broker
 4 the sale, correct?
 5 A Yes.
 6 Q And this was before you actually spoke to President
 7 Trump about the sale of the Bills, right?
 8 A Yes.
 9 Q You needed to have a conversation. You just testified
 10 to that, right?
 11 A Yes.
 12 Q This was before any financial disclosure was provided
 13 to you from President Trump, correct?
 14 A Yes.
 15 MR. FERIS: Can we pull that e-mail back up,
 16 please. Your Honor, I would like to move D1001 into
 17 evidence.
 18 MR. FINKELSTEIN: No objection.
 19 THE COURT: Granted. It is in evidence.
 20 (Whereupon, the Document was marked in evidence as
 21 Defendant's Exhibit 1001.)
 22 Q And even before Morgan Stanley was chosen to broker the
 23 sale, President Trump showed some interest in wanting to buy the
 24 Buffalo Bills, correct?
 25 A Yes.

D. CORNWELL - PLAINTIFF - CROSS(MR. FERIS) Page 2903

1 Q In fact, the chairman of Morgan Stanley communicated
 2 with President Trump's interest to you, correct?
 3 A Chairman --
 4 Q The chairman at the time.
 5 A No. No.
 6 Q No?
 7 MR. FERIS: Can we get on the screen D1002, please.
 8 A Jeff's not -- he was not the chairman of Morgan
 9 Stanley.
 10 Q Doesn't it say the "chairman of the institutional
 11 securities"?
 12 A That's not Morgan Stanley, so he's -- he had a
 13 chairman title. He was not the chairman of Morgan Stanley.
 14 Q He was a chairman?
 15 A Yes.
 16 Q So he was a chairman, just to get it clear?
 17 A No, no, not the chairman of the board, but okay.
 18 Q He was the chairman of institutional securities at
 19 Morgan Stanley, right?
 20 A Yes. Yes.
 21 Q So that's accurately reflected on that e-mail there,
 22 highlighted on the screen?
 23 A I assume so, yes.
 24 Q Just making sure.
 25 And at this time, the bank was still participating in

D. CORNWELL - PLAINTIFF - CROSS(MR. FERIS) Page 2904

1 the bake off, right?
 2 A I don't know the timing. I have to -- I don't recall
 3 the timing of the various meetings.
 4 Q But you thought according to this e-mail that President
 5 Trump had no chance of being approved by the NFL? Is that true?
 6 I'm looking at page two of the e-mail.
 7 A Yes.
 8 Q Yes, right.
 9 How do you pronounce his name, so I don't butcher it?
 10 A Holzschuh.
 11 Q So he told you that he had spent some time with Donald
 12 Trump, correct?
 13 A Correct.
 14 Q And he told you that President Trump wanted your help
 15 with buying the Bills, right, putting in an offer?
 16 A Yes.
 17 Q And he asked you what's your view? You were asked by
 18 James Head on behalf of Mr. Holzschuh?
 19 A Yes.
 20 Q You thought that President Trump had little chance of
 21 being approved by the NFL, true?
 22 A Yes.
 23 Q You knew that the president had been previously
 24 involved with litigation involving the NFL?
 25 A Yes.

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1 Q You told us that here today, right?

2 A Yes.

3 Q But that President Trump's strong show of interest

4 doesn't hurt the process, correct?

5 A I'm sorry. Are you quoting something? Where are you?

6 Q At the top of page two, you said, "That being said, his

7 strong show of interest doesn't hurt the process, which I think

8 will be well-attended both north of the border and down into

9 NYC"?

10 A Yes.

11 Q So President Trump being involved didn't hurt the

12 process?

13 A No.

14 Q That means it helped the process, right?

15 A Hard for me to know.

16 Q You were the managing director at this time, right?

17 A Yeah, but I can't tell you whether it helped or hurt.

18 Q You told us that as a managing director, it was your

19 responsibility to lead these type of transactions?

20 A Yes.

21 Q So you were involved, right? You had information

22 relevant to this, correct? You thought that --

23 A At this point, I'm now looking at the dates. At this

24 point, we weren't hired to sell the team.

25 Q Which was one conflict. "We are of three pitching for

D. CORNWELL - PLAINTIFF - CROSS(MR. FERIS) Page 2906

1 sell side assignment?"

2 A That's correct.

3 Q So at this time, there were conflicts with President

4 Trump potentially?

5 A President Trump had asked if we would represent --

6 Q Sir, yes or no? My question is a yes-or-no question.

7 Did you have a conflict with President Trump; yes or

8 no?

9 A No.

10 Q Is that what you said in your e-mail there?

11 A We hadn't been hired yet.

12 Q So it was a potential conflict?

13 A Potential. There you go.

14 Q Okay. And you said that you thought that wealthy hedge

15 fund guys would take a hard look?

16 A Yes.

17 Q So President Trump being involved attracted other

18 bidders?

19 A I don't know.

20 Q You don't know? So you're telling me here that a

21 world-renowned person like President Trump showing interest in

22 the bills, you don't know if that would have attracted other

23 bidders?

24 A Many times, that can scare away other bidders.

25 Q What was that, sir?

D. CORNWELL - PLAINTIFF - CROSS(MR. FERIS) Page 2907

1 A Many times, that can scare away other bidders.

2 Q But your incentive as the managing director at this

3 time before -- even before the sale was to attract as many

4 bidders as possible, right?

5 A At this time, my incentive was to get hired.

6 Q And you would get hired. You would agree the more

7 bidders you had, the more attractive the bank would be to the

8 seller, right, more qualified bidders?

9 A No.

10 Q So you're saying if you had only one bidder on the

11 list, you were more likely to get chosen?

12 A No.

13 Q No, right.

14 THE COURT: Please, one at a time, so the reporter

15 can take this all down.

16 MR. FERIS: Sure, Your Honor.

17 Q And then the conversation continues with Mr. Holzschuh

18 on the first page of this document and he said that "He probably

19 does have the dough and he told me the bid was 1 billion, so at

20 least he's in the right ballpark," correct?

21 A That's what the e-mail says.

22 Q But he told you that he was glad to pass on Donald

23 Trump if that was the call, correct?

24 A Yes.

25 Q Or at least you could tell him that since you were

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1 baking off, you could hold off the president for a little bit,

2 right?

3 A That's not what the e-mail says.

4 Q "Can certainly tell him we are baking off for sell side

5 and not free until we know the outcome." That's what he said,

6 right?

7 A Correct.

8 Q And you told him that "I can get an unofficial view

9 from the league office on Trump pretty easily if that's

10 helpful"?

11 A Yes.

12 Q So despite certain issues, Morgan Stanley didn't turn

13 away Trump's business outright, correct? I can rephrase my

14 question.

15 A No. I don't understand the question.

16 Q You had the opportunity to pass on President Trump,

17 right?

18 A Pass what?

19 Q Pass on him as a buyer. Is that not what this meant,

20 "glad to pass if that's" --

21 A Representing him.

22 Q As a buyer?

23 A This would be us working for him. That's what this was

24 about. This was us representing him.

25 Q You put President Trump on the ultimate list of buyers,

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1 right?

2 A Yes.

3 Q You didn't have to do that?

4 A So in an estate sale --

5 Q Yes or no, please, sir.

6 THE COURT: It is a yes or no.

7 A No.

8 Q You didn't have to put him on the list?

9 A No.

10 THE COURT: Hold on a second. I'll ask that the

11 witness be excused from the room for a minute and I can talk

12 to the attorneys.

13 (Witness exits the stand.)

14 THE COURT: Well, we spent I don't know how long,

15 but a significant period of time in which the questions seem

16 to elicit some sort of prejudice against President Trump or

17 against some sort of bait and switch. I don't know where we

18 are going with this. I don't know what this proves. Can I

19 get an offer of proof from anybody?

20 MR. KISE: It goes back to what we were talking

21 about this morning, which I think we need to be allowed to

22 make this record whether or not you actually agree with us.

23 They need to establish that there is materiality and

24 reliance. It's not enough that a piece of paper was handed

25 to someone that contained, in your view over our objection,

D. CORNWELL - PLAINTIFF - CROSS(MR. FERIS) Page 2910

1 a false statement. That establishes only one piece of the

2 case. That was the piece of the case that you decided on

3 summary judgment. That doesn't establish anything about

4 this part of the case.

5 The two are not connected necessarily and I

6 respectfully disagree with your conclusion, apparently, that

7 they are because if no one does anything with it, if no one

8 relies on it, then it has no impact of any kind, no real

9 world impact. Even if it is out there, even if it is

10 inaccurate, it has no real impact.

11 So here with this witness, what we will establish

12 is Trump was never a serious bidder in the first place.

13 This guy's dancing all over the place. I'm not sure why,

14 but they never considered him a serious bidder. They took

15 him in to use his name to gin up the price. Sorry. To bid

16 up the price. That's one of those --

17 THE COURT: It's a southern thing.

18 MR. KISE: Right. But that's what they were doing.

19 They were using Trump to manipulate the purchase price

20 thinking that he wasn't really a serious contender at all.

21 And so the financial information that came in, so what,

22 okay? Again, back to my point this morning. Whether that

23 financial information contained something accurate or

24 inaccurate is immaterial if the recipient of the information

25 doesn't do anything with it. Just like with the bank. If

D. CORNWELL - PLAINTIFF - CROSS(MR. FERIS) Page 2911

1 the bank doesn't actually -- you know. So any way, that's

2 really where we are going, to just establish --

3 THE COURT: There was no reliance on the statement.

4 MR. KISE: We think the whole thing is irrelevant

5 because there's no claim or cause of action. We think the

6 entirety of this is not correct so -- and I'll wait. You

7 may have a question. I see that Ms. Greenfield passed you a

8 note, so you may have a question.

9 THE COURT: She's asking me what I'm going to have

10 for lunch.

11 MR. KISE: Okay. I can help you with that. Thank

12 you.

13 THE COURT: Mr. Wallace, would you like to respond?

14 MR. WALLACE: I was just going to say this

15 obviously goes to use and business and repeated use of the

16 false statements. Not every single use is going to generate

17 some disgorgement amount or something else. That's why this

18 is in. That's why it has been introduced. I think part of

19 the reason I guess he's dancing around is I found the

20 questions confusing myself, but obviously, that's the reason

21 why the people are introducing this evidence and it is

22 fairly limited. Thank you.

23 THE COURT: Well, how much longer do you think your

24 cross-examination will be?

25 MR. FERIS: It really depends on how the witness

D. CORNWELL - PLAINTIFF - CROSS(MR. FERIS) Page 2912

1 answers the questions, Your Honor, but not much longer. I

2 think I'll be done before lunch.

3 THE COURT: All right. As is often the case, my

4 attempt to save time is just costing time. So I understand

5 Mr. Kise's point about reliance, so let's get the witness

6 back.

7 Q Welcome back, Mr. Cornwell.

8 A Thank you.

9 Q So before you left, we established that Morgan Stanley

10 didn't flat out turn away President Trump, right?

11 A For what?

12 Q As a buyer, potential buyer.

13 A No.

14 Q No, right. Had the chance to, but didn't, correct?

15 A Sure.

16 Q So let's talk about what Morgan Stanley did before the

17 potential buyer submitted bids.

18 A Yes.

19 Q Now, I'm no expert in the sale of an NFL team, but you

20 would agree with me that the bidding process is essentially a

21 competition between the potential buyers, right?

22 A Yes, and this was an open process because of the estate

23 sale, so we had to talk to all interested parties.

24 Q And the potential buyers would each submit a bid or

25 series of bids, right?

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1 A That is correct.

2 Q And at this point, Morgan Stanley wouldn't simply turn

3 away buyers if they thought that a bidder was qualified on basic

4 information it had?

5 A We gave all people an opportunity to credentialize

6 themselves.

7 Q And even if a bidder had potential problems, that would

8 ultimately disqualify them in the beginning stages? You weren't

9 turning away buyers, right?

10 A No.

11 Q And you told me that you would vet these buyers, you

12 would give them a chance to qualify themselves?

13 A Credentialize themselves, yes.

14 Q Yes, credentialize. Generally, the more qualified

15 suiters for an NFL team, the higher the ultimate selling price

16 would be, right? That's what drives the competition?

17 A No. No.

18 Q So people don't bid against each other driving up the

19 selling price? Is that what you're telling me?

20 A Sometimes.

21 Q And the higher the selling price, the more money that

22 Morgan Stanley would earn on the deal, right?

23 A I don't recall.

24 Q You don't recall?

25 MR. FERIS: Can I, please, have the Morgan Stanley

D. CORNWELL - PLAINTIFF - CROSS(MR. FERIS) Page 2914

1 document up on the screen. I want to go here where it says

2 "brokerage." Can you zoom in on that?

3 Q This is from the Morgan Stanley website. It says, "For

4 brokerage activity, we offer transaction-based pricing in which

5 you pay commissions, sales loads, markups, markdowns, or other

6 fees for each transaction you and your financial advisor

7 execute", correct?

8 MR. FINKELSTEIN: I would like to object to this

9 document that has not been previously identified or

10 otherwise provided to us.

11 MR. FERIS: Your Honor, he doesn't recall and I'm

12 showing him something to refresh his recollection.

13 THE COURT: If it is just to refresh his

14 recollection, you can --

15 MR. GABER: Does the witness have to indicate what

16 would refresh his -- it is withdrawn.

17 Q So Morgan Stanley earns commissions off the sales

18 price, correct?

19 A That is not related to investment banking, this

20 document.

21 Q This is not about Morgan Stanley's services?

22 A This is about brokerage services.

23 THE COURT: Hold on. I think first you have to ask

24 does this refresh your recollection.

25 Q Does this refresh your recollection, sir?

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1 A No.

2 MR. FERIS: We can take it down.

3 Q Part of your job on behalf of the estate was to

4 maximize the selling price, right?

5 A Yes.

6 Q And the bidder might be included in that process simply

7 because they drive up the value, correct?

8 A Restate the question, please.

9 Q A bidder might be included simply because they drive up

10 the value, correct?

11 A Yes.

12 Q And you told me earlier that representatives of Morgan

13 Stanley met with the NFL to discuss potential buyers before bids

14 were submitted, right?

15 A Yes.

16 MR. FERIS: Can we get 1003 up here on the screen.

17 Q This is an e-mail from Robert Kindler on which you're

18 cc'd, your e-mail is cc'd, right?

19 A To Robert Kindler.

20 Q In which you were cc'd from Alex Hill?

21 A Yes.

22 Q And you discussed President Trump at the meeting with

23 the NFL, right?

24 A Yes.

25 Q And the NFL raised some concerns about President

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1 Trump's liquidity, true, looking at the fourth bullet point

2 there.

3 A Yes.

4 Q They also question his ability to get votes?

5 A Yes.

6 Q The NFL wanted to look at certain management contracts

7 that President Trump was involved in, correct?

8 A Yes.

9 Q Despite all this, the NFL was not opposed to Donald

10 Trump submitting a bid, right?

11 A They had no jurisdiction over who submits a bid.

12 Q If I could point you to David Einhorn, it says,

13 "Unlikely, but no problems from the NFL's perspective," right?

14 A Yes.

15 Q So the NFL could have told you, "We have a problem with

16 this person," right?

17 A Yes, but somebody could still submit a bid.

18 Q But they didn't tell you that about Mr. Trump?

19 A Sorry. Tell me what?

20 Q Withdrawn.

21 Morgan Stanley didn't oppose President Trump submitting

22 a bid, right?

23 A No.

24 Q And this meeting took place before any official offer

25 was made, right?

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1 A Yes.
 2 Q You still had not received any financial representation
 3 from President Trump?
 4 A No.
 5 Q This was just based on the Trump name and the
 6 conversation with NFL, right?
 7 A No.
 8 Q So you had no financial disclosure from President
 9 Trump, right?
 10 A No.
 11 THE COURT: You know, again, and I've been saying
 12 this all trial long, when you ask negative questions, "so
 13 you didn't, did you," the answer is inherently ambiguous.
 14 Just ask him if he did and that's a direction to attorneys.
 15 If you can, please, adhere to that. Ask questions -- well,
 16 I'll rephrase it. Withdrawn. Don't ask questions in the
 17 negative. "You didn't do that, did you." What does yes
 18 mean? What does no mean? It is ambiguous.
 19 (Continued on the next page.)
 20
 21
 22
 23
 24
 25

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1 Q Other buyers were deemed unlikely based on this
 2 meeting; right?
 3 A I don't recall.
 4 Q First bullet point. David Bonderman, unlikely;
 5 correct?
 6 A Unlikely.
 7 Q Unlikely. That was my question.
 8 David Einhorn, unlikely?
 9 A Yes.
 10 Q Where it says "Donald Trump," it doesn't say
 11 "unlikely;" right?
 12 A Does not say unlikely.
 13 Q So I want to --
 14 MR. FERIS: I would like to move Exhibit 1003 into
 15 evidence, Your Honor.
 16 THE COURT: I'll do whatever you want as long as
 17 you're finished soon. I feel like we're spinning on wheels
 18 here. Yes, it's in evidence.
 19 (Whereupon, the item previously referred to is
 20 received and marked Defendant's Exhibit Number 1003 in
 21 evidence.)
 22 MR. FERIS: And at this time I would like to go
 23 back and do D 1002 in evidence as well, which I didn't do,
 24 Your Honor.
 25 THE COURT: Granted. It's in evidence.

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1 (Whereupon, the item previously referred to is
 2 received and marked Defendant's Exhibit Number D 1002 in
 3 evidence.)
 4 MR. FERIS: Can I get P 0980 on the screen, please?
 5 Q I want to talk to you about Morgan Stanley's reaction
 6 to the bids. And you went over this document with the Attorney
 7 General recently.
 8 MR. FERIS: Can we turn to page nine of the
 9 document, please?
 10 Q This letter is signed by Donald J. Trump; correct?
 11 A I don't know.
 12 Q That's what the letter represents; right?
 13 A That's what it represents, yes.
 14 Q And above Donald J. Trump's name it says "Trump
 15 Acquisition LLC?"
 16 A Yes.
 17 Q It doesn't say DJT Holdings LLC; right?
 18 A It does not.
 19 Q It doesn't say DJT Holdings managing member; right?
 20 A No.
 21 Q Same question with regard to Trump Organization Inc.?
 22 A No.
 23 Q Same question to Trump Organization LLC?
 24 A No.
 25 Q Same question with regard to Trump Endeavor LLC?

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1 A No.
 2 Q Same question with regard to 401 North Wabash LLC?
 3 A No.
 4 Q Same question with Trump Old Post Office LLC?
 5 A No.
 6 Q Same question with 40 Wall Street LLC?
 7 A No.
 8 Q Same question with Seven Springs LLC?
 9 A No.
 10 Q And same question with the Donald J. Trump Revocable
 11 Trust?
 12 A No.
 13 Q None of those entities are listed there; right?
 14 A No.
 15 Q Mr. Eric Trump is not listed on this letter either;
 16 right?
 17 A He is not.
 18 Q And neither is Donald Trump, Jr.?
 19 A He's not.
 20 MR. FERIS: We can take this exhibit down.
 21 Q And you told us that that bid on July 29, 2014 was a
 22 nonbinding bid; right?
 23 A That's correct.
 24 Q And then based on the bids they received Morgan Stanley
 25 put together a bid summary presentation; yes?

D. Cornwell - Plaintiff - cross (Feris) Page 2921

1 A Yes.

2 Q And it also put a script together of what it would tell

3 potential buyers that submitted bids; right?

4 A Yes.

5 MR. FERIS: Can we pull up D 1004?

6 Q This was sent to you, right, Mr. Cornwell?

7 A Yes.

8 Q And it says "attached is the bid summary and script."

9 Right?

10 A Yes.

11 MR. FERIS: Your Honor, I would like to move this

12 exhibit into evidence.

13 THE COURT: Granted. It's in.

14 (Whereupon, the item previously referred to is

15 received and marked Defendant's Exhibit Number D 1004 in

16 evidence.)

17 MR. FERIS: If we could scroll down, please?

18 Let's go to page five.

19 Q Do you see with where it says "Donald T. Trump?" I

20 believe you meant "J" there, right?

21 A Yes.

22 Q Yes, right.

23 A Yes.

24 Q So he submitted a bid for 1 billion?

25 A That's correct.

D. Cornwell - Plaintiff - cross (Feris) Page 2922

1 Q And it says that it was "subject to finalization and

2 signing of all documents and approval by the NFL's member

3 clubs?"

4 A Yes.

5 Q So at this time nothing was final?

6 A Nothing was final.

7 Q And then it said he had a stated net worth of in excess

8 of 8 billion?

9 A Yes.

10 Q Correct.

11 MR. FERIS: And let's go down to the script that

12 you were going to speak about with the potential buyers.

13 It's going to be on page 7.

14 Q Morgan Stanley at the time had an intention to tell

15 President Trump that his bid was below several others in the

16 process; right?

17 A Yes.

18 Q But you plan to communicate to him that he could

19 prevail during the diligence process if he could move up in

20 value?

21 A Yes.

22 Q So Morgan Stanley was encouraging President Trump to

23 raise his bid if he wanted to win; right?

24 A That he would have to raise his bid if he wanted to

25 win.

D. Cornwell - Plaintiff - cross (Feris) Page 2923

1 Q That he would have to?

2 A Not encourage, but he would have to.

3 Q You were telling him to win he needed to raise his bid?

4 A Yes.

5 Q And Pegula, the ultimate buyer, you, Morgan Stanley,

6 planned to tell him you bid enough to get into the next round,

7 but "at the top of your range you were not the highest bidder?"

8 A Yes.

9 Q So you were planning to communicate to Pegula that he

10 needed to raise his bid -- that they needed to raise the bid to

11 be ultimately successful; right?

12 A At the top end of his range he was not the highest

13 bidder. That's what we said.

14 Q Which means that to be successful he would have needed

15 to raise his bid; right?

16 A No.

17 Q So the person with the highest bid doesn't win?

18 A Certainty of closing also matters.

19 Q But one of the factors is whether the bid is --

20 A Yes.

21 Q -- high in value; correct?

22 A Yes.

23 Q A higher bid would have been beneficial to Morgan

24 Stanley?

25 A I don't understand the question.

D. Cornwell - Plaintiff - cross (Feris) Page 2924

1 Q The higher the bid the higher the ultimate selling

2 price; right?

3 A The higher the bid the higher the -- yes.

4 MR. FERIS: Let's pull up D 1011, please. Let's go

5 to page two of the document. Let's actually start with page

6 three.

7 Q So at the top of page three you write an e-mail that

8 says "have you given any of the NFL forms to the league yet;"

9 correct?

10 A Yes.

11 Q And then you said "we should discuss the process of

12 starting to get people vetted;" right?

13 A Yes.

14 Q Then your e-mail is responded to saying "certain people

15 had submitted the background forms; Pegula, the JBJ Group and

16 the Kelly Group;" correct?

17 A Yes.

18 Q Now, if we turn to page two you write back, "okay, I'd

19 like to get Trump in as well. We don't have the signature page;

20 correct?" That's what you wrote, right?

21 A Yes.

22 Q So you wanted to get Trump's forms in; correct?

23 A Yes.

24 Q You wanted President Trump as a bidder?

25 A Yes.

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D. Cornwell - Plaintiff - cross (Feris) Page 2925

1 Q You wanted to keep him around?
 2 A Yes.
 3 Q Even though he hadn't signed the final consent forms;
 4 right?
 5 A That's the signature page. That's what we're referring
 6 to. I wanted him to sign it, to sign the consent form.
 7 Q The signature page of the background forms, right, you
 8 wanted him to?
 9 A The consent form.
 10 Q He hadn't signed it?
 11 A He had not signed that.
 12 Q So you wanted him as a bidder even though he hadn't
 13 signed; right?
 14 A I wanted him to sign it.
 15 Q You told me right now that you wanted him as a bidder.
 16 That was your answer, right?
 17 A Yes. In order to be a bidder he needed to sign it.
 18 Q Mr. Wayne Katz told you "as far as I know we don't have
 19 President Trump's" -- it says "Trump's," but I'm adding the
 20 "President Trump" as an honorarium, "background check
 21 authorization form and I'd be surprised if we ever get his
 22 financials?"
 23 A What page are you on?
 24 Q I'm on page two.
 25 A Yes.

D. Cornwell - Plaintiff - cross (Feris) Page 2926

1 Q And you said "I'll talk" -- "we'll talk to him about
 2 it. We'll talk to him on Monday about it. He has asked we
 3 pre-check him with the league and that's what we want to do."
 4 A Yes.
 5 Q So President Trump hadn't signed the forms; right?
 6 A No.
 7 Q But you were still pursuing him as a bidder; right?
 8 You were getting him pre-checked with the NFL?
 9 A That's signing the forms.
 10 Q You said he has asked we pre-check him, so that's what
 11 we're going to do; right?
 12 A Yes.
 13 Q So you were pre-checking him even though the forms were
 14 not signed; right?
 15 A No.
 16 Q That's not what the e-mail says?
 17 A There is no pre-checking without the signed form.
 18 Q At this point you just told me that Trump hadn't signed
 19 the forms, but you were pre-checking him. "So that's what we
 20 want to do."
 21 A We want to pre-check him.
 22 Q And then you were told thereafter, "I hear Trump hasn't
 23 been doing anything in the data room;" right?
 24 A Yes.
 25 Q So you were on notice that President Trump was not

D. Cornwell - Plaintiff - cross (Feris) Page 2927

1 active in the data room; right?
 2 A Yes.
 3 Q And the data room is where a potential buyer receive
 4 all of their diligence materials; right?
 5 A That's correct.
 6 Q When the bidder is not very active in the data room
 7 that means they're not really looking at those diligence
 8 materials; right?
 9 A Yes.
 10 Q And in your experience when a bidder is highly
 11 interested in a purchase, they're active in data rooms; correct?
 12 A Sometimes.
 13 Q They want to know where their money is going; correct?
 14 Usually? Can we get a verbal response, sir?
 15 A Sometimes.
 16 Q And then you go on that despite him not being active in
 17 the data rooms, despite him not signing the background consent
 18 form on page one, you say "yes, still want to keep him around
 19 though." That's what you said; right?
 20 A Yes.
 21 Q You still wanted to keep Donald Trump around; right?
 22 A Yes.
 23 Q And then you were told "understood, but that's why I
 24 think it's hard to get his forms;" right?
 25 A Yes.

D. Cornwell - Plaintiff - cross (Feris) Page 2928

1 Q When you said "Trump asked to be pre-vetted so that's
 2 what we're going to do from his perspective. Better to find out
 3 if he is a no go now in a private fashion;" right?
 4 A Yes.
 5 Q So he hadn't signed the forms, but you were pre-vetting
 6 him; right?
 7 A No.
 8 Q "I've got some pretty good intel he has the money;"
 9 right? Yes?
 10 A Yes, I wrote that.
 11 Q You wrote that.
 12 So -- and you wrote "pre-vetting him." That's what it
 13 says. That's what we are doing; right?
 14 A No.
 15 Q That's not what you wrote?
 16 A I wrote that, but not -- we -- not Morgan Stanley doing
 17 pre-vetting, no.
 18 Q Did you write that inaccurately when you wrote it, sir?
 19 A I can't answer your question unless I can go outside
 20 the yes/no construct.
 21 MR. FERIS: Your Honor, at this time I would like
 22 to move D 1011 into evidence, sir.
 23 THE COURT: Okay. Five-minute warning and I
 24 hope --
 25 MR. FERIS: I'm almost done, Your Honor.

D. Cornwell - Plaintiff - cross (Feris) Page 2929

1 (Whereupon, the item previously referred to is
 2 received and marked Defendant's Exhibit Number D 1011 in
 3 evidence.)
 4 THE COURT: Will you be able to finish in five
 5 minutes?
 6 MR. FERIS: I'm going to try.
 7 THE COURT: I may limit you. I mean, I just have
 8 to say, Mr. Kise, you pointed out that the cross examination
 9 was supposed to show there was a reliance because they
 10 weren't going to pick him anyway, but no other questions
 11 seem to be they really did want him as a bidder. I don't
 12 get where we're going with this. Am I the only one --
 13 MR. FERIS: Your Honor, this goes to show Morgan
 14 Stanley did want him as a bidder because it helped the
 15 process. The witness has testified that it --
 16 MR. KISE: The witness is on the stand, Your Honor,
 17 so I don't really want to discuss this in front of the
 18 witness is all I'm saying. I just want to note again --
 19 THE COURT: You don't have to do it again. You
 20 already did it. All right. Here's what we'll do: Ten
 21 minutes. I really hope that you finish within the ten
 22 minutes. I'll ask the witness to answer quickly as best he
 23 can and I'll consider just stopping it at that point because
 24 I don't see the point.
 25 MR. KISE: This never happens with the government,

D. Cornwell - Plaintiff - cross (Feris) Page 2930

1 never. You never put them on the clock.
 2 THE COURT: Maybe they ask questions in a different
 3 matter.
 4 MR. KISE: They don't. They ask a lot of laborious
 5 questions and they drag us through a lot of exhibits and
 6 lots of things that take a lot of time. They're never
 7 questioned about anything they do. I just want to put that
 8 on the record because this is becoming a pattern, Your
 9 Honor. I'm sorry. Every time something takes a little bit
 10 longer with our side it's like you have to hurry up, you
 11 have to hurry up, you're on the clock. And, respectfully,
 12 that's not fair to us. They spend all the time that they
 13 want and I just ask Your Honor to consider that. We're
 14 going to move as fast as we can with this witness. As I've
 15 told you before, there is -- no one in this courtroom wants
 16 to leave here and have this trial over sooner than me.
 17 THE COURT: Let's continue.
 18 Q Are you aware that Mr. Holzschuh -- you are aware that
 19 Mr. Holzschuh encouraged President Trump to put his best offer
 20 forward; right?
 21 A I'm sorry, where are you?
 22 Q I'm not on the document anymore. I'm asking you about
 23 your knowledge?
 24 A I don't recall.
 25 MR. FERIS: Can we pull up D 1012, please?

D. Cornwell - Plaintiff - cross (Feris) Page 2931

1 Q You checked off with Mr. Holzschuh about a conversation
 2 we had with Trump; right? You told him "how did it go last
 3 week."
 4 A Yes.
 5 Q And he said he will stay in the process; right?
 6 A Yes.
 7 Q Followed by, "I encourage him to put his best offer
 8 forward and let the process work;" correct?
 9 A Yes.
 10 Q So you were encouraging -- you, being Morgan Stanley --
 11 President Trump to put his best offer forward; correct?
 12 A Jeff Holzschuh did.
 13 Q On behalf of Morgan Stanley?
 14 A No.
 15 Q You know President Trump is --
 16 MR. FERIS: We can take that down.
 17 Your Honor, I move this document D 1012 into
 18 evidence.
 19 THE COURT: Granted. It's in.
 20 (Whereupon, the item previously referred to is
 21 received and marked Defendant's Exhibit Number 1012 in
 22 evidence.)
 23 Q You know that President Trump is a real estate
 24 developer; right?
 25 A Yes.

D. Cornwell - Plaintiff - cross (Feris) Page 2932

1 Q A successful one; correct?
 2 A I don't know.
 3 Q You know he has an interest in several commercial
 4 properties in New York?
 5 A I don't know.
 6 Q Several golf properties around the world?
 7 A I don't know.
 8 Q You were heading this deal and you don't know about
 9 Donald Trump's equity holdings?
 10 A I don't know whether he held equity or had a license --
 11 he licensed his name. I don't know.
 12 Q You would agree with me that you're aware of President
 13 Trump's a world renowned brand name; right?
 14 A I don't know.
 15 Q You're not familiar with the Trump brand?
 16 A Yes.
 17 Q So you do know about the world renowned brand?
 18 A I don't know. World renowned? I don't speak for the
 19 world.
 20 Q You're aware there is value in that brand, sir?
 21 A I don't know.
 22 Q You are aware that excluding the brand value Mr. Trump
 23 had a net worth of 5.7 billion in 2014?
 24 A I don't know.
 25 MR. FERIS: Can we pull up on the screen what has

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1 been introduced into evidence as PX 730, please?

2 Q I'm going to represent to you this is Donald Trump's

3 Statement of Financial Condition that the New York Attorney

4 General moved into evidence.

5 If we can turn to page four, please. You see this says

6 "assets" right here, sir?

7 A Yes.

8 Q It lists "cash and marketable securities," right, on

9 the first line?

10 A Yes.

11 Q "Escrow and reserve deposits and prepaid expenses?"

12 A Yes.

13 Q In the second line?

14 A Yes.

15 Q "Real and operating properties;" correct?

16 A Yes.

17 Q If we skip down after all the properties are listed out

18 it says "partnerships and joint ventures net of related debt;"

19 correct?

20 A Yes.

21 Q Says "real estate licensing developments?"

22 A Yes.

23 Q And "other assets?"

24 A Yes.

25 Q It doesn't list "brand" on there anywhere; correct, on

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1 this page?

2 A I haven't read it in full, but I assume it does not.

3 Q You don't see it on there right now?

4 A I don't see it.

5 MR. FERIS: We can turn to the next page.

6 Q Now, his net worth there is listed as 5.7 just to round

7 or for time consistency as his net worth; correct?

8 A Yes.

9 Q And, again, we just went through that it's free of any

10 brand value; right?

11 MR. FERIS: If we turn to the next page?

12 Q In the bottom paragraph at the top it says "pursuant to

13 GAAP, this financial statement does not reflect the value of

14 Donald J. Trump's worldwide reputation; however, the brand value

15 has afforded Mr. Trump the opportunity to participate in

16 licensing deals around the globe as reflected on the balance

17 sheet therein." Do you see that?

18 A I do.

19 Q And then the final sentence of this says "the goodwill

20 attached to the Trump name has significant financial value that

21 has not been reflected in the preparation of this financial

22 statement." Do you see that?

23 A I do.

24 Q So this financial statement with a 5.7 billion net

25 worth does not include brand, according to what we just read;

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1 right?

2 A According to what we just read.

3 Q That would be a yes, right, according to what we just

4 read?

5 A Yes.

6 Q Are you aware that Trump's brand value is up to

7 \$3 billion?

8 A No.

9 MR. FERIS: Can we pull up PX 431, please?

10 Q And I'll represent to you this is a brand -- a letter

11 from Predictiv, that the value -- that values President Trump's

12 brand.

13 MR. FERIS: If we can turn to the bottom of page

14 two?

15 MR. FINKELSTEIN: Objection.

16 THE COURT: Go ahead.

17 MR. FINKELSTEIN: Hearsay. This exhibit is not in

18 evidence and this witness has no foundation.

19 MR. FERIS: Your Honor, I haven't tried to move

20 this exhibit into evidence. I'm just showing it into

21 evidence.

22 MS. HABBA: It's already into evidence. I brought

23 it in through Michael Cohen.

24 THE COURT: I guess we'll accept that

25 representation that it's already in evidence. Yes, no?

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1 MR. GABER: Was this introduced for the truth of

2 the matter asserted at the time or just for notice purposes?

3 THE COURT: Might just be notice. Anyone remember?

4 MS. HABBA: I mean, I can look back, Your Honor. I

5 believe we brought it in for the truth of the matter

6 asserted, but it was solely -- I will tell you the part I

7 brought in was the last sentence where it said the value

8 only.

9 MR. WALLACE: We're happy to just have our

10 objection noted and keep it moving.

11 MS. HABBA: Yes, we can keep it moving.

12 THE COURT: I don't know what this witness has to

13 do with this, but okay. Go ahead. Objection overruled

14 without prejudice.

15 Q Do you see where it says: Based on the information

16 provided it was concluded that the value of the Trump brand was

17 in the 2.8 to \$3 billion range?"

18 A I do see that.

19 Q You would agree with me that 5.7 plus 3 billion is

20 8.7 billion?

21 A Yes.

22 Q And that's in excess of 8 billion?

23 A Yes.

24 MR. FERIS: Your Honor, will the Court take

25 judicial notice that 5.7 plus three billion is 8.7 billion?

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1 THE COURT: I hereby take judicial notice of it.
 2 Q Just to remove all room for doubt, Trump didn't
 3 actually buy the Bills; correct?
 4 A He did not.
 5 MR. FERIS: If I could have one moment to confer
 6 with Counsel?
 7 THE COURT: Sure, go ahead.
 8 (Whereupon, there is a pause in the proceedings.)
 9 MR. FERIS: No further questions, Your Honor.
 10 THE COURT: Will there be any redirect?
 11 MR. FINKELSTEIN: No, Your Honor.
 12 THE COURT: That's that. The witness is excused,
 13 and I'll see you all at 2:15.
 14 MS. HABBA: Your Honor?
 15 THE COURT: Wait, wait. Don't go away.
 16 MS. HABBA: I just have a housekeeping matter.
 17 THE COURT: Well, the witness is excused.
 18 What is the housekeeping matter?
 19 MS. HABBA: Thank you, Your Honor. My far smarter
 20 associates have corrected some exhibit numbers that were in
 21 the record wrong when I cross examined Michael Cohen, so I
 22 just wanted to clean it up and make a record. I showed
 23 them. If I could just put that on the record quickly?
 24 THE COURT: How long about will it take?
 25 MS. HABBA: Two seconds.

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1 A F T E R N O O N S E S S I O N
 2 * * * * *
 3 THE COURT OFFICER: All rise. Part 37 is back in
 4 session. The Honorable Judge Arthur Engoron presiding.
 5 Please be seated and come to order.
 6 THE COURT: I know you're ready to call your next
 7 witness because the guy is standing there walking around
 8 like that. Would you like to call your next witness?
 9 MR. HAREN: Yes, we would. The people call David
 10 Orowitz. I understand Mr. Wallace has one matter to place
 11 on the record before we begin.
 12 MR. WALLACE: Cleaning up from the last
 13 examination, there was a question as to whether Plaintiff's
 14 Exhibit 431 had been entered into evidence. This was the --
 15 THE COURT: Right.
 16 MR. WALLACE: Valuation. It was sought to be
 17 introduced during Mr. Cohen's testimony. The objection was
 18 sustained. I don't know that it needs to change anything
 19 else on the record, but since I just wanted it to be
 20 reflected, that that's where we understood it came out.
 21 THE COURT: Okay. So we all agree it is not in
 22 evidence. Thank you.
 23 MR. HAREN: We call David Orowitz.
 24 THE COURT: Can we get Mr. Orowitz.
 25 THE COURT OFFICER: Witness entering.

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1 Record page 2356, exhibit on the record was D 995.
 2 What the record should reflect is D 955.
 3 Record 2361, this is not really relevant. D 958-3
 4 is on the record. It should just be D 958, no -3.
 5 2364 record page. PX 341 is the exhibit on the
 6 record. It should be D 984.
 7 And the last one is record page 2400. Exhibit on
 8 the record is PX 987. It should reflect D 988.
 9 I'm -- I will give this to the Attorney General, as
 10 well, so if they have any objection they can put it on.
 11 THE COURT: Any objections you can raise later.
 12 MS. HABBA: Thank you.
 13 THE COURT: For the time being we'll assume that's
 14 all correct. All right. Have a good lunch, everyone.
 15 (Whereupon, there is a luncheon recess in the
 16 proceedings.)
 17 Transcript continues on the following page....
 18
 19
 20
 21
 22
 23
 24
 25

D. OROWITZ - PLAINTIFF - DIRECT(MR. HAREN) Page 2940

1 D A V I D O R O W I T Z , a witness called by the People,
 2 after having been first duly sworn by the Clerk of the Court,
 3 took the witness stand and testified as follows:
 4 THE COURT OFFICER: State your full name and your
 5 business or home address on the record.
 6 THE WITNESS: David Orowitz.
 7 THE COURT: You are going to have to talk a lot
 8 closer to the microphone.
 9 THE WITNESS: Okay.
 10 THE COURT: Keep your voice up, of course.
 11 THE WITNESS: David Orowitz. 600 West 111th, New
 12 York, New York.
 13 THE COURT: Please proceed with the questioning.
 14 MR. HAREN: Thank you, Your Honor.
 15 DIRECT EXAMINATION
 16 BY MR. HAREN:
 17 Q Good afternoon, Mr. Orowitz. My name is Eric Haren. I
 18 am an attorney with the Attorney General's office. Thank you
 19 for being here.
 20 Can you, please, describe your educational background
 21 after high school?
 22 A I went to Hamilton College for undergraduate and I went
 23 to the Wharton School at University of Pennsylvania for my
 24 M.B.A.
 25 Q Do you hold any professional licenses?

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1 A No.

2 Q Do you have any professional certifications?

3 A No.

4 Q Can you, please, describe your employment history after

5 college?

6 A After undergraduate, I worked at Kaiser Associates

7 which was a strategy consulting firm. Then I went for my M.B.A.

8 for two years, then went to the Trump Organization for eight

9 years, and then after that and since then, I've worked at L&L

10 Holding.

11 Q At what? Sorry. I didn't hear that.

12 A L&L Holding.

13 Q Thank you. Can you describe just in general terms your

14 history of working for the Trump Organization?

15 A I joined as a summer intern in between my two years of

16 my M.B.A. and then I joined full time at the end of the summer

17 after I graduated from business school.

18 Q And approximately what year was that?

19 A 2008.

20 Q So you joined as a full-time employee of the Trump

21 Organization in 2008?

22 A Correct.

23 Q Okay. And who offered you the full-time position at

24 the Trump Organization?

25 A Donald J. Trump, Jr.

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1 Q Could you walk us through your titles at the Trump

2 Organization from 2008 until when you left?

3 A When I joined, I was VP of acquisition and development

4 and when I left, I was SVP, senior vice-president of

5 acquisitions and development.

6 Q There came a time when you were promoted from

7 vice-president to senior vice-president?

8 A Yes.

9 Q Who offered you that promotion?

10 A It was the Trump -- the Trump kids. I don't remember

11 specifically who.

12 Q So by kids, who are you referring to?

13 A Sorry. Donald Trump, Jr., Ivanka Trump and Eric Trump.

14 Q Thank you. Who did you report to when you worked for

15 the Trump Organization?

16 A I reported to Donald Trump, Jr. and Ivanka Trump and

17 Eric Trump.

18 Q And was that reporting structure the same throughout

19 your tenure at the Trump Organization?

20 A Yes.

21 Q Approximately when did you leave your employment at the

22 Trump Organization?

23 A I left in October of 2016.

24 Q Is it correct that you frequently met or spoke with

25 Donald Trump, Jr., Eric Trump and Ivanka Trump during your

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1 employment at the Trump Organization?

2 A Yes.

3 Q Speaking generally, what projects did you work on with

4 Ivanka Trump?

5 A I worked on the Old Post Office, the acquisition and

6 financing of Doral, the refinancing of Trump Chicago, and

7 several brand licensing deals around the world.

8 Q And same question for Eric Trump.

9 A Eric Trump, I worked on and off with him, but I would

10 say one of the things I worked with him on was the retail at

11 Trump Chicago and I'm sure a number of other things while I was

12 there.

13 Q And same question for Donald Trump, Jr.

14 A With Donald Trump, Jr., I worked on some of the leasing

15 at the Old Post Office and some of the Trump India brand

16 licensing deals.

17 Q Who do you understand to have worked in the accounting

18 department while you worked at the Trump Organization?

19 A Allen Weisselberg, Jeffrey McConney, Donna Kidder, I

20 believe Patrick Birney.

21 Q And in terms of the physical layout of the office,

22 where was the accounting department located?

23 A The accounting department was on the 18th floor.

24 Q Where was Mr. Weisselberg's office located?

25 A On the 18th floor.

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1 Q And where was your office?

2 A On the 17th floor.

3 Q Thank you.

4 Do you recall any instance in which you were asked by

5 Allen Weisselberg for valuation information in connection with a

6 conversation with Forbes Magazine?

7 A Yes.

8 Q What do you recall about that?

9 A I recall that there were conversations going on with

10 Forbes about Mr. Trump's net worth in relation to the rankings

11 of the world's richest people and that he had asked me to have a

12 conversation with Forbes about one or maybe more assets as to

13 kind of what the value of those assets might be.

14 Q In connection with those conversations, did you have an

15 understanding of Mr. Weisselberg's objective?

16 A Yes.

17 Q What was your understanding?

18 A To persuade Forbes that some of the assets were worth

19 more than what they originally were discussing valuing them at.

20 Q Did you have any other understanding about Mr.

21 Weisselberg's objective?

22 A Could you clarify the question, please?

23 Q Sure. Did you have an understanding about Mr.

24 Weisselberg's objective in connection with Mr. Trump's net

25 worth?

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1 A That his goal was for it to be represented higher on
2 the listing.
3 Q Thank you. During your time at the Trump Organization,
4 did you ever have an understanding about a report on Mr. Trump's
5 net worth?
6 A Could you clarify what kind of report you mean?
7 Q A financial statement about Mr. Trump's net worth.
8 A Yes.
9 Q How did you gain that understanding?
10 A There was a transaction that I was working on where he
11 needed to provide a statement to his net worth.
12 Q Which transaction was that?
13 A It may have been more than one, but I know that it was
14 in relation to the Old Post Office.
15 Q When you say "in relation to the Old Post Office, can
16 you be more specific about what you mean?
17 A It was in relation to when we put the RFP response
18 together in reaction to the original request for proposals. We
19 had to demonstrate financial wherewithal and his statement was
20 needed for that purpose.
21 Q Thank you.
22 MR. ROBERT: Your Honor, a continuing objection to
23 this line of questioning. The RFP was well outside the
24 statute of limitations.
25 THE COURT: Duly noted. Usual ruling.

D. OROWITZ - PLAINTIFF - DIRECT(MR. HAREN) Page 2946

1 Q Mr. Orowitz, I would like to change topics to the Doral
2 transaction.
3 Do you have a general recollection of when the Trump
4 Organization purchased the Doral property and obtained
5 associated financing?
6 A Yes, it was generally in the early 2010s.
7 Q What was your role in that process?
8 A I was involved with putting together the underwriting.
9 I was involved with the 1031 auction or that may not be what it
10 is called, the bankruptcy auction because we were buying another
11 bankruptcy estate and I was involved in the financing.
12 MR. HAREN: I'd like to have marked for
13 identification PX 3243. I would like to pull it up on the
14 screen.
15 Q Mr. Orowitz, the document on the screen, as you will
16 see on the first page, begins with an e-mail from Ronnie Levine
17 to Ivanka Trump and in the e-mail address, it states that Ronnie
18 Levine is from meridiancapital.com and the e-mail is forwarded
19 to you. Do you see that?
20 A Yes.
21 Q Can you describe the role of Meridian Capital in
22 connection with the Doral transaction?
23 A My recollection is that they were helping to find
24 potential lenders.
25 Q Helping meaning they were -- were they engaged by the

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1 Trump Organization to do that work?
2 A I'm not sure if they were formally engaged
3 contractually, but they were definitely engaged in practice.
4 Q They were assisting the Trump Organization in
5 identifying potential financing?
6 A Yes.
7 Q And focusing in the e-mail from Ronnie Levine in the
8 middle of the page, do you see where it states, "heard back from
9 Blackstone a little while ago and they are a pass on the deal"?
10 A Yes.
11 Q What does that indicate to you?
12 A It indicates that Blackstone was not interested in
13 providing a loan for the acquisition of Doral.
14 Q And there's a reference in the second paragraph to
15 getting information to someplace called Inbursa. Do you see
16 that?
17 A Yes.
18 Q Do you have an understanding of what that refers to?
19 A I believe this was another financial institution that
20 was a potential lender for Doral.
21 Q And there are other references here to Macquaire,
22 Criterion, Colony, Baupost and HSBC.
23 It's your understanding that those are potential
24 sources of financing?
25 A Yes. I don't recall at the time all of them being

D. OROWITZ - PLAINTIFF - DIRECT(MR. HAREN) Page 2948

1 involved, but yes, based on this e-mail, that appears to be the
2 case.
3 Q There is a question in the e-mail on the first page
4 that reads, "Have you received any feedback from DB."
5 What do you understand that to be a reference to?
6 A I would presume this was asking whether Meridian heard
7 back from DB about their interest in the loan.
8 Q DB, is that Deutsche Bank?
9 A Yes.
10 Q Moving to the top of the page, there is a response from
11 Ivanka Trump that reads, "I actually spoke to Todd Harrison at
12 Colony today (I know Todd through Jared as well). We are
13 partners on another deal together. He said that we wouldn't do
14 a deal with them on the debt side as they are too expensive for
15 what we'd be looking for (low teens)."
16 What do you understand "low teens" to refer to in the
17 context of this e-mail?
18 A I would assume it refers to the interest rate.
19 MR. HAREN: Your Honor, I move this exhibit into
20 evidence.
21 MR. ROBERT: Your Honor, continuing objection on
22 statute of limitations and objection to this whole line of
23 questioning.
24 THE COURT: Overruled, but I will consider it a
25 continuing objection.

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1 MR. ROBERT: Thank you.
 2 THE COURT: Okay. It is in.
 3 (Whereupon, the Document was marked in evidence as
 4 Plaintiff's Exhibit 3243.)
 5 MR. HAREN: Moving to a different document. This
 6 is Plaintiff's Exhibit 3244.
 7 Q Mr. Orowitz, do you recognize this set of e-mails?
 8 A I don't remember it, no.
 9 Q But it does appear to be an e-mail chain involving you
 10 in the middle of the first page?
 11 A Yes.
 12 Q And looking at page one, there is an e-mail from again
 13 Ronnie Levine at Meridian Capital to Ivanka Trump that copies
 14 you. Do you see that?
 15 A Yes.
 16 Q The e-mail states, "Citi has all the info on the deal,
 17 but I don't think they are going to make an offer." What do you
 18 understand that to refer to?
 19 A I would presume that Meridian had sent over due
 20 diligence materials and offering memoranda related to the
 21 transaction and that Citi was not interested in being a lender.
 22 Q City refers to?
 23 A Citibank.
 24 Q Again, on page one, there is a statement that reads,
 25 "They might consider a low-leverage first mortgage, but it would

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1 be sized to a ten percent debt yield on the in-place cash flow.
 2 Even that would be a stretch for them."
 3 Do you have an understanding of those sentences?
 4 A Yes.
 5 Q What's your understanding?
 6 A Debt yield is the percentage of the assets or the debt
 7 that proceeds, so it is the income divided by the debt. So this
 8 is basically saying that they would only lend ten times whatever
 9 the current cash flow or income was of the asset.
 10 Q Continuing that same e-mail, there's the next paragraph
 11 reads, "I spoke with Loancore early last week. My
 12 brother-in-law works at Jefferies and is on the JLC credit
 13 committee. This transaction is too large for them and they are
 14 generally not looking to do deals with large renovation
 15 components."
 16 What's your understanding of that information?
 17 A My interpretation of it is that they had reached out to
 18 Loancore and Loancore wasn't able to do loans this large or
 19 loans on assets that required investment in improving them.
 20 Q What is Loancore?
 21 A I'm not familiar with Loancore.
 22 Q Do you have an understanding what Loancore is?
 23 A -- I believe they are a real estate lender.
 24 MR. HAREN: I move Exhibit P X 3244 in evidence.
 25 MR. ROBERT: Objection; statute of limitations.

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1 THE COURT: I think we've been over this many
 2 times. You still feel that you need to object every time
 3 even though it is a continued objection because it is a
 4 document, not testimony?
 5 MR. ROBERT: Yes, sir.
 6 THE COURT: I'm learning. All right. Do what you
 7 feel you have to do. Overruled. It is in.
 8 (Whereupon, the Document was marked in evidence as
 9 Plaintiff's Exhibit 3244.)
 10 MR. HAREN: I've handed or the witness has been
 11 handed plaintiff's Exhibit 3247. That document is also up
 12 on the screen.
 13 Q Mr. Orowitz, do you recognize, if you could take a
 14 moment to look through it, the e-mail and the attachment that
 15 follows.
 16 (Witness reviewing document.)
 17 A I don't recognize it specifically, no.
 18 Q Do you see there at the bottom of the first page is an
 19 e-mail from Ivanka Trump to Enrique E. Morelos Zaragoza on
 20 November 28, 2011?
 21 A Yes.
 22 Q And the e-mail is then forwarded to you?
 23 A Yes.
 24 Q And the e-mail from Ms. Trump refers to "Inbursa's term
 25 sheet" at the beginning of the first paragraph. Do you see

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1 that?
 2 A Yes.
 3 Q And then you can see at the top of the first page,
 4 there's an attachment entitled "inbursatermsheet.docx"?
 5 A Yes.
 6 Q If you could look then to page -- beginning on page
 7 three, do you see a document that appears to be a term sheet
 8 from Inbursa Grupo Financiero?
 9 A Yes.
 10 Q It refers to Donald Trump as the sponsor?
 11 A Yes.
 12 Q And it refers to the sponsor as the guarantor?
 13 A Yes.
 14 MR. HAREN: I move Plaintiff's Exhibit 3247 into
 15 evidence.
 16 MR. ROBERT: Statute of limitations and relevance.
 17 THE COURT: Overruled. Granted. It is in
 18 evidence.
 19 (Whereupon, the Document was marked in evidence as
 20 Plaintiff's Exhibit 3247.)
 21 Q Mr. Orowitz, we're going to move to some information
 22 from another potential lender. We're looking at Plaintiff's
 23 Exhibit 3231.
 24 MR. HAREN: Could we pull down -- I have the wrong
 25 document in front of me, so let me try to fix that. One

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1 moment, Your Honor.
 2 THE COURT: Yes.
 3 MR. WALLACE: Your Honor, I apologize for
 4 interrupting Mr. Haren. I want to note for the record that
 5 there appears to be no attorney right now for Donald Trump,
 6 for Mr. Weisselberg or for Mr. McConney and I just want to
 7 know if the defendants have made some arrangements for this
 8 absence, but I don't believe either Mr. Robert or Mr. Kise
 9 represent those individuals.
 10 MR. KISE: I certainly represent Donald Trump
 11 whether it says so on the docket or not. I mean, that's
 12 been obvious since the beginning, that I'm the lead counsel
 13 and if you want to ask him next time he's here, you can ask
 14 him, but there's no question as to that. I think Mr. Gabra
 15 is here. He may be in the back watching, but I think -- I
 16 mean in the video room watching, but I'll confirm that.
 17 For Mr. Weisselberg and McConney, I clearly do not
 18 represent Mr. Weisselberg and Mr. McConney, but I can check
 19 on that momentarily. We can continue the proceeding and I
 20 can -- if you'll allow me to go check, I could go do that.
 21 THE COURT: Of course.
 22 MR. KISE: Thank you, Judge.
 23 MR. HAREN: You could put the document you've been
 24 handed to the side. We will move to a different one and see
 25 if we can correct that issue.

D. OROWITZ - PLAINTIFF - DIRECT(MR. HAREN) Page 2954

1 MR. KISE: He is now here, Your Honor. I
 2 appreciate the concern of the government for representation.
 3 MR. WALLACE: We want to keep the record clean.
 4 Q So Mr. Orowitz, you have in front of you Plaintiff's
 5 Exhibit 3232. You see on the top of the first page, there's an
 6 e-mail from someone named Steve Harvey to you and Ivanka Trump
 7 copying Jacob Turner and some other people and the e-mail
 8 signature states that Steven L. Harvey is an executive
 9 vice-president at CSG Investment, Inc.
 10 Do you have an understanding as to who Mr. Harvey is in
 11 the context of this e-mail?
 12 A I don't have a recollection of it, no.
 13 Q Are you familiar generally with Beal Bank and CSG
 14 Investments?
 15 A Yes.
 16 Q What is your understanding of those entities?
 17 A They're affiliated entities that are both owned or
 18 partially owned by Andy Beal.
 19 Q And then are they potential sources of financing?
 20 A Yes.
 21 Q So the e-mail states, "Attached is a redraft of the
 22 term sheet based on our conversation today. If you find this
 23 acceptable, the next step for us will be a loan application,
 24 which I am working on right now."
 25 And you can see that there is an attachment entitled,

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1 "Doral term sheet 111114 "which I assume is November 11, 2014 --
 2 November 14, 2011.
 3 Is it fair to say that this document represents a
 4 transmittal of a term sheet with Beal Bank or CSG Investments
 5 regarding the Doral property?
 6 A Yes.
 7 Q If we could take a look at the attachment. Do you see
 8 that this document appears to be such a term sheet?
 9 A Yes.
 10 Q It contains an interest rate term of LIBOR plus
 11 5.5 percent?
 12 A Yes.
 13 Q And do you see that it provides a floor rate of two
 14 percent?
 15 A Yes.
 16 Q And there's a default interest rate of five percent
 17 above the interest rate?
 18 A Yes.
 19 Q And on page three, there are a series of additional
 20 fees including an upfront fee, a breakage fee. Do you see
 21 those?
 22 A Yes.
 23 MR. HAREN: Your Honor, I move Plaintiff's
 24 Exhibit 3232 into evidence.
 25 MR. ROBERT: Objection. Statute of limitations and

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1 hearsay and relevance.
 2 MR. HAREN: Your Honor, this is a term sheet for a
 3 potential loan received by Mr. Orowitz and Ivanka Trump at
 4 the Trump Organization. They are right there in the "to"
 5 line in the e-mail.
 6 MR. ROBERT: It is not prepared by the witness. It
 7 is prepared someone. It is an out-of-court statement and it
 8 was produced by whoever Beal is. I don't know who that is.
 9 MR. HAREN: It is a bank that offered terms to the
 10 Trump Organization for a potential loan and I'm introducing
 11 it for notice for the terms that were offered.
 12 MR. ROBERT: Notice of what to whom? Notice that
 13 there was a term sheet, but not any of the contents of the
 14 term sheet including the amount or the interest rate,
 15 correct?
 16 MR. HAREN: The term sheet is contained in the
 17 document beginning at page two, portions of which I read to
 18 the witness and that do specify the interest rate, loan
 19 term, loan amount and other terms.
 20 THE COURT: It's in simply for the notice of what's
 21 in it, not for the truth of the statements asserted.
 22 (Whereupon, the Document was marked in evidence as
 23 Plaintiff's Exhibit 3232.)
 24 MR. HAREN: Your Honor, I have another exhibit, but
 25 before I show it to the witness, it's my understanding that

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1 it is still subject to a confidentiality designation under
 2 the protective order, so I wanted to hand a copy up to the
 3 Court and to counsel.
 4 THE COURT: Is there an issue about showing this to
 5 the witness? Mr. Haren, is that a threshold question?
 6 MR. HAREN: I don't think there should be an
 7 objection. It is a perfectly appropriate document that
 8 could be shown to the witness and support in kind to the
 9 other documents I showed the witness, but just want to make
 10 sure -- the protective order allows that the Court can
 11 order that I can show it to him, so I think that that would
 12 be appropriate.
 13 THE COURT: I'll give them, defendants, a moment to
 14 look at it.
 15 MR. KISE: Is the question as to the protective
 16 order, the confidentiality order?
 17 THE COURT: Yes.
 18 MR. HAREN: Yes.
 19 MR. KISE: No, there is no objection on that
 20 ground. I could come up with a lot of other objections, but
 21 not on that.
 22 THE COURT: You probably already have. You can
 23 show it to the witness.
 24 MR. HAREN: Thank you, Your Honor.
 25 Q So, Mr. Orowitz, you could see on the first page of

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1 Exhibit 3233 that there's an e-mail exchange involving you and
 2 Ivanka Trump and Jacob Turner and Steve Harvey at CSG
 3 Investments. Do you see that.
 4 A Yes.
 5 Q The e-mail states in the second line, "I understand
 6 that there is no need to discuss the \$130 million comment on the
 7 markup (CSG is not going to get to that advance level)."
 8 Do you have an understanding of what that line
 9 indicates?
 10 A Yes, I believe it refers to the loan proceeds that they
 11 would be willing to loan.
 12 Q The e-mail also states, "We had a number of
 13 discussions" --
 14 MR. KISE: Your Honor.
 15 THE COURT: Hold on.
 16 MR. KISE: So the confidentiality, are we asking
 17 him questions about a document that's not in evidence that
 18 he can't authenticate or can he? I don't know. I did not
 19 see that he did. Maybe he did.
 20 Q Mr. Orowitz, did you receive this e-mail?
 21 A I don't -- I don't recall receiving it.
 22 Q Do you see in the "to" line that it states "David
 23 Orowitz"?
 24 A Yes.
 25 Q Do you have any reason to doubt that you received this

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1 e-mail?
 2 A No.
 3 Q Do you understand that it contained responses from CSG
 4 Investments concerning potential loan terms?
 5 A Yes.
 6 MR. HAREN: Your Honor, I move to admit Plaintiff's
 7 3233 in evidence for notice.
 8 MR. ROBERT: I want to be clear with this for
 9 notice. Notice of what? I mean, if you intend to try to
 10 show later with this document and the other document that
 11 there's certain interest rates that are here, that's not
 12 notice. So let's just be clear. You want this notice of
 13 who of what?
 14 MR. HAREN: I want it for notice that Ivanka Trump
 15 and David Orowitz at the Trump Organization were expressly
 16 advised about potential loan terms from Beal. That's what
 17 that document provides them notice of.
 18 MR. ROBERT: Not any of the terms of the loan
 19 because the terms of the proposed loan are hearsay.
 20 MR. HAREN: I don't understand how they are hearsay
 21 if they were expressly advised what the terms would be.
 22 THE COURT: They are not hearsay. I don't know
 23 what you mean by that.
 24 MR. ROBERT: A statement coming from Jacob Turner
 25 who is not a party, sending an e-mail, making a statement of

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1 potential terms, that's quintessential hearsay.
 2 THE COURT: It is not being introduced to prove the
 3 truth of the contents, just that the recipients were
 4 notified that this sender was willing to do these terms. Is
 5 that what I --
 6 MR. HAREN: Yes.
 7 MR. ROBERT: That goes to the truth of the matter
 8 asserted. We are now interpreting that to mean that the
 9 lender was going to go ahead on these terms. That, in
 10 essence, is the truth of the matter asserted. If it is a
 11 question of did you receive a document that said that 10:30
 12 a.m. central standard time, that's one thing, but Your
 13 Honor's hypothetical goes to the truth of the matter
 14 asserted.
 15 THE COURT: So just to make sure I understand your
 16 point, we don't -- does your point boil down to we don't
 17 know that this sender really would have done these --
 18 MR. ROBERT: Correct. Correct.
 19 MR. WALLACE: It constitutes an offer which is
 20 another reason that it can be admitted on its own for the
 21 purposes that there was an offer made. It doesn't need to
 22 show whether the offer was going to be closed, whether
 23 everything is going to proceed from here, we are not
 24 going -- that was down the road.
 25 THE COURT: I don't -- when you say "offer," you

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1 mean binding as in we learned in contracts, an offer is
 2 binding?
 3 MR. WALLACE: Not binding.
 4 THE COURT: So, then, it is not really an offer.
 5 MR. WALLACE: That's fine, Your Honor.
 6 MR. HAREN: I could ask a slightly different
 7 question.
 8 THE COURT: All right. Withdrawn.
 9 Q Mr. Orowitz, when you received this e-mail, did you
 10 understand -- did you form an understanding that Beal Bank was
 11 responding to potential loan terms with the responses that are
 12 here indicated?
 13 A I don't remember receiving this specific e-mail at that
 14 time.
 15 Q Do you --
 16 THE COURT: I think you said you have no reason to
 17 doubt that you did, right?
 18 THE WITNESS: No, no reason.
 19 THE COURT: Okay.
 20 THE WITNESS: Your Honor.
 21 Q Do you have a general recollection of engaging
 22 in -- withdrawn.
 23 MR. HAREN: Just want to be clear, is the document
 24 in evidence for those purposes or is it --
 25 MR. ROBERT: If it is noticed that an e-mail was

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1 (Continued on the next page.)
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1 received, but none of the contents -- all of the contents of
 2 the notice are hearsay.
 3 MR. HAREN: I mean, just to be clear on the
 4 question of hearsay, it's not a truthful fact that it is
 5 being asserted by the statement. It is a market term that
 6 is being offered. I don't think it is hearsay at all. I
 7 don't think it is being offered for its truth. It is being
 8 offered to show what a third-party bank offered and notified
 9 the defendant organization was the subject of their offer.
 10 MR. ROBERT: That's the definition of the truth of
 11 the matter asserted because you want to try to bootstrap
 12 that there were other offers, that these other interest
 13 rates, these interest rates differed than the ultimate
 14 interest rate and you're going to connect those dots or
 15 attempt to connect those dots.
 16 What I'm saying is the underlying substance of
 17 what's contained here is hearsay. If you had the ability of
 18 the time is expired, someone from the bank to come in here
 19 and explain something, but that's not what we have. We have
 20 a document that you're trying to introduce from a witness
 21 who doesn't recall receiving it.
 22 To Your Honor's point, he doesn't dispute that he
 23 probably got it because he is on the e-mail exchange, but
 24 the underlying substance of this and of the earlier e-mail
 25 are all hearsay.

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1 MR. WALLACE: Your Honor, if I could just clarify
 2 my point about it. It's an offer to constitute a verbal act
 3 under 8.47 under the rules of evidence and that even if it's
 4 not a binding offer it is contractual term.
 5 By making this offer we are interested in
 6 establishing and making the offer to the Trump Organization.
 7 And so that is how the -- that's how Mr. Haren is offering
 8 to use this document.
 9 And just to go back to one other point. This came
 10 from the Trump Organization, so any issues with authenticity
 11 because this was produced in discovery.
 12 MR. ROBERT: I'm not questioning -- so I didn't
 13 think it came from us, this exhibit that's here, but I take
 14 your word for it.
 15 MR. WALLACE: I'll just clarify that's the
 16 production stamp that the Trump Organization used for civil
 17 discovery in this action as opposed to TTO is from the
 18 underlying investigation.
 19 MR. ROBERT: I'm just saying nonetheless if you
 20 want to introduce something as an offer, the person that
 21 made the offer has to come in and say here was the offer,
 22 here are the terms, not the witness who is looking at the
 23 document coming from a third party relaying terms or
 24 potential terms of a deal.
 25 THE COURT: All right. Give me a moment.

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1 (Whereupon, there is a recess in the proceedings.)
 2 THE COURT: Mr. Wallace, what is -- was the
 3 evidentiary rule you just referred to?
 4 MR. WALLACE: I believe 8.47 Verbal Act.
 5 THE COURT: 8.47 of?
 6 MR. WALLACE: I'm --
 7 MR. GABER: This is Section 8.47 of the Bench Book
 8 on New York Evidence Article 8 rules. I think it's
 9 incorporated as the rules, but I'm reading it off of the New
 10 York courts website. I think it is -- it comes from a line
 11 of Court of Appeals cases. I'm not sure if it's codified.
 12 I believe 8.47 is the citation here.
 13 THE COURT: Okay. Thanks.
 14 Is plaintiff willing to I think go along with
 15 Mr. Robert's view that it can be admitted only for the fact
 16 that this was sent -- and by the way, I think we learned in
 17 law school back decades ago there is a presumption that
 18 something mailed to someone, has been received by the
 19 recipient, I'm assuming that should be at least the same
 20 with e-mail. So anyway, plaintiff, are you willing to
 21 accept that as I just --
 22 MR. WALLACE: I think it essentially does get us to
 23 the same place. I think it's fine.
 24 THE COURT: I'll take that as a yes?
 25 MR. WALLACE: As a yes.

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1 THE COURT: It's admitted in evidence over the
 2 hearsay objection and only for the purpose that the
 3 recipients David Orowitz and Ivanka Trump received this
 4 e-mail.
 5 MR. ROBERT: That would be the same ruling for the
 6 previous e-mail as well which was the same objection?
 7 THE COURT: I think that's correct.
 8 MR. ROBERT: Thank you, sir.
 9 THE COURT: Okay. Let's move on.
 10 Q Mr. Orowitz, we saw earlier in Plaintiff's Exhibit 3243
 11 that there was a question posed by Meridian Capital about the
 12 status of any discussions with DB. Do you generally recall
 13 that? I asked you about it in the beginning of the discussion.
 14 A I recall discussions with DB.
 15 Q I want to hand you a document that's been marked as
 16 Plaintiff's Exhibit 3111.
 17 And Mr. Orowitz, you see at the top of this e-mail is
 18 an e-mail from you to Marc Levine, David Goodman and some other
 19 folks at Deutsche Bank with Allen Weisselberg copied?
 20 A Yes.
 21 Q I'd like to direct your attention to the e-mail that is
 22 on the second page. It goes from the first page on to the
 23 second page from Marc Levine to Ivanka Trump and it reads:
 24 "Refers to an investment memo and projections for the Doral Golf
 25 Resort and Spa in Miami, Florida." Do you see that?

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1 A Yes.
 2 Q Do you have an understanding in the context of seeking
 3 financing for the Doral property what the phrase "investment
 4 memo" refers to?
 5 A Yes.
 6 Q And what's your understanding?
 7 A It's a presentation that gives key information to
 8 potential lenders to explain general terms around what the plan
 9 is for the development and what the financial projections are in
 10 order for them to evaluate it.
 11 Q And in the e-mail in the first page from Ms. Trump she
 12 writes that she's copied you on the e-mail and you'll be putting
 13 together all the information. Do you see that?
 14 A Yes.
 15 Q I'll put that to the side for a moment and I'll hand
 16 you Plaintiff's Exhibit 3112.
 17 Mr. Orowitz, do you recognize this document as a chain
 18 of e-mails involving you, Allen Weisselberg and Ivanka Trump?
 19 A I don't remember this e-mail specifically.
 20 Q But looking at it here today do you have any reason to
 21 doubt it's an e-mail chain involving you, Allen Weisselberg and
 22 Ivanka Trump pertaining to the Doral transaction?
 23 A No.
 24 MR. HAREN: Move to admit Plaintiff's Exhibit 3112.
 25 MR. ROBERT: Objection. Statute of limitations.

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1 THE COURT: Overruled. It's in evidence.
 2 (Whereupon, the item previously referred to is
 3 received and marked Plaintiff's Exhibit Number 3112 in
 4 evidence.)
 5 Q The exhibit begins on page one with an e-mail from Marc
 6 Levine at Deutsche Bank to you. Do you see that?
 7 A Yes.
 8 Q And it reads: "David, received your e-mail last night
 9 regarding the due diligence checklist. I checked with the rest
 10 of the team and we are available after 10:30 after a call. Let
 11 me know what time works for you and we will send around a dial
 12 in for the call."
 13 So you then forwarded that e-mail to Allen Weisselberg
 14 and asked him if he could do 10:30 for the call; is that right?
 15 A Yes.
 16 Q And is it fair to say you were trying to ensure Allen
 17 Weisselberg was available to join a call with you and Marc
 18 Levine from Deutsche Bank on or about this date?
 19 A Yes.
 20 Q I'd like to show you another document, Plaintiff's
 21 Exhibit 3117.
 22 Mr. Orowitz, just directing your attention to the first
 23 page of the exhibit. Do you recognize it to be a calendar
 24 invitation ?
 25 A Yes.

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1 Q And the original appointment in the calendar invitation
 2 includes you and you forwarded it to Allen Weisselberg; is that
 3 right?
 4 A Yes.
 5 Q And looking at the attendees in the original
 6 appointment, do you see that there are two names, Mason Parker
 7 and William Frauen. Mr. Parker is on the second line and
 8 Mr. Frauen is on the third line?
 9 A Yes.
 10 Q And the information beginning on page two of the
 11 exhibit is a diligence list pertaining to the Doral Golf Resort;
 12 is that right?
 13 A Yes.
 14 MR. HAREN: Your Honor, I move the Exhibit 3117
 15 into evidence.
 16 MR. ROBERT: Objection. Statute of limitations and
 17 the attachment is hearsay.
 18 MR. HAREN: And I'm fine moving into evidence the
 19 calendar invitation. I have no need for the remainder of
 20 document.
 21 THE COURT: Okay. Overruled on the statute of
 22 limitations grounds and it's in evidence just for the
 23 invitation.
 24 MR. ROBERT: So then that will come off the exhibit
 25 and I guess the question of the witness to the attachment

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1 will be stricken since it's not in evidence?
 2 MR. HAREN: Why don't we make it easier.
 3 Q Mr. Orowitz, you were provided a copy of this diligence
 4 list in connection with the calendar invitation. Is that fair?
 5 And just so we don't have to generate another exhibit solely for
 6 the fact you were provided we could just admit it for that
 7 purpose.
 8 A That appears to be attached to the invitation.
 9 THE COURT: Okay. That resolves that.
 10 Q And so if we could go back to Exhibit 3111.
 11 At the top of the page we talked about this e-mail a
 12 minute ago, but this is the same day as that calendar
 13 invitation, November 18, 2011, and you wrote to Mr. Levine:
 14 "Marc, it was good speaking with you earlier today.
 15 Please find a link to a folder containing the due diligence
 16 materials that you requested." Do you see that?
 17 A Yes.
 18 Q Did you have a call with Mr. Levine from Deutsche Bank
 19 on or about November 18, 2011?
 20 A From this e-mail it appears so.
 21 Q Was Mr. Weisselberg on the call?
 22 A I don't recall the call.
 23 Q On the November 18, 2011 phone call did anyone from the
 24 bank, meaning Deutsche Bank, convey what interest rate the bank
 25 might seek for a commercial real estate loan regarding the Doral

D. Orowitz - Plaintiff - direct (Haren) Page 2971

1 property?
 2 A I don't recall the call.
 3 Q Let's see if a document refreshes your recollection and
 4 I'll admit -- I'd ask to admit Plaintiff's Exhibit 3111.
 5 MR. ROBERT: Objection. Even if this refreshes the
 6 witness's recollection it will be hearsay what Deutsche Bank
 7 may have told him.
 8 MR. HAREN: I'm speaking about the e-mail where
 9 Mr. Orowitz wrote: "Marc, it was good speaking with you
 10 earlier today." I'm not talking about the content of any
 11 phone call at this point.
 12 MR. ROBERT: I thought the question was I thought
 13 on the November 18, 2011 phone call did anyone from the
 14 bank, meaning Deutsche Bank, convey what interest rate the
 15 bank might seek for a commercial real estate loan regarding
 16 the Doral property so whatever they may have said to this
 17 witness is hearsay.
 18 MR. HAREN: I'm asking to admit the document that
 19 was the precursor to that question and I will have another
 20 document that may refresh him.
 21 MR. ROBERT: But even if it refreshes his
 22 recollection as to what the bank says, it's still hearsay.
 23 MR. HAREN: The e-mail that Mr. Orowitz said when
 24 he wrote "Marc, it was good speaking with you earlier
 25 today," this is an e-mail that he wrote. The witness is

D. Orowitz - Plaintiff - direct (Haren) Page 2972

1 sitting here, he testified --
 2 MR. ROBERT: I think we're talking about two
 3 different things.
 4 MR. HAREN: That's right. We are talking about two
 5 different things. I haven't shown him the document that may
 6 or may not refresh his recollection. That's not what I move
 7 to admit. I move to admit Plaintiff's Exhibit 3111.
 8 MR. ROBERT: So you're not going to ask him what
 9 the conversation was with Deutsche Bank? If you're not
 10 going to ask him what the conversation was I have no
 11 objection.
 12 MR. HAREN: This may --
 13 MR. WALLACE: If we have to lay out how we're doing
 14 this we will also say that the defendants are receiving
 15 multiple offers from different banks and they choose a bank
 16 offer that has a different term. That is an appropriate use
 17 of them having learned of the other offers from the other
 18 banks.
 19 So we're saying putting things in for notice, but
 20 it is notice because we want to show what the defendants
 21 understood when they were making decisions about which loan
 22 to select.
 23 MR. ROBERT: And, Your Honor, that proves my point.
 24 This is for the truth of the matter asserted. If they
 25 wanted to call people from these institutions, they very

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1 well could have in their case. They didn't. They're now
 2 trying to use hearsay documents and hearsay testimony to
 3 make up for the deficiency in their case.
 4 MR. WALLACE: Absolutely not.
 5 MR. ROBERT: I'm still speaking, Mr. Wallace. It
 6 is inappropriate.
 7 MR. WALLACE: It is whether or not the defendants
 8 had notice of the other terms of what were being offered and
 9 then selected another loan.
 10 THE COURT: Now, what the banks would actually have
 11 lent the money at these rates I think that's a question of
 12 fact.
 13 MR. ROBERT: Then you need someone from the bank to
 14 testify; otherwise, it's completely irrelevant. If someone
 15 is saying here -- to allow this to come in now without the
 16 bank saying they would have done it is completely irrelevant
 17 I think because what someone didn't intend to do can't show
 18 reliance, can't show any of the elements they need to prove
 19 their case. So just because their bank may have sent an
 20 e-mail about something without the bank explaining what
 21 that's about, it's completely and utterly irrelevant.
 22 They need it for the purpose of the bank made an
 23 offer at X and the defendants decided not to do it. They
 24 can't do that through hearsay.
 25 MR. WALLACE: I don't know why we can't show that

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1 they got an offer and decided not to go with it through
 2 their own documents and witnesses.
 3 MR. ROBERT: You have to bring in a witness who
 4 actually made the offer. I don't see these documents saying
 5 -- first of all, even if they said there was an offer you
 6 still need the person that made the offer. You're
 7 conflating notice with the substance of it. If you want to
 8 show they got an e-mail and there was words on the page of
 9 an e-mail, I can't fight you on that. But underlying
 10 substance of what the potential offer was and what their
 11 notice of that was that's hearsay.
 12 MR. HAREN: So I think we're arguing about an
 13 e-mail that's not even in front of us.
 14 MR. ROBERT: It's not about the e-mail, Mr. Haren.
 15 MR. HAREN: If I can finish, please, Mr. Robert.
 16 The e-mail that's in front of us is a statement
 17 from Mr. Orowitz who at the time was an employee of the
 18 Trump Organization that "it was good speaking with you
 19 earlier today" and in response to a series of other e-mails
 20 involving Mr. Orowitz and Ms. Trump who was also an employee
 21 of the Trump Organization at the time. That's all this
 22 e-mail is. That's what I move to admit. I don't understand
 23 the debate we're having here. It's not about this e-mail.
 24 THE COURT: All right. So objection overruled to
 25 the extent we're talking about what Mr. Haren just said.

D. Orowitz - Plaintiff - direct (Haren) Page 2975

1 MR. HAREN: So I'd like to bring up Plaintiff's
 2 Exhibit 3107, which is being shown to the witness solely for
 3 the purpose of refreshing his recollection if it does.
 4 Q Mr. Orowitz, do you see on the screen an e-mail from
 5 William Frauen to Richard Byrne and Mason Parker?
 6 A Yes.
 7 Q And Richard -- just William Frauen and Mason Parker
 8 were both on the calendar invite we looked at a few minutes ago?
 9 A Yes.
 10 Q The e-mail states:
 11 "Had call with them this morning (not Ivanka or Donald
 12 was Allen) and some other guy-David Orowitz I think."
 13 Do you see that?
 14 A Yes.
 15 Q And it continues: "We told them" -- and this is in the
 16 fifth paragraph down, and I realize some of the wording in the
 17 e-mail is in shorthand. "We told them we are working two
 18 angles: A) MTG plus mezz and B) whole loan to Levfin investors.
 19 They asked what whole loan costs, we said project development
 20 pricing is around ten PCT." Do you see that?
 21 A Yes.
 22 Q Does that refresh your recollection as to any loan
 23 pricing conveyed by Deutsche Bank to you on the phone call of
 24 November 18, 2011?
 25 A No, it doesn't.

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1 Q And directing your attention to information further
 2 down in this e-mail. It states: "Also suspect others" -- let
 3 me ask you a question before that.
 4 Do you have a recollection of Mr. Weisselberg conveying
 5 any information regarding Mr. Trump's personal financial
 6 statement on the November 18, 2011 call?
 7 A I don't.
 8 Q And so if you take a look at Exhibit 3107 and you look
 9 down where it states -- this is in the second to last line --
 10 "also suspect others may be thinking/exploring direct Donald
 11 GNTY or other asset pledge as Allen again mentioned he sent you
 12 personal statement." Does that refresh your recollection as to
 13 whether Mr. Weisselberg conveyed any information about
 14 Mr. Trump's personal financial statement on that November 18,
 15 2011 call?
 16 A It does not.
 17 Q You can set that to the side.
 18 Putting aside any particular phone call, were you
 19 generally aware whether Deutsche Bank offered an interest rate
 20 of approximately ten percent on a nonrecourse commercial real
 21 estate loan for the Doral property?
 22 A I don't remember that.
 23 Q Do you have a general recollection of any difference
 24 between terms offered by the commercial real estate arm of
 25 Deutsche Bank and the private wealth arm of Deutsche Bank?

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1 A Yes. I recall that the commercial real estate arm, the
 2 rates and other terms were less favorable.
 3 Q And what do you mean by "less favorable?"
 4 A I believe the rates were higher and I'm not certain,
 5 but I -- the proceeds I believe were lower.
 6 MR. HAREN: Let's go to Plaintiff's Exhibit 369.
 7 And Mr. Orowitz, again, I'm going to show you this
 8 document solely for the purposes of determining whether it
 9 refreshes your recollection, and I'll direct your attention
 10 to you -- you can see beginning on page two there is a title
 11 "Doral Golf Resort and Spa Miami."
 12 A Yes.
 13 Q And on page four on the left side of the page there is
 14 a series of items proceed by hyphens, one of which states
 15 "\$130 million term loan priced at L + 800 with a two percent
 16 LIBOR floor." Do you see that?
 17 A Yes.
 18 Q Does that refresh your recollection that the rate
 19 offered by Deutsche Bank's commercial real estate arm is
 20 approximately ten percent?
 21 A No, it does not.
 22 Q Let's move to Plaintiff's Exhibit 3245.
 23 Mr. Orowitz, do you recognize Plaintiff's Exhibit 3245
 24 as an e-mail from you to Ivanka Trump and Allen Weisselberg?
 25 A I don't remember it, but it appears to be an e-mail,

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1 yes.
 2 Q And do you understand the subject "DB" to refer to
 3 Deutsche Bank?
 4 A Yes.
 5 Q And given the timing just five days after the
 6 November 18th documents we looked at -- do you understand that
 7 this refers to this -- this relates to Doral?
 8 A I would assume so.
 9 Q The e-mail states: "I spoke to the DB guys this
 10 morning. They are focused on how they are going to present the
 11 project to other lenders, which I do not think bodes
 12 particularly well."
 13 Do you have an understanding as to what you meant by "I
 14 do not think bodes particularly well?"
 15 A I'm not certain exactly what I meant at the time, but I
 16 could presume what it means.
 17 Q What do you understand it to mean?
 18 A I think it means I had concerns that they didn't want
 19 to hold the loan on their balance sheet and that they were --
 20 that that might indicate that they were less interested in the
 21 loan.
 22 MR. HAREN: I move to admit Plaintiff's
 23 Exhibit 3245.
 24 MR. ROBERT: Objection. Statute of limitations.
 25 THE COURT: Overruled. Its 'in evidence.

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1 Five-minute warning.
 2 MR. HAREN: Thank you, Your Honor.
 3 (Whereupon, the item previously referred to is
 4 received and marked Plaintiff's Exhibit Number 3245 in
 5 evidence.)
 6 Q Up on the screen will be Plaintiff's Exhibit 3226.
 7 And Mr. Orowitz, do you see in this exhibit a series of
 8 e-mails involving you Ivanka Trump and Allen Weisselberg?
 9 A Yes.
 10 Q And do you understand that this e-mail chain involves
 11 the Doral property?
 12 A Yes.
 13 Q And beginning on page two there is an e-mail from
 14 Rosemary Vrablic at Deutsche Bank stating:
 15 "Please find attached our summary of terms for the
 16 proposed acquisition of the Doral resort."
 17 And Ms. Trump's response: "It doesn't get any better
 18 than this." Do you see that?
 19 THE COURT: There is no "any" in there.
 20 Q "It doesn't get better than this," excuse me.
 21 A Yes.
 22 Q And Ms. Trump continues, "I am tempted not to negotiate
 23 this, though?"
 24 A Yes.
 25 Q And there are a series of other e-mails involving

D. Orowitz - Plaintiff - direct (Haren) Page 2980

1 Ms. Trump and Jason Greenblatt.
 2 Do you have an understanding as to who Jason Greenblatt
 3 was at the time of this e-mail?
 4 A Yes, he was the general counsel at Trump Organization.
 5 MR. HAREN: I move to admit Plaintiff's
 6 Exhibit 3226.
 7 MR. ROBERT: Statute of limitations.
 8 THE COURT: Overruled. It's in.
 9 (Whereupon, the item previously referred to is
 10 received and marked Plaintiff's Exhibit Number 3226 in
 11 evidence.)
 12 Q Let's move to another document, Plaintiff's
 13 Exhibit 3271.
 14 And Mr. Orowitz, in Plaintiff's Exhibit 3271, there is
 15 a response from you to Ms. Trump's e-mail where she stated, "it
 16 doesn't get better than this?"
 17 A Yes.
 18 Q And you stated: "Some areas that could be problematic
 19 in the covenants" and under there you wrote "during reno and
 20 during reno and amo periods-guarantor shall maintain a minimum
 21 net worth of 3.0 billion excluding any value related to the
 22 guarantor's brand value." What does reno refer to in that line?
 23 A I think in the context of this loan there was a
 24 bifurcation of two time periods; one was while construction was
 25 going on and one was after and so I think renovation is reno and

D. Orowitz - Plaintiff - direct (Haren) Page 2981

1 amo is probably amortization.
 2 MR. HAREN: I move to admit Plaintiff's
 3 Exhibit 3271.
 4 MR. ROBERT: Objection. Statute of limitations.
 5 THE COURT: Overruled. It's in.
 6 (Whereupon, the item previously referred to is
 7 received and marked Plaintiff's Exhibit Number 3271 in
 8 evidence.)
 9 Q Moving to another document, Plaintiff's Exhibit 332.
 10 Mr. Orowitz, you'll see Plaintiff's Exhibit 332 is an
 11 e-mail from Ivanka Trump to Rosemary Vrablic, Dominic Scalzi and
 12 copied are you and Allen Weisselberg and the subject is "Doral
 13 term sheet." Do you see that?
 14 A Yes.
 15 Q And I just want to do a quick look through the
 16 document. If you could just flip through it and I'll just ask
 17 you one question about it.
 18 So, looking at the e-mail and the attachment does this
 19 appear to be -- to be the Trump Organization's response to
 20 proposed terms from the private wealth group of Deutsche Bank?
 21 A Yes.
 22 Q And I'll just pull up on the screen an undisputed fact
 23 from the summary judgment proceeding number 472 that indicates
 24 that it's an admitted fact that Ivanka Trump sent a revised term
 25 sheet as indicated in this e-mail.

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1 MR. HAREN: And that would be a perfect time for a
 2 break once that's up on the screen. We can do that after
 3 the break.
 4 THE COURT: Looks complicated and long.
 5 Okay, 15-minute break. See you all at that time.
 6 (Whereupon, there is a recess in the proceedings.)
 7 Transcript continues on the following page....
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1 THE COURT OFFICER: All rise. Part 37 is back in
 2 session. Be seated and come to order.
 3 Witness entering.
 4 (Witness resumes the stand.)
 5 THE COURT: Let's continue.
 6 Q Welcome back, Mr. Orowitz. I would like to turn your
 7 attention to the Chicago property and pull up Plaintiff's
 8 Exhibit 3240.
 9 Mr. Orowitz, do you see on the first page of the
 10 exhibit an e-mail from you to David Goodman and Jim Griffith at
 11 Deutsche Bank?
 12 A Yes.
 13 Q And the attachment -- well, one of the attachments is
 14 identified as a financing memo?
 15 A Yes.
 16 Q Do you have an understanding of what a financing memo
 17 refers to in the context of this e-mail?
 18 A Yes, it was a document that was put together with basic
 19 information that a lender would need to understand a real estate
 20 deal.
 21 Q You said "was put together." Is that something that was
 22 put together in the Trump Organization?
 23 A Yes, either -- in some cases, we do it or a broker
 24 would do it.
 25 Q Broker, did you say?

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1 A Sometimes a broker would do it as well.
 2 Q Thank you.
 3 MR. HAREN: I move to admit Plaintiff's
 4 Exhibit 3240.
 5 MR. ROBERT: Objection. Statute of limitations and
 6 so the record is clear, is this one that was prepared by the
 7 Trump Organization or by a broker because the witness said
 8 sometimes it is one or the other.
 9 Q Mr. Orowitz, can you describe the circumstances under
 10 which this financing memo was prepared?
 11 A This appears to have been put together by the Trump
 12 Organization.
 13 Q Thank you.
 14 THE COURT: So it is in. Objection overruled.
 15 (Whereupon, the Document was marked in evidence as
 16 Plaintiff's Exhibit 3240.)
 17 Q And directing your attention to page two -- not the
 18 page -- the page two of the exhibit where it says 2 of 22 at
 19 the bottom, there is a description in the middle of the page
 20 that reads -- excuse -- I'll just -- in the interest of time,
 21 we could just move on from the document.
 22 Withdraw the question and move to Plaintiff's
 23 Exhibit 3239.
 24 Mr. Orowitz, do you see in the first page of
 25 Plaintiff's Exhibit 3239, there is an e-mail from David Goodman

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1 at Deutsche Bank to you and Ivanka Trump?
 2 A Yes.
 3 Q And just to situate that in the timeline, the prior
 4 exhibit when you sent the financing memo was three days before
 5 this exhibit or this e-mail, right?
 6 A Yes.
 7 Q And the e-mail from Mr. Goodman states, "Attached,
 8 please find term sheets for hotel and condo financings."
 9 Do you have an understanding of what Mr. Goodman was
 10 providing in this e-mail?
 11 A Yes.
 12 Q Okay.
 13 A I believe he was providing two separate financing. One
 14 was for the hotel which was an asset that we were going to hold
 15 on to and the other was for the residential condominiums which
 16 we would sell off over time and paydown the loan.
 17 Q And could you just describe the nature of the Chicago
 18 property and how it relates to those two categories of financing
 19 you described?
 20 A Yeah. The Chicago tower had retail. It had
 21 residential condominium, so individual residences that were sold
 22 off to individual buyers and then it had a hotel and that hotel
 23 originally was hotel/condominium, so the hotel units would be
 24 sold off when we refinanced. At this point, the intention was
 25 to hold on to all the remaining hotel/condo units and operate

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1 them as a sponsor-held hotel along with the hotel/condo units
 2 that had been sold off.
 3 Q And beginning on page two of the exhibit, there's
 4 identified as up to 56 million in financing for the commercial
 5 condo component.
 6 A Yes.
 7 Q And on page four, there is an indication of the type of
 8 recourse provided for in this term sheet. It states, "The loan
 9 will be non-recourse to borrower with some exceptions."
 10 Do you see that?
 11 A Yes.
 12 Q On page six, there is an indication that the interest
 13 rate fees, et cetera, are outlined on Schedule A?
 14 A Yes.
 15 Q And on page ten, there is actually a Schedule A that
 16 provides for pricing and various other terms?
 17 MR. ROBERT: Objection.
 18 THE COURT: The ground?
 19 MR. ROBERT: He's reading from a document that's
 20 not in evidence and it wouldn't be able to come into
 21 evidence because it is hearsay.
 22 MR. HAREN: This is the same point as we dealt with
 23 with the prior term sheet. This is a term sheet received by
 24 Mr. Orowitz in the ordinary course of business seeking
 25 financing for the Chicago property. We're offering it for

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1 the same purposes as the earlier exhibits were offered and
 2 accepted.
 3 MR. ROBERT: For the purpose that they received
 4 something, but all of the contents of it are inadmissible
 5 hearsay. Is that what you are saying?
 6 MR. HAREN: Could go to state of mind internally,
 7 inside the company to choose as a private wealth loan with a
 8 guaranty as opposed to a commercial real estate loan that is
 9 non-recourse, would tend to go to state of mind.
 10 MR. ROBERT: Notwithstanding the fact that you
 11 would have to stay whose state of mind you are trying to
 12 attribute this to. It doesn't change the fact that the
 13 contents of this attachment from Deutsche Bank is
 14 inadmissible hearsay.
 15 MR. HAREN: I think we dealt with this in the prior
 16 exhibit. It is the same principle.
 17 THE COURT: Same ruling, same principle.
 18 Overruled.
 19 MR. ROBERT: I think it was sustained as to what
 20 our objection was subject to what Mr. --
 21 THE COURT: Oh, well, let's try to be very precise.
 22 It is being introduced for what purpose?
 23 MR. HAREN: It is being introduced for two
 24 purposes; one to show notice of the terms received by the
 25 Trump Organization.

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1 THE COURT: Well, that alone should do it. Doesn't
 2 it?
 3 MR. ROBERT: Notice of purported -- notice of
 4 what's contained in the document, but not those were
 5 actually the terms offered by the bank.
 6 MR. HAREN: It goes to state of mind, as I said.
 7 MR. ROBERT: That part I don't understand because
 8 it would be whose state of mind.
 9 THE COURT: Right. Let's go to the second ground.
 10 Whose state of mind?
 11 MR. HAREN: Sure. Inside a company, companies work
 12 through people. There's imputed knowledge of an agent that
 13 gets imputed to the principal. If there is one set of terms
 14 that involves the submission of Statements of Financial
 15 Condition and those terms have a very low interest rate and
 16 there is another set of terms that are a much higher
 17 interest rate that are not private wealth loans that would
 18 tend to show a motive or a -- minimum a motive to use those
 19 statements.
 20 THE COURT: In for both purposes or on both
 21 grounds.
 22 (Whereupon, the Document was marked in evidence as
 23 Plaintiff's Exhibit 3239.)
 24 Q Then turning to page 15, there begins a summary of
 25 terms for unsold residential condominium units. Do you see

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1 that?

2 A Yes.

3 Q On page 18, there is a description of recourse at the

4 very top that says, "The loan will be non-recourse to borrower

5 with certain exceptions"?

6 A Yes.

7 Q And on page 18 also -- excuse me. I may have the

8 wrong page. At the very bottom of page 18 that provides loan

9 interest rate fees, et cetera are outlined on schedule A. Do

10 you see that?

11 A Yes.

12 Q And page 22 is the Schedule A that pertains to this

13 particular term sheet and it -- do you see that it provides an

14 interest rate with a spread of 800 basis points?

15 A Yes.

16 Q You can set that document aside. We will turn to

17 Plaintiff's Exhibit 3242. Now, Mr. Orowitz, in the e-mail on

18 the first page, do you see that there's an e-mail from Jason

19 Greenblatt to David Goodman at Deutsche Bank on which you,

20 Ivanka Trump and Allen Weisselberg are copied?

21 A Yes.

22 Q And the e-mail from Mr. Greenblatt provides, "Attached,

23 please find a revised draft of the proposed term sheet."

24 Do you see that?

25 A Yes.

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1 Q And since the subject of the e-mail refers to Chicago,

2 do you have an understanding that the proposed term sheet

3 relates to Chicago?

4 A Yes.

5 MR. HAREN: And if we could turn to -- I guess

6 I'll move to admit this document, Plaintiff's Exhibit 3242

7 as Mr. Greenblatt who was the -- withdrawn. I move to

8 admit Plaintiff's Exhibit 3242 as the Trump Organization's

9 response to a term sheet regarding the Chicago property.

10 MR. ROBERT: This one is just a statute of

11 limitations defense. This is fine because this is us

12 sending our work product to them, so it is not hearsay.

13 THE COURT: Okay. Understand. Overruled.

14 (Whereupon, the Document was marked in evidence as

15 Plaintiff's Exhibit 3242.)

16 Q If you can turn to page 17 of the document, please. Do

17 you see at the very top, there's a reference to "Trump draft

18 6/19/12"?

19 A Yes.

20 Q Do you have an understanding as to what that refers to?

21 A Yes, this is -- this is a redline or a markup of a

22 term sheet and that refers to a draft.

23 Q When it says, "Trump draft," that means it is a Trump

24 Organization response, correct?

25 A Yes.

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1 Q And if you could turn to page 29. Do you see that

2 there is a Schedule A that provides an interest rate?

3 A Yes.

4 Q And it provides, "The interest rate shall be calculated

5 at rate lock (see below) by adding [392] basis points (the

6 spread) to the yield on the ten-year on the run swap rate.

7 However, in no event shall interest rate be less than

8 5.64 percent with that number in brackets?"

9 A Yes.

10 MR. HAREN: Since that's -- if we can move to the

11 next document. Handing up to the witness Plaintiff's

12 Exhibit 3235.

13 Q Mr. Orowitz, looking at Plaintiff's Exhibit 3235, you

14 can see an e-mail from Jacob Turner at CSG Investments to Ivanka

15 Trump followed by an e-mail from Ivanka Trump to you and Allen

16 Weisselberg on April 18, 2012. Do you see that?

17 A Yes.

18 Q And the subject of the e-mail is "Trump Chicago

19 investment memo"?

20 A Yes.

21 Q And could you just take a look at Mr. Turner's e-mail.

22 I am going to ask you some questions about the e-mail that's at

23 the top, but take a look at Mr. Turner's e-mail before I do

24 that.

25 (Witness reviewing document.)

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1 Q So I guess I'll walk you through it before I ask you

2 questions about the e-mail that Ms. Trump sent to you.

3 On page three, there's an e-mail from Ivanka Trump to

4 Andrew Beal. Is that the Andy Beal you referenced earlier?

5 A Yes.

6 Q And Ms. Trump writes in that e-mail to Mr. Beal, "My

7 father had asked me to send you the Trump Chicago loan memo per

8 your conversation yesterday. Sometime in the next few weeks, I

9 was planning to go to market for senior financing on our iconic

10 92-story mixed-use skyscraper in Chicago Trump International

11 Hotel and tower. This loan would be secured by both the unsold

12 inventory of the condominium units and retail component as well

13 as operating cash flow from the hotel commercial and parking

14 facilities."

15 On page three of the document, Mr. Turner responds,

16 "Ivanka, thanks for the Trump Chicago memorandum. I have

17 reviewed the materials on a truly beautiful first-class

18 property. We are passing on the loan opportunity based

19 predominantly on the interest rates sought."

20 A Yes.

21 Q It is a little bit difficult to read because of the

22 small print, but on page two at the very bottom, Ms. Trump asked

23 Mr. Turner the following question. "Out of curiosity and so I

24 can better understand how you look," I think it says, "how you

25 took at these type of loans, what type of pricing would you

Page 2993

1 attach to the Chicago financing request"?

2 And Mr. Turner responds in part on page one, bolded

3 underline text short answer, "Our new loan originations

4 generally start with a baseline of around L plus 500, with a

5 LIBOR floor of two." And Ms. Trump then forwarded that

6 information to you and Mr. Weisselberg stating "some interesting

7 feedback." Do you see that?

8 A Yes.

9 Q Do you have an understanding as to why Ms. Trump added

10 Allen Weisselberg to this e-mail chain and stated to you "some

11 interesting feedback"?

12 A I would presume she wanted to give him the benefit of

13 understanding how this specific lender was looking at a loan

14 like Trump Chicago.

15 MR. HAREN: I move to admit Plaintiff's

16 Exhibit 3235 into evidence.

17 MR. ROBERT: Objection; statute of limitations.

18 THE COURT: Overruled. It is in.

19 (Whereupon, the Document was marked in evidence as

20 Plaintiff's Exhibit 3235.)

21 MR. HAREN: Plaintiff's Exhibit 3236 is being

22 handed up to the witness.

23 Q Mr. Orowitz, looking at Plaintiff's Exhibit 3236, you

24 recognize that it is the same e-mail chain that we just looked

25 at except for a different ending?

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1 A Yes.

2 Q And following Mr. Turner's e-mail to Ms. Trump, Ms.

3 Trump then e-mailed you directly and stated, "I think we made a

4 mistake adding rate to our memo...." Do you see that?

5 A Yes.

6 Q What did that indicate to you?

7 A It indicates to me that she was questioning whether we

8 should have included a rate because it does seem to have made

9 them not dig in on potentially giving a loan.

10 MR. HAREN: Move to admit Plaintiff's Exhibit 3236.

11 MR. ROBERT: Statute of limitations.

12 THE COURT: Overruled. It is in evidence.

13 (Whereupon, the Document was marked in evidence as

14 Plaintiff's Exhibit 3236.)

15 Q Now, Mr. Orowitz, let's talk about the Old Post Office

16 project. You have a general recollection of working on that

17 project during your time at the Trump Organization?

18 A Yes.

19 MR. HAREN: Handing up to the witness Plaintiff's

20 Exhibit 3241.

21 Q Mr. Orowitz, Plaintiff's Exhibit 3241, you see that it

22 is an e-mail from you to Allen Weisselberg, Jason Greenblatt,

23 Ivanka Trump and Ray Flores on September 3, 2013?

24 A Yes.

25 Q The subject is "All documents for OPO financing."

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1 What did you understand that to refer to?

2 A It appears to be me sharing two clean versions of the

3 term sheet that we got from Natixis and DB and then a quick

4 markup of like my initial thoughts on them and then a comparison

5 that Ray did, Ray Flores did against some previous loans that

6 the Trump Organization had done.

7 Q And for what purpose were you sending this information

8 to the recipients of the e-mail?

9 A I believe it was to get my initial thoughts out to them

10 as quickly as possible and get everyone thinking about how to

11 proceed with a loan.

12 Q The e-mail states, "We are speaking to Iron Hound about

13 DB and Natixis today at noon." Do you see that?

14 A Yes.

15 Q Can you explain what Iron Hound is and what its role

16 was in this transaction?

17 A Iron Hound is a broker and consultant that helps real

18 estate owners attain financing.

19 Q And what was its role in this transaction?

20 A They were helping us to find potential lenders and

21 negotiate with them.

22 Q So they were working on behalf of the Trump

23 Organization?

24 A Yes.

25 Q In item three on your list, you state that "One item

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1 attached was a comparison that Ray finalized last night of

2 Natixis and DB versus our previous DB, Hypo and Fortress loans.

3 Who is Ray as referred to there?

4 A Raymond Flores.

5 Q What was Mr. Flores' role at the Trump Organization at

6 the time?

7 A He was a financial analyst and reported to me.

8 MR. HAREN: And I'm going to move to admit

9 Plaintiff's Exhibit 3241.

10 MR. ROBERT: As to the cover e-mail, objection,

11 statute of limitations. As to the attachments, there

12 appears that there are more attachments listed on the cover

13 e-mail than are attached to this exhibit. To the extent

14 that they are documents prepared by anyone other than Trump,

15 I object that it is hearsay; but it is not complete because

16 the e-mail talks about a preliminary markup and a comparison

17 and it looks like those are in the attachment, but it is not

18 on what I was just handed.

19 MR. HAREN: So as to any item, one term sheet from

20 Natixis and DB, the Court has already ruled the various

21 purposes for which term sheets could come in. Item two, Mr.

22 Orowitz's preliminary markups, those are his markups. He

23 was an employee of the organization.

24 MR. ROBERT: I'm not fighting you on two and three.

25 They're not here, so it is not complete. I don't know what

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1 they are.
 2 MR. HAREN: One may be -- well, page seven of the
 3 document, there is a document withheld for privilege in the
 4 middle of the document. So why don't we do this? We can
 5 take a look at the term sheet from Natixis which is in the
 6 document, the term sheet from Deutsche Bank which is in the
 7 document, and we can take a look at the native Excel file
 8 that's the other attachment, and the defendants can advise
 9 if they continue to object to Mr. Flores' -- excuse me.
 10 Mr. Orowitz's markups of term sheets and we can move past
 11 that issue.
 12 MR. ROBERT: I'm sorry. I didn't understand any of
 13 that. I'm sorry. Maybe I didn't hear it.
 14 THE COURT: That was tough to follow.
 15 MR. HAREN: In the exhibit, there is a term sheet
 16 from Natixis. That's the first attachment beginning at page
 17 two.
 18 MR. ROBERT: Goes from page two to page five?
 19 MR. HAREN: Page two to page five. Page seven,
 20 there is document withheld for privilege.
 21 MR. ROBERT: Seven and eight. Got you.
 22 MR. HAREN: And then following that, there is a
 23 term sheet from Deutsche Bank.
 24 MR. ROBERT: Okay.
 25 MR. HAREN: That concludes on page 21. And then

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1 page 22 is a document provided natively which our other
 2 discussions is likely an Excel file and you can see that the
 3 last attachment listed in the e-mail is an Excel file.
 4 MR. ROBERT: So you're representing to me that item
 5 two in the e-mail was withheld for privilege? I can't tell.
 6 MR. HAREN: You would know better than I would the
 7 documents that are withheld for privilege based on the pages
 8 that are attached to the exhibit is my understanding.
 9 MR. ROBERT: You are telling me this is the
 10 complete e-mail of attachments that was turned over to you?
 11 MR. HAREN: Except for the native file which is
 12 Excel.
 13 MR. ROBERT: I keep my standard objection then.
 14 THE COURT: Same ruling. It is in.
 15 (Whereupon, the Document was marked in evidence as
 16 Plaintiff's Exhibit 3641.)
 17 MR. HAREN: I'm informed that there may be -- since
 18 it says "document withheld for privilege" on page seven and
 19 page eight, that may be two different documents that are
 20 withheld for privilege.
 21 THE COURT: Defendants, Mr. Robert, do you want to
 22 waive the privilege?
 23 MR. ROBERT: I accept his representation and later
 24 we can clean it up.
 25 THE COURT: Do you want to waive the privilege?

Page 2999

1 MR. ROBERT: Absolutely not.
 2 Q I want to move to page two of the exhibit. Mr.
 3 Orowitz, you see there is a label at the top "Natixis" and it
 4 appears to be a term sheet from Natixis for a loan related to
 5 the Old Post Office?
 6 A Yes.
 7 Q And beginning on page nine, there appears to be a term
 8 sheet from Deutsche Bank related to the Old Post Office?
 9 A Yes.
 10 MR. HAREN: If we could pull up on the screen
 11 Plaintiff's Exhibit 3241 native one.
 12 Q Mr. Orowitz, you recall in the e-mail there was a
 13 reference to a comparison that Mr. Flores prepared of potential
 14 terms for the Old Post Office transaction. You can see -- do
 15 you recognize this Excel spreadsheet on the screen to be that
 16 document?
 17 A Yes.
 18 Q And you can see in this document there are interest
 19 rate terms identified?
 20 A Yes.
 21 Q And so there's a spread from Natixis of 5.25 in the
 22 document. Do you see that?
 23 A Yes.
 24 Q From Deutsche Bank, this is a spread identified at
 25 4.25 percent?

Page 3000

1 A Yes.
 2 Q And there is a comparison to a Fortress loan that had a
 3 spread of 11 percent?
 4 A Yes.
 5 MR. HAREN: I'm going to move to admit Plaintiff's
 6 Exhibit 3241 including the native file that Mr. Flores
 7 prepared.
 8 MR. ROBERT: Statute of limitations, but I thought
 9 it is already in based on the Court's ruling.
 10 THE COURT: It was a different document, right?
 11 Anyway, it is in either way.
 12 (Whereupon, the Document was marked in evidence as
 13 Plaintiff's Exhibit 3241.)
 14 Q We are going to move to Plaintiff's Exhibit 513. Mr.
 15 Orowitz, Plaintiff's Exhibit 513, you mentioned that Iron Hound
 16 was working on the Trump Organization's behalf in connection
 17 with seeking financing for the Old Post Office transaction?
 18 A Yes.
 19 Q And you can see that this is an e-mail that is sent to
 20 Chris Herron at ironhoundmgt.com?
 21 A Yes.
 22 Q Was he working on behalf of the Trump Organization at
 23 Iron Hound in connection with the Old Post Office?
 24 A Yes.
 25 Q Beginning on page two, there is a document -- does the

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1 document appear to you to be a term sheet from Deutsche Bank for
 2 the Old Post Office project?
 3 A Yes.
 4 Q And just directing your attention to page 15 -- excuse
 5 me -- 14, do you see that there's a spread identified of
 6 400 basis points?
 7 A Yes.
 8 Q And just turning your attention back to the e-mail,
 9 there are three attachments identified. There's
 10 "db_old postofficetermsheet.doc,"
 11 "termsheet(v7versusborrowercommentstov4).doc" and
 12 "termsheet(v7versulenderpriordraft(v4).doc."
 13 MR. HAREN: Just want to move to admit this
 14 document and the attachments as notice to Mr. Herron from
 15 Iron Hound who was working on the Trump Organization's
 16 behalf.
 17 MR. ROBERT: Objection; statute of limitations and
 18 hearsay.
 19 THE COURT: Overruled.
 20 (Whereupon, the Document was marked in evidence as
 21 Plaintiff's Exhibit 513.)
 22 MR. HAREN: Moving to Plaintiff's Exhibit 3303.
 23 Q So Mr. Orowitz, in Plaintiff's Exhibit 3303, you see an
 24 e-mail from Chris Herron at Iron Hound to you, Jason Greenblatt
 25 and others with the subject "OPO term sheet." Do you see that?

Page 3002

1 A Yes.
 2 Q And the e-mail states, "There are certain points in
 3 that term sheet that DB specifically pointed out to us that they
 4 do not have room to move on (economics as we discussed) and
 5 others that were made without a detailed explanation that may
 6 require a direct conversation." Do you see that?
 7 A Yes.
 8 Q Now, there are three documents attached to this e-mail.
 9 "db_oldpostoffice-termsheet.doc" and
 10 "term sheet(v7versusborrowercommentstov4).doc" and
 11 "termsheet(v7versulenderpriordraft(v4).doc."
 12 The document is 78 pages long, so I don't want to take
 13 you through all of it, but I want to direct your attention to
 14 page 14 entitled "Economics" at the top left.
 15 Do you see that this page also contains the same spread
 16 400 basis points?
 17 A Yes.
 18 (Continued on the next page.)
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 23
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Page 3003

D. Orowitz - Plaintiff - direct (Haren)

1 MR. HAREN: I'm going to move to admit this
 2 document for the same purpose as the last document.
 3 MR. ROBERT: Objection. Statute of limitations and
 4 hearsay.
 5 THE COURT: Overruled.
 6 (Whereupon, the item previously referred to is
 7 received and marked Plaintiff's Exhibit Number 3033 in
 8 evidence.)
 9 MR. HAREN: Plaintiff's Exhibit 322.
 10 Q And Mr. Orowitz, just directing you back to
 11 Exhibit 3303. I just want to note the date was November 5, 2013
 12 on the prior exhibit.
 13 MR. ROBERT: Can I ask Mr. Haren to speak up a
 14 little? I'm having difficulty hearing.
 15 MR. HAREN: Sure. Is that better?
 16 THE COURT: Much.
 17 MR. HAREN: Sure. I indicated to the witness that
 18 the last document was November 5, 2013.
 19 Q Exhibit 322 is an e-mail from you to Tom Sullivan at
 20 Deutsche Bank. Do you see that?
 21 A Yes.
 22 Q And you were e-mailing him a document entitled, "Old
 23 Post Office Offering Memo August 2013?"
 24 A Yes.
 25 Q What do you understand that offering memo to be?

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D. Orowitz - Plaintiff - direct (Haren)

1 A This is a document explaining the general facts that a
 2 lender would want to know about a potential real estate
 3 investment in their interest in lending against it.
 4 Q And the attachment is identified as -- on the first
 5 page, it's page two of the document, "Trump International Hotel
 6 The Old Post Office Building Washington, D.C." and on the bottom
 7 left, it says, "Ironhound Management Company LLC?"
 8 A Yes.
 9 Q And so this document, was this the Trump Organization's
 10 offering memo in connection with seeking financing for the Old
 11 Post Office?
 12 A This was a memo that was put together. I'm not sure to
 13 what degree Ironhound was involved in that, but we were
 14 certainly involved in putting it together.
 15 MR. HAREN: I'm going to move to admit Plaintiff's
 16 Exhibit 322.
 17 MR. ROBERT: Objection. Statute of limitations.
 18 THE COURT: Overruled.
 19 (Whereupon, the item previously referred to is
 20 received and marked Plaintiff's Exhibit Number 322 in
 21 evidence.)
 22 Q And did you have an understanding that Mr. Sullivan was
 23 with the private wealth group at Deutsche Bank?
 24 A Yes.
 25 Q And so just on or about this time November 22nd, is

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1 that a -- that was essentially when the Trump Organization began
 2 to seek financing for the Old Post Office from the private
 3 wealth management group at Deutsche Bank?
 4 A It appears to be from the same, yes.
 5 MR. HAREN: Just give me one second, Your Honor, to
 6 confer with colleagues.
 7 THE COURT: Sure. I confer a lot too, you know.
 8 (Whereupon, there is a pause in the proceedings.)
 9 MR. HAREN: So can we pull up Plaintiff's
 10 Exhibit 327?
 11 Q So Mr. Orowitz, this is an e-mail from Tom Sullivan to
 12 you and Ivanka Trump and others attaching a term sheet in
 13 connection with the Old Post Office property. Do you see that?
 14 A Yes.
 15 Q And so is this document and the attached term sheet, do
 16 they represent terms from the private wealth management group at
 17 Deutsche Bank?
 18 A Yes.
 19 MR. HAREN: I'll move to admit Plaintiff's
 20 Exhibit 327.
 21 MR. ROBERT: Objection. Statute of limitations,
 22 hearsay.
 23 THE COURT: Overruled.
 24 Q And let's pull up Plaintiff's Exhibit 1286. I assure
 25 you, Mr. Orowitz, I will not be asking you about this entire

D. Orowitz - Plaintiff - direct (Haren) Page 3006

1 document, but do you recognize it to be the request for
 2 proposals from the General Services Administration in connection
 3 with the Old Post Office property?
 4 A Yes.
 5 Q And turning to page five of the document.
 6 MR. HAREN: I move to admit Exhibit 1286 as the RFP
 7 for the Old Post Office project.
 8 MR. ROBERT: Objection, Your Honor. Statute of
 9 limitations, but this is a complete hearsay document. It's
 10 prepared by the government, a request for proposal for Old
 11 Post Office.
 12 MR. HAREN: It's going to be used to show the Trump
 13 Organization's responses not for the truth of any items
 14 contained.
 15 MR. ROBERT: I still would object that it's
 16 impermissible to have it come in through this witness and it
 17 that it's hearsay.
 18 THE COURT: I would think that it's -- the overall
 19 -- overall it's basically saying -- the government is saying
 20 we want to renovate the Old Post Office, here is what we
 21 want, send us your proposals. What about that is --
 22 MR. ROBERT: And they can call a witness from the
 23 government to do that. They're using a former employee of
 24 the company to admit documents without having to lay the
 25 proper foundation through either a representative of bank,

D. Orowitz - Plaintiff - direct (Haren) Page 3007

1 insurance company or the federal government. There is a
 2 manner in which to properly present their case.
 3 Respectfully, this is not one of them.
 4 MR. HAREN: If a person had a business, receives a
 5 request for proposals, takes steps to respond to it,
 6 participates in the response to it, the request for
 7 proposals itself to come in to show what the witness and the
 8 business were responding to.
 9 MR. ROBERT: I disagree with that.
 10 THE COURT: I agree with it. Objection overruled.
 11 (Whereupon, the item previously referred to is
 12 received and marked Plaintiff's Exhibit Number 1286 in
 13 evidence.)
 14 MR. HAREN: Plaintiff's Exhibit 1164?
 15 Q Mr. Orowitz, do you recognize Plaintiff's Exhibit 1164
 16 as the response of Trump Old Post Office LLC to the GSA's RFP
 17 regarding the Old Post Office property?
 18 A Yes.
 19 Q And I just want to direct your attention to page two of
 20 the document. There is a letter on page two, letter signed by
 21 Ivanka Trump. Do you see that?
 22 A Yes.
 23 Q And do you see that the letter describes the Trump
 24 Organization on the roles of Donald Trump, Jr., Eric Trump and
 25 Ivanka Trump within the company?

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1 A Could you direct me to that?
 2 Q Sorry. I withdraw it. I think I may have the wrong
 3 page, so I just withdraw that question.
 4 Page 145 of the document refers to the developer's
 5 financial capacity and capability. Do you see that?
 6 A Yes.
 7 Q And then page 153 refers to financial statements.
 8 A Yes.
 9 Q And it reads: "Please find Trump's Statement of
 10 Financial Condition in an envelope submitted with each copy of
 11 this proposal." And it continues at the next paragraph.
 12 "Please note that Trump affiliates are all private
 13 companies. The attached Statement of Financial Condition was
 14 compiled under GAAP, but it should be noted that there are
 15 departures from GAAP that are described in the accountant's
 16 compilation report attached to the Statement of Financial
 17 Condition. Most personal financial statements contain GAAP
 18 exceptions. WeiserMazars LLP has compiled these financials."
 19 Do you see that?
 20 A Yes.
 21 Q And I'm going to note an undisputed fact from
 22 defendant's summary judgment papers, paragraph 143 where
 23 defendants stated: "As required by the GSA, the 2008 to 2010
 24 SOFCs were submitted as part of the bid and the Attorney
 25 General's office response was undisputed." That's number 143 of

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1 the defendant's 202 statement.
 2 MR. HAREN: I move to admit Plaintiff's
 3 Exhibit 1164.
 4 MR. KISE: So, Your Honor, I don't know whether he
 5 did or not --
 6 MR. HAREN: I move to admit the Trump
 7 Organization's response to the GSA RFP Exhibit 1164.
 8 MR. KISE: So hearsay obviously, relevance, statute
 9 of limitations, and his reference to the 2008 to 2010 SOFCs,
 10 I don't even know those are at issue in the case, so I'm not
 11 sure -- there hasn't even been any allegation that there is
 12 a problem with the 2008 to 2010. That has never come in
 13 before, so I'm not exactly sure what that reference related
 14 to -- I'm sure it was undisputed in the summary judgment
 15 that they were submitted because yes, but that doesn't make
 16 it relevant to this trial proceeding and I don't see what
 17 any relevance of these RFPs is. I mean, this is way outside
 18 the statute of limitations. There is no claim that is
 19 presented with respect to the OPO award process. So is
 20 there?
 21 MR. HAREN: Couple of responses. It's certainly
 22 not hearsay. It's entitled "Proposal of Trump Old Post
 23 Office LLC."
 24 THE COURT: Statement of a party.
 25 MR. HAREN: As to the other matters it relates to a

D. Orowitz - Plaintiff - direct (Haren) Page 3010

1 course of conduct, use of the statements of financial
 2 condition and business agreed that the date of the RFP is
 3 outside the statute of limitations, but that doesn't mean
 4 it's not relevant for the Court to determine what, if any,
 5 equitable relief to award.
 6 MR. KISE: But which statements of financial
 7 condition? This is the 2008 -- by his own statement, this
 8 is the 2008 to 2010 statements of financial condition which
 9 heretofore have never been mentioned in the course of this
 10 proceeding, so I'm not sure are we going to go back there?
 11 I know that we're -- there is no calendar or clock
 12 associated with any of this, so -- but that's a new -- 2008
 13 to 2010 is certainly a new allegation.
 14 MR. HAREN: I would add there is an allegation in
 15 the complaint that refers generally to the Old Post Office,
 16 but the statement in the 202 statement is not our statement.
 17 It was a statement from the defendants describing the
 18 submission of these statements to the GSA and that is what
 19 we did not dispute, so you put it in your 202 statement.
 20 MR. KISE: Again, there is a big difference.
 21 THE COURT: That's the banned word, but you can say
 22 it again.
 23 MR. KISE: As I stated before, but just because we
 24 said that the 2008 to 2010 statements were submitted to the
 25 GSA, okay, they were, but it has no relevance to these

D. Orowitz - Plaintiff - direct (Haren) Page 3011

1 proceedings. That may be undisputed that they were in fact
 2 submitted, but there is no relevance to these proceedings
 3 because these statements have never been challenged. There
 4 is not a shred of evidence that has been introduced at trial
 5 or before about the 2008 to 2010 statements.
 6 MR. HAREN: I don't want to say this necessarily in
 7 front of the witness, but there will be other documents that
 8 come in in the next few minutes or very early tomorrow
 9 morning that describe the actions and responses of certain
 10 people in connection with this RFP and they will be relevant
 11 at a minimum for that purpose.
 12 MR. KISE: But again, actions by others -- well,
 13 I'm saying again to Counsel not to you, Your Honor, actions
 14 by other people -- let me just see if I get this right.
 15 In responses in connection with this RFP, but those
 16 would be actions based on 2008 to 2010 financial statements,
 17 not 2011 to 2021, which is what the case has always been
 18 about, at least I thought so.
 19 MR. WALLACE: I'll just interject, and I apologize
 20 to Mr. Haren, but the thread here is there is a discussion
 21 of some of the GAAP exceptions in the statements of
 22 financial condition as part of the GSA process that shows
 23 the knowledge of the company and its officers about --
 24 around the GAAP exceptions that people are now claiming they
 25 are not familiar with. So that is the thread that pulls us

D. Orowitz - Plaintiff - direct (Haren) Page 3012

1 through and that this is the process that eventually leads
 2 to the loan that is in very much indeed apart of this case.
 3 THE COURT: Objection overruled. Pattern and
 4 practice to repeat myself or again bars claims not in
 5 evidence.
 6 And five-minute warning.
 7 Overruled.
 8 MR. HAREN: Plaintiff's Exhibit 1288.
 9 THE COURT: And notice which is part of pattern and
 10 practice.
 11 MR. KISE: Your Honor, just so I'm clear on the
 12 ruling.
 13 THE COURT: Yes.
 14 MR. KISE: Part pattern of practice of what, 2008
 15 to 2010?
 16 THE COURT: Of the Trump Organization.
 17 MR. KISE: But there's not been any allegation that
 18 the 2008 to 2010 statements of financial condition have any
 19 issues associated with them.
 20 THE COURT: Well, would there be?
 21 MR. WALLACE: But there is and there is a
 22 discussion of the GAAP exceptions that carries through this
 23 entire period, including 2008, 2010, 2011, 2012, all the way
 24 into the future and the GAAP exceptions that are contained
 25 within the Statement of Financial Condition are very much a

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1 question that is open to debate at this point and goes to
 2 the knowledge and intent of the individuals that were
 3 executives of the Trump Organization and the fact that we
 4 can establish before the statute of limitations period
 5 knowledge of certain individuals is certainly relevant
 6 evidence.
 7 THE COURT: That you can certainly do.
 8 MR. KISE: But, again, as to the 2008 to 2010
 9 financial statement -- statements of financial condition
 10 that's the key distinction here. Whatever took place before
 11 2011 wasn't ever part of the case. I mean, are we going --
 12 I'm just -- I don't see the thread that Mr. Wallace -- with
 13 all due respect, I'm not exactly sure what he's talking
 14 about because those had never been challenged as having any
 15 issues. There was no testimony from Mr. Bender, there was
 16 no testimony from any witness about those.
 17 Does the case now involve the defense of the 2008
 18 to 2010 statements of financial condition?
 19 THE COURT: Mr. Wallace, last word.
 20 MR. WALLACE: I will just say that the complaints
 21 or summary judgment papers there has been a through line
 22 that there has been a discussion amongst the members of the
 23 Trump Organization about the GAAP exceptions in the
 24 statements of financial condition. The defendants have
 25 claimed very few people were even aware of these statements

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1 (Whereupon, the trial proceedings are adjourned to
 2 November 1, 2023 at 10:00 a.m.)
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D. Orowitz - Plaintiff - direct (Haren) Page 3014

1 within the company. They don't know about the GAAP
 2 exceptions, so it's relevant to that.
 3 I would also note from a timing perspective, this
 4 colloquy that we're having here is exactly what we're
 5 worried about when it's objection overruled. Let's talk
 6 about it for another ten minutes.
 7 I think we've made our case as to why this will
 8 connect and we're entitled to put the evidence in and show
 9 that connection.
 10 THE COURT: I try to strike a balance between not
 11 wasting time when I've made a ruling and explaining the
 12 ruling and allowing a record to be made and Counsel to say
 13 what he has to say. But we're basically done for today,
 14 anyway, so what time are we resuming tomorrow? Let me
 15 guess, 10 o'clock with this witness?
 16 Objection overruled, by the way.
 17 MR. ROBERT: Your Honor, can we have a sidebar?
 18 THE COURT: Sure. We'll have a front bar.
 19 And I'll order the witness not to discuss this case
 20 or his testimony or anything related to that with anybody
 21 until you're finished testifying team.
 22 THE WITNESS: Okay, Your Honor.
 23 THE COURT: Thank you.
 24 (Whereupon, the witness is excused from the witness
 25 stand.)

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In The Matter Of:
PEOPLE OF THE STATE OF NEW YORK v.
DONALD J. TRUMP, et al.

M. MCCARTY, DONALD TRUMP, JR.
November 1, 2023

NICOLE C. ROBINSON

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1 SUPREME COURT OF THE STATE OF NEW YORK
 2 COUNTY OF NEW YORK : CIVIL TERM : PART 37
 3 PEOPLE OF THE STATE OF NEW YORK, BY
 4 LETITIA JAMES, ATTORNEY GENERAL OF
 5 THE STATE OF NEW YORK,
 6 Plaintiff,
 7 -against- Index No. 452564/2022
 8 DONALD J. TRUMP; DONALD TRUMP, JR.; ERIC TRUMP;
 9 IVANKA TRUMP; ALLEN WEISSELBERG; JEFFREY MCCONNEY;
 10 THE DONALD J. TRUMP REVOCABLE TRUST; THE TRUMP
 11 ORGANIZATION, INC.; TRUMP ORGANIZATION, LLC;
 12 DJT HOLDINGS, LLC; DJT HOLDINGS MANAGING MEMBER;
 13 TRUMP ENDEAVOR 12, LLC; 401 NORTH WABASH VENTURE,
 14 LLC; TRUMP OLD POST OFFICE, LLC; 40 WALL STREET,
 15 LLC.; AND SEVEN SPRINGS, LLC,
 16 Defendants.
 17 ----- X
 18 60 Centre Street
 19 New York, New York 10013
 20 November 1, 2023
 21 B E F O R E:
 22 HONORABLE ARTHUR F. ENGORON,
 23 Justice, Supreme Court
 24 A P P E A R A N C E S :
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 ALEX FINKELSTEIN, ESQ.
 (Appearances continued on the next page.)

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Proceedings

1 THE COURT OFFICER: All rise. Part 37 is now in
 2 session. The Honorable Judge Arthur Engoron presiding.
 3 Make sure all cell phones are on silent. Laptops and cell
 4 phones will be permitted, but only to members of the press.
 5 There is absolutely no recording or photography of any kind
 6 allowed in the courtroom. Now be seated and come to order.
 7 THE COURT: Would you like to continue with your
 8 witness?
 9 MR. HAREN: I would. We recall David Orowitz.
 10 THE COURT OFFICER: Witness entering.
 11 (Whereupon, the witness enters the courtroom and
 12 approaches the witness stand.)
 13 THE COURT: I'll ask Counsel to keep in mind we
 14 have a busy day and a busy week, so let's try to move things
 15 along as quickly as we can, and please proceed.
 16 MR. HAREN: Thank you, Your Honor.
 17 CONTINUED DIRECT EXAMINATION
 18 BY MR. HAREN:
 19 Q Good morning, Mr. Orowitz. Welcome back. Sorry you're
 20 here for a second day.
 21 THE COURT: And I'll remind him, as I always do,
 22 the witness is under oath.
 23 Q I'd like to go back to Plaintiff's Exhibit 1288, which
 24 we almost began to discuss yesterday.
 25 Do you recognize this to be an e-mail from you to

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D. Orowitz - Plaintiff - direct (Haren)

1 Patricia Moore copying Ivanka Trump and others on December 14,
 2 2011?
 3 A Yes.
 4 Q Do you see that the subject says "meeting to discuss
 5 OPO presentation?"
 6 A Yes.
 7 Q Do you have an understanding of the circumstances
 8 surrounding this e-mail?
 9 A My recollection is that we got I believe two rounds of
 10 questions from the GSA based on our proposal and this was one of
 11 them and I was attempting to kind of organize people around our
 12 response.
 13 Q And you see that the e-mail that you sent contains
 14 three attachments?
 15 A Yes.
 16 Q And one is GSA letter to Trump Organization
 17 12132011.PDF?
 18 A Yes.
 19 Q Do you understand what that refers to?
 20 A I believe it refers to one of those letters with some
 21 of their questions or requests for clarification.
 22 Q And the third attachment is entitled, "Outline for
 23 12-19-1" -- excuse me -- "12-19-11 Presentation docx."
 24 Do you have an understanding of what that refers to?
 25 A I'm not certain, but I think that that probably refers

D. Orowitz - Plaintiff - direct (Haren) Page 3020

1 to a presentation that we did in person where we were presenting
 2 our proposal to constituents in the GSA.
 3 Q And there is a notation in the e-mail that identifies
 4 it as one of high importance. Do you have a recollection as to
 5 why that designation is there?
 6 A We want -- we would have wanted -- this was important
 7 and we would have wanted to get organized quickly and make sure
 8 we had as thoughtful a response as we could.
 9 MR. HAREN: I move to admit Plaintiff's
 10 Exhibit 1288 into evidence.
 11 MR. KISE: Objection. Statute of limitations and
 12 relevance.
 13 THE COURT: Where is Mr. Robert? He usually does
 14 that.
 15 MR. KISE: I know. I've got to take over this
 16 morning.
 17 THE COURT: Overruled. It's in evidence.
 18 (Whereupon, the item previously referred to is
 19 received and marked Plaintiff's Exhibit Number 1288 in
 20 evidence.)
 21 Q And directing your attention to page three of the
 22 exhibit. Do you recognize this as a letter from the General
 23 Services Administration to Ivanka Trump as executive vice
 24 president of acquisitions and development at the Trump
 25 Organization?

D. Orowitz - Plaintiff - direct (Haren) Page 3021

1 A Yes.
 2 Q And the letter states: "This is to confirm that your
 3 team is scheduled to make a presentation regarding the
 4 above-referenced solicitation on December 19, 2011 at
 5 2:00 p.m." Is that a reference to the in-person presentation
 6 that you mentioned earlier?
 7 A I believe it is.
 8 Q And then on page four this is the second page of the
 9 letter under "Factor 3." It states under the second bullet,
 10 "financial statements appear to have multiple GAAP departures,
 11 including but not limited to, not including separately held
 12 financials, no provision for income tax and the PV of the
 13 deposits not reflected." Do you see that?
 14 A Yes.
 15 Q Was that an issue identified by the GSA during the
 16 process?
 17 A It appears to be from this letter, yes.
 18 Q And then on page four, same page, there is a bullet
 19 that reads -- it's the third bullet, "please provide a statement
 20 regarding any bankruptcy or loan defaults on real estate
 21 development projects as specified under Factor 3."
 22 Was that also an issue identified by the GSA during the
 23 bidding process?
 24 A Yes.
 25 Q I want to direct your attention to page 15 of the

D. Orowitz - Plaintiff - direct (Haren) Page 3022

1 document. Is the information on page 15 and what follows in a
 2 table format, is that the outline for presentation that you
 3 attached to your e-mail?
 4 A Yes.
 5 Q And the outline identifies under the heading "Oral
 6 Presentation" on page 15 that there would be an intro from
 7 Ivanka Trump?
 8 A Yes.
 9 Q And the third bullet reads "DJT speaks." What is that
 10 a reference to?
 11 A That refers to the portion of the presentation when
 12 President Trump was presenting.
 13 Q And on page 18 of the document next to factor 3B
 14 regarding financial statements it reads in part, "Dave to
 15 discuss with Allen how we might address." Do you see that?
 16 A Yes.
 17 Q Was it your understanding that you will discuss the
 18 financial statement item under factor 3B with Allen Weisselberg?
 19 A Yes.
 20 Q How did you come to that understanding?
 21 A I have a slight recollection that this was generally an
 22 issue that we had to address in our response, so in reviewing
 23 this it sort of reminded me of that.
 24 Q But how did you come to the understanding at the time
 25 that Allen Weisselberg was the person you should speak to?

D. Orowitz - Plaintiff - direct (Haren) Page 3023

1 A Oh, Allen is the CFO and was responsible for that side
 2 of the business.
 3 MR. HAREN: Let's pull up Plaintiff's Exhibit 1429.
 4 Q Mr. Orowitz, the Plaintiff's Exhibit 1429, do you see
 5 that it's an e-mail from you to Allen Weisselberg on
 6 December 16, 2011 pertaining to language in the GAAP section?
 7 A Yes.
 8 Q Does the information in this e-mail pertain to the GSA
 9 bidding process?
 10 A Yes.
 11 MR. HAREN: I move to admit Plaintiff's
 12 Exhibit 1429 into evidence.
 13 MR. KISE: Objection. Statute of limitations and
 14 relevance.
 15 THE COURT: Overruled. It's in.
 16 (Whereupon, the item previously referred to is
 17 received and marked Plaintiff's Exhibit Number 1429 in
 18 evidence.)
 19 Q And in the subject line you wrote in all caps,
 20 "Important," and then you added "need to discuss now." Why
 21 would you write that?
 22 A I think we were on a deadline to get the response put
 23 together and I needed people to focus on their portions of that
 24 response.
 25 Q And in the first line of your e-mail reads: "Allen,

D. Orowitz - Plaintiff - direct (Haren) Page 3024

1 Ivanka wanted me to change the language in the GAAP section.
 2 She asked that I review with you."
 3 Do you have a recollection apart from what's in this
 4 e-mail of being asked by Ivanka Trump to review language
 5 pertaining to GAAP with Allen Weisselberg?
 6 A I don't remember that specifically.
 7 Q And, again, what is your understanding as to why Allen
 8 Weisselberg was the person you were directed to consult with
 9 about the item referenced in this e-mail?
 10 A He was the CFO of the company and was familiar with how
 11 the accounting worked and how the net worth statement was put
 12 together, so he would be the best person to comment on our
 13 response.
 14 Q So far as you understand would any GAAP-related change
 15 require Allen Weisselberg's approval as it related to the
 16 responses of the GSA?
 17 A Yes.
 18 MR. HAREN: Let's move to Plaintiff's Exhibit 3273.
 19 Q Mr. Orowitz, do you see Plaintiff's 3273 in the middle
 20 of the page includes an e-mail from Jeff McConney to Morgan
 21 Miles copying you with the subject "SOFC?"
 22 A Yes.
 23 Q Who was Morgan Miles?
 24 A Morgan Miles was summer intern at the Trump
 25 Organization.

D. Orowitz - Plaintiff - direct (Haren) Page 3025

1 Q And do you see at the bottom e-mail is from or
 2 includes, it says, "message from RNPFC 77-CE" and it states
 3 "queries to scanner@Trumporg.com?"
 4 A Yes.
 5 Q Do you have an understanding as to whether this
 6 document was scanned or e-mailed?
 7 A I would assume that.
 8 Q And looking at the attachment beginning on page two do
 9 you see that it says at the top "Redevelopment of Old Post
 10 Office, Request For Proposals?"
 11 A Yes.
 12 Q And do you understand that the attachment reflects
 13 under the heading "Financial Statements" Mr. McConney's
 14 handwritten input into language describing Mr. Trump's Statement
 15 of Financial Condition and GAAP departures?
 16 A I don't know whose handwriting this is.
 17 Q But does the e-mail itself indicate that it came to you
 18 from Jeff McConney?
 19 A It indicates that it came from Jeff McConney, yes.
 20 Q And back to the e-mail at the very top, you wrote
 21 "please incorporate."
 22 A Yes.
 23 Q What did you intend that to mean?
 24 A We had a larger presentation that this was apart of and
 25 my recollection is Morgan was putting that together or helping

D. Orowitz - Plaintiff - direct (Haren) Page 3026

1 put that together and we needed to incorporate it into a larger
 2 presentation.
 3 Q And so you received handwritten comments pertaining to
 4 Mr. Trump's Statement of Financial Condition from Jeff McConney
 5 and then directed that they be incorporated?
 6 A Yes.
 7 THE COURT: Wait. These are two different things
 8 obviously. Are you saying yes to both? Incorporate the
 9 handwritten notes and incorporate the document into the
 10 presentation?
 11 THE WITNESS: I was suggesting that with these
 12 changes in the handwritten notes, Your Honor, that that
 13 should be incorporated into the presentation.
 14 Q And the handwritten notes came to you from Jeff
 15 McConney?
 16 A I received them from Jeff McConney based on this
 17 e-mail, yes.
 18 THE COURT: So there are two different
 19 incorporations. I just want to make that clear. Okay, I'll
 20 assume they agree.
 21 MR. HAREN: I move to admit Plaintiff's
 22 Exhibit 3273.
 23 MR. KISE: Objection. Statute of limitations and
 24 relevance.
 25 THE COURT: Don't you wish your buddy was here?

D. Orowitz - Plaintiff - direct (Haren) Page 3027

1 MR. KISE: I do. He's making me work today.
 2 THE COURT: Overruled. Granted.
 3 (Whereupon, the item previously referred to is
 4 received and marked Plaintiff's Exhibit Number 3273 in
 5 evidence.)
 6 MR. HAREN: Plaintiff's Exhibit 1431 has been
 7 handed to the witness.
 8 Q Mr. Orowitz, you'll see on the first page an e-mail
 9 from you to Ivanka Trump and others on December 17, 2011. I'll
 10 just advise you that's a Saturday.
 11 And the subject of the e-mail is "handout for Monday."
 12 Do you have an understanding as to what that refers to?
 13 A I believe that this refers to a document that we were
 14 providing to the GSA in tandem with our presentation.
 15 Q And do you have an understanding that the attachment is
 16 a copy of the document that was provided to the GSA during the
 17 presentation?
 18 A Yes. This appears to be a version of it, if not the
 19 final version.
 20 Q Let's take a look at page ten of the exhibit. You see
 21 at the top at the left it reads "Factor 3:" And then "3B)
 22 financial statements appear to have multiple GAAP departures"
 23 and it goes on?
 24 A Yes.
 25 Q And it provides a response about three separate items

D. Orowitz - Plaintiff - direct (Haren) Page 3028

1 in bold, "separately held entities provisions for income tax and
 2 PV of the deposits?"
 3 A Yes.
 4 Q And those were the same GAAP departures that were
 5 highlighted in the letter from GSA we looked at a few moments
 6 ago?
 7 A Yes, correct.
 8 MR. HAREN: I move to admit Plaintiff's
 9 Exhibit 1431 into evidence.
 10 MR. KISE: Objection. Statute of limitations and
 11 relevance.
 12 THE COURT: Overruled. It's in.
 13 (Whereupon, the item previously referred to is
 14 received and marked Plaintiff's Exhibit Number 1431 in
 15 evidence.)
 16 Q And Mr. Orowitz, I'm going to switch to a different
 17 topic and hopefully have you out of here, depending on the
 18 defendants. This relates to the Doral property.
 19 MR. HAREN: Plaintiff's Exhibit 347 has been handed
 20 to the witness.
 21 Q Mr. Orowitz, do you recognize this document as a series
 22 of e-mails between you and Dave Williams and Josh Frank from
 23 Deutsche Bank on or about March 18, 2016?
 24 A Yes.
 25 Q The subject of these e-mails is "Doral/Turnberry."

D. Orowitz - Plaintiff - direct (Haren) Page 3029

1 Do you see that?
 2 A Yes.
 3 Q Do you have an understanding of what that refers to in
 4 this time frame?
 5 A At that time we were in conversations with Deutsche
 6 Bank about upsizing our loan, so getting additional loan
 7 proceeds and I believe that's what this e-mail refers to.
 8 MR. HAREN: And I move to admit Plaintiff's
 9 Exhibit 347 into evidence.
 10 MR. KISE: Objection. Relevance.
 11 THE COURT: Overruled.
 12 Q Do you have an understanding as to how much in
 13 additional financing was being sought by the Trump Organization
 14 from Deutsche Bank in or about February or March of 2016?
 15 A I don't recall specifically.
 16 Q Let's see if a document refreshes your recollection.
 17 MR. HAREN: This is Plaintiff's Exhibit 342 -- 352.
 18 Q Mr. Orowitz, do you see at the top of the document
 19 there is an e-mail from Rosemary Vrablic to Ivanka Trump on
 20 February 11, 2016?
 21 A Yes.
 22 Q And do you see that in the e-mail Ms. Vrablic wrote to
 23 Ms. Trump, quote, "I spoke to the credit team on the" -- excuse
 24 me -- "\$50 MM request and we are thrilled to consider it for
 25 you." Does that refresh your recollection that the Trump

D. Orowitz - Plaintiff - direct (Haren) Page 3030

1 Organization requested \$50 million in financing from Deutsche
 2 Bank to upsize the Doral loan in or about February of 2016?
 3 A It refreshes my memory that it was around that number,
 4 but I don't remember specifically.
 5 Q Thank you.
 6 MR. HAREN: I have no further questions for this
 7 witness.
 8 THE COURT: Will there be any cross examination at
 9 this time?
 10 MR. KISE: Not at this time, Your Honor, no.
 11 THE COURT: Okay. Witness excused.
 12 THE COURT OFFICER: Members of the audience, please
 13 remain seated.
 14 (Whereupon, the witness is excused from the witness
 15 stand.)
 16 THE COURT: And Plaintiff, would you like to call
 17 your next witness?
 18 MR. WALLACE: Yes. Thank you, Your Honor. The
 19 People call Michiel McCarty.
 20 MR. KISE: For the record, Your Honor, we renew our
 21 objection as stated on the record yesterday.
 22 THE COURT: I understand that, and I overruled it.
 23 THE COURT OFFICER: Court ready for the witness?
 24 THE COURT: Yes.
 25 THE COURT OFFICER: Witness entering.

M. McCarty - Plaintiff - direct (Wallace) Page 3031

1 (Whereupon, the witness enters the courtroom and
 2 approaches the witness stand.)
 3 THE COURT OFFICER: Raise your right hand.
 4 Do you solemnly swear or affirm that any testimony
 5 you give will be the truth, the whole truth and nothing but
 6 the truth?
 7 THE WITNESS: I do.
 8 THE COURT OFFICER: Please have a seat.
 9 Please state your name and either home or business
 10 address for the record.
 11 THE WITNESS: Michiel McCarty spelled M-i-c-h-i-e-l
 12 M-c-C-a-r-t-y. Address is 44 N. Porchuck Road, Greenwich,
 13 Connecticut 06831.
 14 THE COURT: Okay. Please proceed, Counselor.
 15 MR. WALLACE: Thank you, Your Honor.
 16 DIRECT EXAMINATION
 17 BY MR. WALLACE:
 18 Q Good morning, Mr. McCarty.
 19 A Good morning, Mr. Wallace.
 20 Q So just so that all of us are reminded, I will ask you
 21 to speak closely into the microphone so that people can hear you
 22 and also remind you to speak slowly so that the court reporter
 23 can take down everything we are saying.
 24 Mr. McCarty, where are you currently employed?
 25 A I am a chairman and CEO of an investment bank by the

M. McCarty - Plaintiff - direct (Wallace) Page 3032

1 name of MM Dillon & Company.
 2 Q And what do you do in your role as CEO and chairman of
 3 MM Dillon?
 4 A I spend the majority of my time doing transactions for
 5 clients, corporate clients, mergers and acquisitions,
 6 financings, joint venture related.
 7 Q And what kind of transactions are you involved in?
 8 A I do debt transactions, convertible transactions,
 9 equity transactions, and assorted various mergers and
 10 acquisitions.
 11 Q And how long have you been working in the banking
 12 industry?
 13 A For a very long time, since 1975.
 14 Q Could you describe for us your educational background
 15 prior to becoming a banker?
 16 A I have an undergraduate degree from Vanderbilt
 17 University in physics and honors and I have an MBA in finance
 18 with a concentration in capital markets from the Wharton School.
 19 Q So if we could just go through your employment
 20 experience after you obtained your MBA.
 21 What was the first position you took after you
 22 completed your education?
 23 A My first job out of Wharton was for Citibank here in
 24 New York working in their merchant banking group.
 25 Q And could you describe for us what kinds of

M. McCarty - Plaintiff - direct (Wallace) Page 3033

1 transactions you worked on while you were at Citi?
 2 A The first one I worked on just showed up was the Penn
 3 Central bankruptcy which was the largest bankruptcy in the
 4 history of the country at that time and I was assigned to that
 5 group for the first nine months I was there. Penn Central was
 6 at that time the largest real estate owner in New York owning 24
 7 trophy properties.
 8 Q And what were your responsibilities in that engagement?
 9 A I was put on the team because of my science in
 10 analytical background, so I was the valuation expert on the
 11 properties which the bank was trying to originate the sale of to
 12 recover their losses on Penn Central.
 13 Q And what were those properties?
 14 A Large number PanAm building, the New York Central
 15 building, the Commodore Hotel, the Barclay Hotel, the Waldorf
 16 Astoria and about eight office buildings along Park Avenue and
 17 Lexington Avenue, Madison Avenue.
 18 Q And after your time in Citi what was your next
 19 position?
 20 A I was recruited to join Dillon Read & Company, another
 21 investment bank.
 22 Q And what was your position at Dillon Read?
 23 A I had various jobs. I ultimately took control and
 24 responsibility for the financing of corporate clients, both
 25 equity and debt.

M. McCarty - Plaintiff - direct (Wallace) Page 3034

1 Q And can you describe for us some of your experiences
 2 when you were at Dillon Read?
 3 A One of the most notable was I was the lead banker and
 4 Dillon Read was the lead manager underwriter of the
 5 privatization of Fannie Mae. Fannie Mae was the largest issuer
 6 of debt in the United States and the largest provider of
 7 mortgages. I believe it still is. I worked for about a year
 8 privatizing, setting it up and taking it public in the market.
 9 Q And after your time at Dillon Read what was your next
 10 position?
 11 A I was recruited to join SG Warburg, which is a
 12 London-based bank. I believe it's the largest bank outside the
 13 United States in a role running North and South America for the
 14 SG Warburg operation.
 15 Q And what were some representative transactions from
 16 your time at SG Warburg?
 17 A One of the most interesting was the de-merger of
 18 Marriott Corporation. Marriott at the time I think was the
 19 third largest hotel operation in the United States.
 20 We designed a system to divide Marriott into the hotel
 21 management company, Marriott and the real estate owning company
 22 post Marriott.
 23 Q And what was your role on that transactions?
 24 A I was the lead banker on that transaction.
 25 Q Were there any changes in your employment during the

M. McCarty - Plaintiff - direct (Wallace) Page 3035

1 course of your time at SG Warburg?
 2 A Moore I remember when she was appointed to the
 3 Management Committee and Commitment Committee overseeing all the
 4 assets in North and South America.
 5 Q And what were your -- where were you employed after
 6 your time at SG Warburg?
 7 A I was involved in selling the SG Warburg to UBS. I
 8 stayed on the combined UBS Warburg for my contract period which
 9 is nine months and then left to go to a firm here in New York,
 10 Gleacher & Co.
 11 Q And what is Gleacher & Co?
 12 A It was an independent investment bank owned by the
 13 partners. We sold it to NatWest, a UK institutional bank and we
 14 ran it as Gleacher NatWest in North America. We took over the
 15 NatWest operations here in North America.
 16 Q And what were your responsibilities at Gleacher and
 17 NatWest?
 18 A I was running the financing side of the business. Eric
 19 Gleacher, who was the founder was running the MNA side of the
 20 business.
 21 Q When you say "financing side of the business," what
 22 does that entail?
 23 A The whole spectrum of financing going from bank debt to
 24 private placements to public debt and then all the spectrum of
 25 equity convertibles and straight equity.

M. McCarty - Plaintiff - direct (Wallace) Page 3036

1 Q And can you give us examples of any relevant
 2 transactions that you worked on during your time at Gleacher and
 3 NatWest?
 4 A Probably the most prominent client I had was AT&T. I'd
 5 done a series of senior debt deals for them. I had actually
 6 opposed them in the takeover of NCR and they eventually hired me
 7 to take them and sell them to one of the other large telcos,
 8 ultimately SBC, Southwestern Bell Corp to form the new AT&T.
 9 Q And where did you go after your time at Gleacher and
 10 NatWest?
 11 A I started up an investment banking group inside a
 12 trading firm in Connecticut called CRT Capital. The investment
 13 banking group ultimately became MM Dillon. We spun it off after
 14 the 2008 crash from CRT, which it had trading problems in the
 15 crash.
 16 Q And what was your position at that entity?
 17 A I was one of the managing partners of CRT Capital and
 18 we were part of them and ran investment banking and after the
 19 spin I became the chairman of the independent company MM Dillon.
 20 Q And can you describe for us some representative
 21 transactions you worked on during your time at CRT?
 22 A Maybe one of the more relevant ones is I began having
 23 occasional expert witness testimony cases and two of them that
 24 are relevant here. I took on for Credit Suisse, an expert
 25 witness testimony in the Lake Las Vegas case, a development

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1 dozen times and I probably testified at trial maybe 14 or 15
 2 times.
 3 Q Across those engagements was there a general subject
 4 matter of the issues you testified on?
 5 A Really a hundred percent of it was related to capital
 6 markets issues.
 7 Transcript continues on the following page....
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M. McCarty - Plaintiff - direct (Wallace) Page 3037

1 outside Las Vegas involved about 2,800 homes and golf courses
 2 and hotels.
 3 THE COURT: Let me just ask this and/or direct the
 4 witness please speak up. You're borderline difficult to
 5 hear I think out there.
 6 THE WITNESS: I apologize. I have some seasonal
 7 allergies that are clogging me up. I'll try to speak up,
 8 though.
 9 THE COURT: Okay, great.
 10 Q Was there any other experts experiences that you
 11 mentioned? There were some others, I believe?
 12 A I've taken about one a year. I got into the expert
 13 witness business very accidentally. I was asked to do for a
 14 client in Delaware, a takeover discussion dispute and so I take
 15 one or two major a year.
 16 Another one that's relevant maybe is Duke Energy was a
 17 past client of mine, had its real estate subsidiary called
 18 Crescent Realty and they done it -- a sponsored spin off of
 19 Crescent Realty with Morgan Stanley asset management and put on
 20 about two and a half billion dollars of debt and ultimately went
 21 brought bankrupt. I was put in to testify about the asset of
 22 the loans and public debt.
 23 Q So do you have a sense of what's the subtotal number of
 24 times you've appeared as an expert witness?
 25 A I've probably been hired as an expert witness a couple

M. MCCARTY - PLAINTIFF - DIRECT(MR. WALLACE) Page 3039

1 Q What kinds of capital market issues?
 2 A Adequacy of equity and terms and condition of debt,
 3 structure of the debt, the knowledge of the participants who
 4 bought the debt, all related to things that people trade and
 5 issue in capital markets.
 6 Q Did any of those cases involve credit decisions made by
 7 lenders?
 8 A Almost all of them.
 9 Q Did any of those cases involve the pricing of debt?
 10 A Almost all of them.
 11 Q Each of the cases where you appeared, were you always
 12 qualified to be an expert?
 13 A Yes, I was.
 14 Q In any of the cases in which you testified, were you
 15 ever disqualified as an expert?
 16 A No, I wasn't.
 17 Q I'd like to go back to some of the work you described
 18 apart from your expert experience.
 19 Generally speaking, do you have experience with the
 20 underwriting of commercial real estate loans?
 21 A I have, yes.
 22 Q What kind of experience do you have underwriting real
 23 estate commercial loans?
 24 A I sat in as a senior officer and approval of loans at
 25 NatWest and for my time at UBS as the approval of real

M. MCCARTY - PLAINTIFF - DIRECT(MR. WALLACE) Page 3040

1 estate-related loans.
 2 Q And what was your role in approving those loans?
 3 A I was the senior officer signing off.
 4 Q And how many other real estate transactions have you
 5 worked on since then?
 6 A It's not a specialty, but it is probably four or five.
 7 Q Did any of the transactions, any of the commercial real
 8 estate transactions you worked on involve high net worth
 9 individuals as guarantors?
 10 A Yes, so I had a couple.
 11 Q Can you give us those examples?
 12 A Yeah. The NatWest had a subsidiary called Coutts that
 13 handled the high net worth including the Queen and kind of
 14 transaction involving the Coutts client base which one of their
 15 high net worth individuals wanted to buy the Cunard Shipping
 16 Lines and related real estate assets.
 17 Q Any other experience?
 18 A Another client of Coutts wanted to take and split up a
 19 public U.S. company that had a real estate subsidiary. Both of
 20 these were two and-a-half to three-billion-dollar transactions
 21 involving bank financing and equity from the high net worth
 22 individuals.
 23 Q And so who did you represent in those transactions that
 24 you just described?
 25 A Curiously enough, both parties because the subsidiary

M. MCCARTY - PLAINTIFF - DIRECT(MR. WALLACE) Page 3041

1 Coutts was a reporting agent to me and the clients were
 2 investment banking clients, so I was the mediator between both
 3 parties.
 4 Q Over the course of your career, was review of financial
 5 statements to make credit decisions something you did on a
 6 regular basis?
 7 A Pretty much everything I've done involves review of
 8 financial statements and analysis, be it mergers or equity
 9 financing, or debt financing. I might have completed, I don't
 10 know, 350, 400 transactions and I probably looked at twice as
 11 many. So pretty much every day I go to work, I analyze
 12 financial statements.
 13 Q What kinds of financial statements, corporate,
 14 personal?
 15 A Corporate in the majority and the high-net worth
 16 individuals, it is individual statements.
 17 Q And is there a significant difference between corporate
 18 financial statements and individual financial statements?
 19 A Not really. I mean, it's still the same accounting
 20 principles. It is GAAP. So I don't really view them as highly
 21 different. Many of the family offices that we deal with are
 22 multi-billion-dollar enterprises.
 23 Q And are you familiar with the banking transactions at
 24 issue in this case?
 25 A I am.

M. MCCARTY - PLAINTIFF - DIRECT(MR. WALLACE) Page 3042

1 Q And is the analysis conducted by the lenders in this
 2 case similar to analysis that you had performed?
 3 A Yes.
 4 Q Are there any differences?
 5 A One difference I notice is I don't know that I've ever
 6 dealt with compilation statements, so many of the transactions
 7 are done without audited statements, but compilation was a new
 8 thing to me.
 9 MR. WALLACE: Your Honor, I move to qualify Mr.
 10 McCarty as an expert in banking and capital markets.
 11 THE COURT: Would that include expertise about
 12 compilations?
 13 MR. WALLACE: Not in the preparation of
 14 compilations, Your Honor.
 15 THE COURT: Let's hear from the other side.
 16 MR. KISE: Well, it also appears that it is not a
 17 valuation of compilation statements either, so that's yet an
 18 additional reason that we would object to this witness in
 19 addition to the reasons we put on the record yesterday. He
 20 has now just testified that he's never dealt with
 21 compilation. "I don't know that I've ever dealt with
 22 compilation statements."
 23 The entire case centers around the valuation by the
 24 banks of compilation statements. So while this witness
 25 merely has experience in the banking and financing sector

M. MCCARTY - PLAINTIFF - DIRECT(MR. WALLACE) Page 3043

1 and specifically with underwriting loan transactions, it
 2 appears that he does not have the specific experience
 3 relevant for purposes -- for the purposes that we're here.
 4 Q Mr. McCarty are you capable of reading and
 5 understanding and analyzing a compilation statement?
 6 A I am. They're not really significant differences to
 7 me. The private financial statements of high-net worth
 8 individuals many times are unaudited and the difference between
 9 the statements, I believe, is not material to my analysis.
 10 THE COURT: I hereby grant the request to deem him
 11 as an expert, but, of course, I'll keep in mind his
 12 statement that he doesn't or hasn't dealt with compilation
 13 statements, but balance that against his statement that he
 14 thinks they're somewhat similar or very similar to what he
 15 does have great experience with.
 16 MR. KISE: And just briefly for the record, Your
 17 Honor, I think the answer to the question that Mr. Wallace
 18 posed still doesn't resolve the issue because he's basically
 19 saying in his own opinion there aren't significant
 20 differences, but if he hasn't dealt with them before, it is
 21 not possible for him to really know that. So he's just
 22 qualifying himself in that regard, but I understand the
 23 Court's ruling and our objection is noted.
 24 THE COURT: Okay.
 25 MR. WALLACE: As I understand, the issue is the

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1 Court will afford whatever weight based on Mr. McCarty's
 2 description of his experience and that will be included in
 3 your final analysis as to what weight to afford his
 4 testimony.
 5 THE COURT: And then the next time that you testify
 6 in a case like this, you can say you've dealt with
 7 compilation statements.
 8 THE WITNESS: That's correct. I now have.
 9 MR. WALLACE: Thank you, Your Honor.
 10 Q Mr. McCarty, I'm going to hand you a document that's
 11 been marked as Plaintiff's Exhibit 1780.
 12 Mr. McCarty, do you recognize this document?
 13 A I do. It's my expert report.
 14 Q And when did you prepare this report?
 15 A I submitted it on May 26th. I worked on it for a
 16 couple of months before then.
 17 Q Did you update any opinions contained in this report at
 18 some point?
 19 A I did two additional -- I did a rebuttal report and
 20 then a supplemental submission just recently.
 21 Q I'm going to -- Mr. McCarty, I'm going to hand you a
 22 document that has been marked Plaintiff's Exhibit 1786.
 23 Mr. McCarty, do you recognize this document?
 24 A I do. That's my rebuttal report.
 25 Q And what are the subject matters that you cover in

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1 these two reports?
 2 A The matters are the same as I was retained to look at
 3 the economic impact of the false and misleading financial
 4 statements, if any.
 5 Q And how did you go about conducting that analysis?
 6 A I worked through the documents that were provided in
 7 production and I approached it the same way that I would in my
 8 transaction analysis. I broke down the business into analytical
 9 sections and did market research.
 10 Q Mr. McCarty, I'm going to hand you a document that has
 11 been marked as Plaintiff's Exhibit 3302.
 12 Do you recognize this document?
 13 A I do. This is the supplemental disclosure document I
 14 filed recently.
 15 Q If we turn to the last page of this document, can you
 16 tell me what is reflected on this page?
 17 A This is the updated lost interest calculation that I
 18 did in my original report modified in two manners.
 19 Q Mr. McCarty, this is the subject matter I'd like to
 20 discuss with you today, this calculation that you prepared.
 21 Could you tell us what was the assignment that led you
 22 to prepare this lost interest analysis?
 23 MR. KISE: Your Honor, is this document in
 24 evidence?
 25 MR. WALLACE: No.

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1 THE COURT: No.
 2 MR. KISE: Okay. So is this a demonstrative?
 3 MR. WALLACE: I'm happy to mark it as Plaintiff's
 4 4.
 5 MR. KISE: If it is demonstrative, that's fine. If
 6 it is demonstrative, that's okay.
 7 THE COURT: Are you so moving?
 8 MR. WALLACE: Sorry?
 9 THE COURT: Are you so moving?
 10 MR. WALLACE: I am requesting to have this marked
 11 as Plaintiff's Exhibit Demonstrative 4.
 12 MR. KISE: Just this page?
 13 MR. WALLACE: Just this page.
 14 THE COURT: And just marked as an exhibit?
 15 MR. WALLACE: Demonstrative exhibit, yes.
 16 MR. KISE: Well, just this page again. Not the
 17 first one, two, three, pages.
 18 MR. WALLACE: That's fine.
 19 MR. KISE: Yes.
 20 THE COURT: I hereby mark it as a demonstrative
 21 exhibit. What number are we going to give it?
 22 MR. WALLACE: It's Plaintiff's Demonstrative 4
 23 because I believe our numbering sequence so far.
 24 THE COURT: Okay. It is now demonstrative Exhibit
 25 No. 4.

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1 MR. WALLACE: Thank you, your Honor.
 2 (Whereupon, the Document was marked in evidence as
 3 Plaintiff's Demonstrative Exhibit 4.)
 4 Q Mr. McCarty, going back to the question I asked, what
 5 was the assignment that led you to prepare this lost interest
 6 analysis?
 7 A The same as my retention, to try to get a handle on the
 8 economic impact of the financial statements that were, I guess,
 9 judged as mistaken or fraudulent.
 10 Q At a high level, can you explain to us how you went
 11 about that assignment?
 12 A Yeah, I can. I might just say this is a modified
 13 version. The first version was in my last page of my report,
 14 expert report. This one has been modified to take into account
 15 the -- Your Honor's ruling on the statute of limitations and
 16 updated from the time from May to October. So it is the same
 17 analysis, same calculation. It is just modified for those two
 18 parts.
 19 Q Okay. I'm going to hand you another document. This is
 20 not going into evidence. It is a copy of the summary judgment
 21 decision. It is NYSCEF Document No. 1531.
 22 Mr. McCarty, if I could direct your attention to page
 23 25 of this document, we'll pull it up on the screen. Footnote
 24 21, this footnote states, "The subject loans made the banks lots
 25 of money; but the fraudulent SOFC's cost the banks lots of

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1 money. The less collateral for a loan, the riskier it is and a
 2 first principle of loan accounting is that as risk rises, so do
 3 interest rates. Thus, accurate SOFC's would have allowed the
 4 lenders to make even more money than they did."
 5 Mr. McCarty, is the statement in this footnote
 6 consistent with your experience as a banker?
 7 A With a few word changes, it could have been said by me
 8 as the way I look at risk and interest rates.
 9 Q And so just so I understand at this point, your basis
 10 for saying that the Statements of Financial Condition that were
 11 used in the loans was misstated is coming from the judge's
 12 decision on summary judgment?
 13 A That's correct.
 14 Q Prior to the judge's decision on summary judgment, what
 15 was your basis for reaching that conclusion?
 16 A Analysis of the financial statements myself on an
 17 independent basis.
 18 Q And any other sources that you relied upon in reaching
 19 that conclusion?
 20 A The credit reports of the Trump Organization.
 21 Q Did you also rely on any other experts?
 22 A I did for the valuation side. I didn't have an
 23 assignment to do the valuation of the assets, so I took as
 24 assumed the two valuation experts and the accounting experts'
 25 input.

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1 Q At this point, the summary judgment decision is the
 2 basis for finding the statements from this --
 3 A That's correct.
 4 MR. KISE: That question got cut off. It just
 5 said, "At this point, the summary judgment decision is the
 6 basis for finding the statements from this" and then it went
 7 blank.
 8 Q So at this point, the summary judgment decision is the
 9 basis for your conclusion that the financial statements were
 10 misstated?
 11 A That's correct.
 12 MR. KISE: Just this portion?
 13 MR. WALLACE: The entire decision.
 14 MR. KISE: The entire decision, not this footnote?
 15 MR. WALLACE: I'm going to ask him about this
 16 footnote, but he is saying -- the Court decided the
 17 statements were false, so that's the basis upon which he is
 18 going to discuss the opinions we're going to go through now.
 19 I don't know if I need to --
 20 MR. KISE: I reassert my objection to foundation.
 21 THE COURT: He can. Overruled.
 22 Q So going back to this footnote, Mr. McCarty, why is it
 23 as risk rises, interest rates go up?
 24 A The risk and sometimes it is included credit risk is a
 25 representation of --

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1 MR. KISE: Objection. Going back to the footnote,
 2 are you asking him in his experience why this happens or are
 3 you asking him to comment --
 4 MR. WALLACE: Can I conduct my exam? He has
 5 already stated -- I'm sorry. Actually, I assume the
 6 objection was to the judge. I withdraw it.
 7 MR. KISE: A footnote in an opinion even by our
 8 learned judge is not a foundation for an expert to formulate
 9 an opinion as to the capital markets. If he's
 10 testifying -- if your question is is this his understanding
 11 of how it works based on his experience, that's one thing,
 12 but your question, I believe, was based on this footnote.
 13 So if it is based on this footnote, I would say
 14 that's not a proper foundation because our judge may be an
 15 expert in many things, but I would respectfully suggest that
 16 he is not an expert in the capital markets. So if his
 17 experience bears this out, that's fine; but that wasn't your
 18 question.
 19 MR. WALLACE: I'll go back to the prior question.
 20 "Mr. McCarty, is the statement in the footnote
 21 consistent with your experience as a banker?"
 22 "ANSWER: With a few word changes, it could have
 23 been said by me as the way I look at risk and interest
 24 rates".
 25 I believe that's a sufficient foundation to show

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1 that this is consistent.
 2 MR. KISE: But then your subsequent question was
 3 not based on his experience. It was based on the footnote.
 4 So we just need to be clear here because as you know, we
 5 have a considerable disagreement as to the foundational and
 6 appropriate aspects of this witness testifying at all. So I
 7 just want to make sure the record is very, very clear here
 8 as to what he's testifying about.
 9 THE COURT: I think the simplest way is just to ask
 10 the question again.
 11 But I just want to ask the witness some day, will
 12 you tell me those few different word changes, so when I get
 13 another case like this, I'll know exactly how to state it.
 14 THE WITNESS: Your words were better than mine.
 15 THE COURT: Next question.
 16 Q Mr. McCarty, do you have a view that as risk rises,
 17 interest rates go up?
 18 A It's really a basis of the capital markets. Risk,
 19 sometimes called credit risk, is a representation of the
 20 probability of default. We call it PD for short and so as PD
 21 goes up, you have to compensate for the potential for loss and
 22 to do that, you raise the interest rate.
 23 THE COURT: And you didn't learn that from me,
 24 right? You already knew that, right?
 25 THE WITNESS: I did.

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1 Q Mr. McCarty, is there a way to measure the differential
2 you just described?
3 A The differential in what? If you would just clarify
4 for me.
5 Q As risk goes up, is there a way to measure the
6 differential in a loan when there's differential in risk?
7 A There is. There's reg agencies that exist. The banks
8 all conform to the same, so you have a probability default very
9 very low, nearly zero. It is a AA credit and if you have a
10 probability of default that is five percent, that's a BB credit.
11 And there's gradations all along, so people trade based on those
12 analysis of the statements and whether they have a high
13 probability default or a low probability.
14 Q And do those ratings apply to debt in all of its forms?
15 A It does. Bonds, loans, notes, convertibles. It is the
16 whole spectrum of debt.
17 Q And did you conduct an analysis in this case of the
18 risk differential from the various loans that are at issue here?
19 A I did.
20 Q How did you perform that analysis?
21 A I looked at the internal documents by Deutsche Bank of
22 analyzing first the credit level of the guarantor versus the
23 credit level of the collateral, the project itself without a
24 guaranty.
25 Q If we could take a step back for just a moment.

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1 What determines the interest rate that a bank will
2 charge for a particular loan?
3 A It varies. The first thing is the cost of their funds.
4 Then they put on a cost of servicing those funds and then the
5 most key element is the risk premium. In the case of AA,
6 there's very little risk premium. I did AT&T's last debt
7 financing back before I was independent and they had a rate that
8 was very similar to the U.S. Government rate, a risk-free rate.
9 If there is a higher rate for premium, the interest rate goes up
10 based on that premium.
11 Q And just to unpack some of what you said, you said a
12 cost of funds for the bank is one element in what the interest
13 rate is charged. What is the cost of funds?
14 A It varies by type of debt it is. If it's a personal
15 guaranty where there's very little risk, A or AA credit, the
16 cost of funds is very low for the bank because they don't have
17 to set aside much equity. The Basel II mandated that the bank
18 set aside equity based on the rating of the particular loan. So
19 if you have a AA rated loan, you set aside very little equity.
20 That means your cost of providing the money and the funds to the
21 loan is very low.
22 Q And you said that the most important part was the risk
23 premium. Could you explain what you mean by that?
24 A The risk premium is really, again, your own
25 interpretation of the credit risk of the enterprise you're

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1 lending to, the individual, or the project, or some other
2 structure.
3 Q And did you identify discussion of the risk premium on
4 the loans in this case?
5 A I did, independently and also with reviewing the
6 Deutsche Bank material.
7 Q And what conclusions did you reach?
8 A Conclusion I reached that the loans with the guaranty,
9 the three principal trophy ones, Doral, OPO and Chicago, were
10 assigned a very low risk level an A level or better, a strong A
11 and a risk premium of almost zero by PWM.
12 Q Were there any other risk analyses that you found in
13 your review of the Deutsche Bank materials?
14 A I did. In reading through the different credit memos,
15 they did an independent analysis of the collateral which is
16 short for the project-based credit availability and that one was
17 a BB connoting that the probabilities independent without the
18 guaranty held a relatively high risk.
19 BB is considered the first step of non-investment
20 grade. If you go to BBB, it is investment grade. So they
21 determined the projects were non-investment grade BB.
22 Q When you say the projects were determined to be
23 non-investment grade BB, which projects were those?
24 A The three I mentioned; Doral, OPO and Chicago.
25 Q And was there a reason the bank determined those were

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1 BB?
2 A I think so. I mean, I know Doral. I've been there,
3 played the Blue Monster a few times, and it was a project
4 turnaround. It had been brought out of bankruptcy. MSR owned
5 it, was selling it in bankruptcy. It needed a large amount of
6 spending and a change in the image, so when you're doing a
7 turnaround project like that, that's a risk item that a banker
8 would look at and say that's a risky project. OPO was a
9 startup. It was a conversion of a facility to a hotel for the
10 first time. Startups carry their own risk premium.
11 Q And did you identify any impacts in the difference
12 between these risks?
13 A Significant. The difference in the strong A credit and
14 BB credit is many basis points, so I'm going -- I'm sorry for
15 using basis points. Basis points are ticks in a one percent, so
16 100 basis points is one percent. I'll try to use percents.
17 It's -- it can be as much as seven or eight percent difference
18 between the two different credit ratings.
19 Q And what is reflected in that difference between the
20 interest rates?
21 A It is a difference in risk. Again, the probability
22 default of the two. Historically, banks have been very willing
23 to lend to high-net worth individuals at low rates because they
24 get repaid so...
25 Q You described that there was -- I think you said there

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1 may be as much as an eight-percent difference. Here, did you
 2 conduct an analysis to determine the interest rate differential
 3 between the BB credit and the A credit?
 4 A We did. We did several different analysis. We broke
 5 down the analysis that Deutsche Bank had done of the projects.
 6 We went out and looked at -- it is hard to find a direct
 7 comparable, so there is no direct comparable, but we saw things
 8 like ClubCorp which was a ten percent issuer, BB credit. We did
 9 a scan of all BB credits of similar size and they all centered
 10 around kind of nine, ten percent at that time, the time of the
 11 loans.
 12 Q Any other confirmation that you were able to obtain as
 13 to your analysis of the interest rates?
 14 A After we did the comparable analysis and market sweep,
 15 we then looked at documents that CRE had proposed to finance the
 16 project without a guaranty.
 17 Q If we could go back to what I believe is now
 18 Plaintiff's Demonstrative 4, if I could direct your attention to
 19 the top row, which is Doral, could you tell me what is your
 20 understanding of the Doral project?
 21 A Doral project is a large resort in South Florida. It
 22 involves several golf courses and a spa facility and a large
 23 number of bungalows. The spin was estimated to be something
 24 like \$200 million to rehab the facility, make it a viable,
 25 long-term project.

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1 to just flat rate it at the original rate.
 2 (Continued on the next page.)
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1 Q And if we look at the top row, the line that says,
 2 "actual INT percent," what is reflected in that row?
 3 A We took that straight from the Trump statements. This
 4 is the actual interest rate paid in each of the years and the
 5 same is true of the loan amounts, that they're exactly the
 6 amounts that were outstanding for each of the years.
 7 Q When you say "loan amount," you're referring to the row
 8 that says, "loan AMT ADJ"?
 9 A Yes.
 10 Q Can you tell us what is reflected in the "low CRE INT
 11 percentage"?
 12 A We -- after we did the market analysis and determined
 13 that the BB credit was in a tight band, we then decided that the
 14 CRE proposals for each of the projects, since they knew more
 15 about the projects than the market would have, was probably the
 16 best representative, contemporaneous data for an interest rate
 17 for the projects without the guaranty.
 18 Q And if we look at the numbers, they're spread out in
 19 the row "CRE INT," it stays at ten percent from 2014 through
 20 2022. Why does the rate stay the same?
 21 A We made a decision to keep it. The line above it is
 22 floating with LIBOR pricing. We decided in CRE to keep it
 23 straight for each of the projects as a conservative measure. We
 24 were concerned that with interest rates going up in '17, '18 and
 25 '19, that it would present too dramatic a number, so we decided

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1 Q And just to make sure I'm understanding correctly, you
 2 said the line above is a floating rate. This is the numbers
 3 reflected in the row, "actual INT percentage rate." That's the
 4 row you're referring to?
 5 A That's correct. The loans were made as a premium to
 6 LIBOR and so as LIBOR went up, the interest paid went up and
 7 when LIBOR went down, interest payments go down.
 8 Q And so if we look at the bottom row under the Doral
 9 section, it says "interest delta." What is reflected in that
 10 row?
 11 A That's the difference between the first two rows and
 12 dollar amounts and so each year that's the calculation of the
 13 difference in if it's project financed versus guaranteed finance
 14 and that differential is totalled up for Doral on the far right,
 15 72,908,308.
 16 Q And what is the basis for the GAAP in the interest
 17 rates you've identified here?
 18 A The basis is that the financial statements as provided
 19 wouldn't allow PWM along with conditions of the projects to have
 20 made the loans and that the true rate of risk premium was the
 21 CRE line. So the differential between the two was the -- my
 22 calculation lost interest due to the debt difference.
 23 Q Do you have --
 24 MR. KISE: Objection. Move to strike the answer
 25 the answer, assumes facts not in evidence, Your Honor.

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1 MR. WALLACE: What facts are --

2 MR. KISE: The real banks in the real world that

3 actually evaluated the loan have not testified in this

4 courtroom at trial that in fact they would not have approved

5 the loans and at those levels. So this witness is assuming

6 facts that are not in evidence at all. He's introducing new

7 facts with that testimony -- that answer.

8 MR. WALLACE: I will make two points. One is an

9 expert is allowed to rely upon hearsay and evidence that is

10 not in the record. I will also note that the terms of the

11 offers that were made by the -- that were made by Deutsche

12 Bank were not disputed at summary judgments. We are

13 entitled to disgorgement potentially coming out of the

14 summary judgment decision and hence, it is part of the

15 record as something that an expert is perfectly capable of

16 considering.

17 MR. KISE: Your Honor, if the government is asking

18 this witness to do the math between the two numbers and

19 testify that that's the mathematical difference, that's

20 fine, but that wasn't the question. That wasn't the answer

21 that was given. The answer that was given is that Private

22 Wealth Management would not have made this loan on these

23 terms based on his analysis and there is no evidence from

24 the real banks that operate in the real word that did their

25 own real evaluation. That's what's in the record right now.

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1 MR. WALLACE: Based on fraudulent financial

2 statements. This is the hurdle you guys can --

3 MR. KISE: Can I finish my objection, please?

4 THE COURT: Mr. Wallace, please don't interrupt.

5 MR. WALLACE: All right.

6 MR. KISE: And so the government as I say is

7 perfectly capable of eliciting that testimony from the bank.

8 It's their burden to do it. It's not my burden to undo it.

9 It's their burden to do that. They were perfectly capable

10 of doing that. They didn't because we all know from the

11 record that isn't before the Court that the answer would not

12 have been favorable to them. So that's why they didn't do

13 it. So they now have a witness who is an expert and I don't

14 quarrel with his qualifications in that regard, but he is

15 assuming facts not in evidence which is clearly not

16 appropriate under the case law that we cited. There is no

17 record evidence. He's -- as the Ortiz case that we

18 discussed, there are two eyewitness and this is an accident

19 reconstructionist that's coming in.

20 I'll wait so you can read the note that

21 Ms. Greenfield just handed you.

22 THE COURT: What do I want for dinner?

23 MR. KISE: Right. That was yesterday.

24 THE COURT: Well, we could ask the witness what

25 facts he's assuming.

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1 MR. WALLACE: Your Honor, I actually don't think he

2 is assuming any facts and the record does show there was an

3 offer made. I think he is describing his knowledge and his

4 assessment of whether the loans would have been made, but

5 ultimately, we are asking him to measure the difference

6 between a market rate without a statement of financial

7 condition and the rate that they obtained with the statement

8 of financial condition. This is not an element of a 6312

9 claim but it is to provide assistance to the Court in

10 determining what was the potential profit that came from the

11 fraudulent activity that we've already identified and

12 established. So it is not an element of 6312. It is not

13 speculation and it is based on the facts that are in the

14 record at this point as to what -- how these loans are being

15 priced by different groups. I think he has also said he

16 compared this to the market rates, which I -- was going to

17 actually be my next question.

18 So I think that this is a basis. If they want to

19 suggest that it's not reliable, that he should rely on other

20 information, that's perfectly fine. It seems like they have

21 a very large binder for cross examination they can go

22 through and they can make an argument on it as to what the

23 appropriate measure of disgorgement might be, but at this

24 point he's basing his opinions on facts that are in the

25 record.

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1 THE COURT: Well, I think we need to ask him what

2 facts, if any, he assumed. Then we decide whether they're

3 in the record.

4 As for whether experts are allowed to rely on

5 hearsay, that's a subtle one. I don't think I've come

6 across yet. Do you have any authority for that? Can you

7 get authority for that?

8 MR. KISE: Your Honor, I'm not even suggesting it's

9 relying on hearsay. What I'm saying is that the facts don't

10 exist at all, that they haven't established that the gains

11 are ill gotten in the first place because the bank itself

12 has not provided that testimony.

13 Just because the statements may have contained

14 falsities based on Your Honor's ruling, which you know we

15 disagree with, but just because the statements may have

16 contained inaccuracies, falsities, how you want to describe

17 it does not mean that the bank in fact would have done

18 something different. And until that is established, the

19 gains are not ill gotten because if the bank were to say

20 that even knowing what I know today, yes, I would have

21 likely made those loans and Your Honor knows we're going to

22 hear testimony from that same bank that's going to say that

23 Mr. Trump would have qualified for the private wealth

24 management group anyway. So the idea that whether it's two

25 and a half billion, whether it's one billion, whether it's

M. McCarty - Plaintiff - direct (Wallace) Page 3064

1 500 million. So the question is whether the bank who had
 2 the responsibility in the real world to make the credit
 3 determination to determine the probability of default as
 4 this expert has just testified to, made that decision and
 5 with the revised information would they have made the same
 6 decision? I don't know whether this witness would have made
 7 the same decision, but that's not what's at issue here.
 8 What's at issue here is whether the bank made the decision
 9 or would have made a different decision or would have
 10 actually priced the loans differently considering all of the
 11 factors. And yes, we will get to a lot of other specific
 12 items in cross examination, but this is a fundamental
 13 question and this witness is assuming that the bank -- he's
 14 substituting his judgment. He's saying well, based on what
 15 I see I wouldn't have approved it, okay, that's great. But
 16 he doesn't get to make that call unless the bank says they
 17 wouldn't have approved it. Back to the Ortiz case and the
 18 other cases that we cited.
 19 MR. WALLACE: I don't think it is our obligation to
 20 have a loan officer from Deutsche Bank sit here and listen
 21 to all the evidence that comes in at trial and then say yes,
 22 so let me go back and figure out what would have really
 23 happened if I had known all the lies that Donald Trump was
 24 telling me. That's not how this works. And Mr. Kise is
 25 rehashing the same arguments we made yesterday when they

M. McCarty - Plaintiff - direct (Wallace) Page 3065

1 made their motion to preclude Mr. McCarty's testimony. This
 2 is a measure of the benefit they obtained. That is
 3 perfectly reasonable, expert testimony.
 4 We do not need to prove the counterfactual of we
 5 reconstruct every piece of his financial statements. We
 6 showed that he used fraudulent financial statements in
 7 business to obtain these loans.
 8 The measure of the benefit is perfectly reasonable
 9 expert testimony. It is not something that we have to
 10 establish by going back to each of the loan officers who are
 11 making the decision at the time these loans were made.
 12 MR. KISE: Of course it is, Your Honor.
 13 THE COURT: Hold on. I'm arguing for you. I still
 14 want to know what he based his answer on.
 15 MR. WALLACE: I'm happy to get that information,
 16 but we've now drifted into a legal argument over essentially
 17 the same issues we were discussing yesterday. I'm happy to
 18 continue with the exam and ask Mr. McCarty to repeat what he
 19 based his decision on what the CRE INT percentage.
 20 THE COURT: It's not even a legal argument. It's
 21 more of a mathematical argument. Anyway, why don't you
 22 given Mr. Kise's objection, which I'll sustain without
 23 prejudice to further examination --
 24 MR. WALLACE: I'm sorry, what's been sustained?
 25 THE COURT: His objection at this point on the

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1 ground that I don't know what he was relying on.
 2 MR. WALLACE: I believe he's testified to it, but
 3 I'll ask you -- I'll cover it again, Your Honor.
 4 Q Mr. McCarty, how did you calculate the CRE INT number?
 5 A I took the loan proposal from Deutsche Bank which was
 6 LIBOR + 8 and with a floor of LIBOR 2, so at ten percent rate
 7 proposed in their term sheet and I used that number.
 8 Q And do you have a view -- any other information you
 9 considered in reaching your conclusion as to what that interest
 10 rate was?
 11 A I might have just to complete for the whole
 12 spreadsheet. The term is the actual term of the loan. I used
 13 the same term of the loan, the loan amounts of the actual loan
 14 amounts and the differential is just the difference in the
 15 actual interest paid and the interest proposed by CRE, which I
 16 validated in the market comparison as a market rate. So you
 17 could put market rate there instead of CRE the same way.
 18 Q So if I'm understanding correctly, then the actual INT
 19 reflects the rate that Mr. Trump was able to obtain using his
 20 financial statement?
 21 A That's actually off their statements.
 22 Q Okay. And the CRE INT is just the interest rate that
 23 he was -- that one would obtain without using a personal
 24 guaranty. Is that a correct analysis?
 25 A From Deutsche Bank invalidated in the market, yes.

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1 THE COURT: So objection now overruled subject to
 2 cross examination. He said where he got the numbers.
 3 MR. KISE: Right. I just want to be clear that
 4 he's testifying as to the mathematics, not to the ill gotten
 5 nature of the gain. He's just testifying these are the
 6 differences and the numbers.
 7 MR. WALLACE: He is testifying as to what he is
 8 testifying to. There is someone here writing it all down.
 9 If we have a legal dispute as to whether that is an
 10 appropriate measure of disgorgement, that's our closing
 11 arguments or post-trial briefing, but the evidence of the
 12 work he did is the evidence of the work he did.
 13 THE COURT: Mr. Kise, you're asking -- you want to
 14 be clear what he testified to. The record will show what he
 15 testified to.
 16 MR. KISE: But he's testifying to mathematics.
 17 That's acceptable. He can put up numbers on the board and
 18 testify to them, but our objection goes right to the point
 19 he can't substitute his judgment which is what the one
 20 question that we talked about that where this whole colloquy
 21 began. The one question is the loans -- they're not ill
 22 gotten gains if the bank doesn't testify that they would
 23 have done -- they would have not done anything differently
 24 if the bank would have acted the same under the
 25 circumstances. Then the gains are not ill gotten.

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1 As long as this witness is not testifying that the
 2 gains were not ill gotten, that this is -- if he's just
 3 testifying these are math numbers and there was one number
 4 that was the actual and there is one number that was the
 5 CRE, then that's fine. But I don't believe that that's
 6 where this is going and I don't believe that's what this
 7 witness is testifying to.

8 MR. WALLACE: Well, I believe the witness has said
 9 he is relying upon the Court's determination and summary
 10 judgment. I will say that if this is, again, legal argument
 11 as to whether this is an appropriate measure of damages.
 12 And so I would like to continue to put in this evidence and
 13 we can continue our disagreements as to whether or not this
 14 establishes an improper benefit to Mr. Trump and the Trump
 15 Organization, but that the testimony is the testimony.

16 THE COURT: Yes, objection overruled. Let's move
 17 on.

18 MR. KISE: Okay.

19 Q Mr. McCarty, I'd like to move on to the next row, the
 20 OPO loan. Can you tell us what's your understanding of the OPO
 21 project?

22 A OPO project was the Old Post Office in Washington,
 23 D.C.. That was put out for bid for converting it to a hotel.
 24 Series of bidders put forward proposals and the Trump
 25 Organization ultimately won the right to convert and hold the

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1 lease.

2 Q Okay. And so in this analysis what does the row
 3 "actual INT percentage" reflect?

4 A It's the same. This is off the June statements of
 5 Trump Organization actual interest paid.

6 Q Okay. And the row marked "CRE INT," how did you
 7 determine the CRE INT for this loan?

8 A Unlike Doral and Chicago, which are very forward and
 9 similar, we had an issue with OPO because the proposal from
 10 Deutsche Bank included what we wonderfully call in my business
 11 bells and whistles which is intended to be a representation of
 12 other terms and conditions that have economic effect that aren't
 13 in the interest rate.

14 Q And what were some of the bells and whistles you had to
 15 consider?

16 A The first one, the major one was it was for a smaller
 17 amount than the proposal, the actual proposal by \$30 million.
 18 So it required -- the Trump Organization would have required the
 19 Trump Organization to put up \$30 million more equity into the
 20 project to complete it.

21 Q And what impact did the fact that the Trump
 22 Organization had to put in an additional \$30 million of equity,
 23 what effect did that have on your analysis?

24 A Well, some people don't realize it, but equity has a
 25 cost and the cost of equity can be determined and it's actually

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1 more expensive than debt. So we took a shot at cost to capital
 2 for the equity and adjusted the interest rate for that
 3 additional required equity.

4 Q And how did you do that?

5 A We took a cost to capital for project finance real
 6 estate-related average which is like 12 percent. So we took
 7 12 percent on the 30 million to come back to an add on to get to
 8 a comparable rate.

9 Q Any other bells and whistles that you had to consider?

10 A This had a series of -- this was the only one that we
 11 found that was a proposed syndicated loan and syndicated loans
 12 have fees attached to them, one percent up front and three
 13 percent on syndication. So this had four percent fees that were
 14 not included in the other transactions.

15 Q And just to make sure the record is clear what does it
 16 mean to syndicate a loan?

17 A One bank originates it. They get an origination fee.
 18 They go out to distribute it to other banks. They have an
 19 agreement with the borrower they're allowed to sell the loans to
 20 other banks.

21 Q Any other bells and whistles that you had to consider?

22 A There are -- this is cash sweeps and low yield
 23 categories that basically restricted the ability to take cash
 24 out of the business and we had to take account of the
 25 differential.

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1 Q And could you just describe for us what is a cash
 2 sweep?

3 A This is basically a lockbox. I think people might know
 4 that better where all the cash that comes into the organization,
 5 goes to a lockbox and is only released by the bank when and if
 6 the other obligations have been satisfied.

7 Q And so taking all those factors into account, what did
 8 you determine about the CRE interest rate?

9 A On a comparable basis it was eight percent we believe.

10 Q And were you able to determine whether or not that was
 11 a market rate?

12 A We did. We went out and did a similar comparable run
 13 through for -- again, there is nothing directly comparable to
 14 OPO, but we believe that in kind of the center of the comparable
 15 group.

16 Q And so just so I'm understanding, once again, the
 17 actual interest rate row shows the loan that Mr. Trump and the
 18 Trump Organization were able to obtain using personal guaranty
 19 and the financial statement; is that correct?

20 A That's correct.

21 Q And so then the CRE interest rate percentage row shows
 22 your assessment of what the market rate would be for a loan with
 23 no personal guaranty whatsoever?

24 A That's correct.

25 Q Once again, you used a fixed rate throughout the term?

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1 A We did. We ran it with a floating rate, but it was
 2 significantly higher, so we decided to be conservative and keep
 3 it flat.
 4 Q I think you described this when you were talking about
 5 the Doral loan as well that is because there was variation in
 6 the LIBOR rate during the term of this loan; is that correct?
 7 A That's correct. And it would have been a significantly
 8 higher, several points higher for several of the years.
 9 Q And so what was the total interest differential on the
 10 OPO property?
 11 A Well, using the same loan amounts as from their books.
 12 We came up with an interest differential lost interest of
 13 53,423,209.
 14 Q Okay.
 15 MR. KISE: Same objection, Your Honor.
 16 THE COURT: Same ruling.
 17 I just want to point out one other thing which goes
 18 back to our earlier discussions. I believe you said your
 19 only objection or your main objection was to any reading
 20 into what he said that these gains are ill gotten. I
 21 decided they were ill gotten. He's not deciding that. He's
 22 deciding the number.
 23 MR. KISE: Yes, Your Honor, but the only basis for
 24 an expert to testify is in this circumstance as we went over
 25 yesterday, I'm not going to belabor it, but is where the

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1 record provides an opening for that if there is no record
 2 evidence that the gains were ill gotten, meaning the bank
 3 itself in the real world with their real analysis does not
 4 say that they would have in fact done something different,
 5 then none of this comes in at all because it's like the
 6 accident reconstructionist being brought in in the case that
 7 I cited where there is two eyewitnesss to the accident.
 8 The expert simply cannot contradict the record
 9 evidence. The expert can opine on the record evidence, but
 10 he or she cannot contradict the record evidence.
 11 THE COURT: Overruled. And five-minute warning.
 12 MR. WALLACE: Thank you, Your Honor.
 13 Q Mr. McCarty, just to move on to the next row. It
 14 states "Chicago." Can you tell me what is your understanding of
 15 what the Chicago loan is?
 16 A There are actually two loans in Chicago, an A and a B
 17 and we actually didn't do the A because it was retired early, so
 18 we only did the B loan.
 19 Q And what was the B loan that you analyzed?
 20 A This is related to a hotel condominium complex in
 21 Chicago that Deutsche Bank had lent to previously.
 22 Q Okay. And how did you calculate the -- let me just
 23 backup. Was your analysis for the Chicago loan similar to the
 24 analysis you conducted for the other loans?
 25 A Yes. It's just exactly like Doral.

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1 Q And so how did you calculate the CRE interest rate for
 2 the Chicago loan?
 3 A The CRE was from the term sheet that Deutsche Bank CRE
 4 provided to them. It had several iterations. I saw a redline
 5 version of it, so I think it had been interactively provided and
 6 so that was the rate. Again, we did it flat. This was the
 7 LIBOR plus the stated premium that CRE offered on a
 8 non-guaranteed basis.
 9 Q Okay. And in the far right, what was your calculation
 10 as to the total interest benefit on the Chicago property?
 11 A It was 17,443,359.
 12 MR. KISE: Same objection. Interest benefit.
 13 THE COURT: Same ruling. Overruled.
 14 Q Mr. McCarty, do you recall being deposed by the
 15 defendant in this case?
 16 A I do.
 17 Q Do you recall the defendants asking you about a default
 18 rate on these three loans?
 19 A I do.
 20 Q Did you consider as part of your work whether the
 21 default rate was an appropriate means to establish lost
 22 interest?
 23 A I did.
 24 Q And what did you -- what conclusion did you reach?
 25 MR. KISE: Objection, Your Honor. Again, now he's

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1 going outside even the documents. I mean, the document the
 2 contract, the agreement between the parties specifies a
 3 default rate. That was agreed to between these
 4 sophisticated parties. It was negotiated carefully. There
 5 is no basis in this record for an expert to come in and
 6 testify that that default rate wouldn't otherwise apply.
 7 It's just not -- there is no foundation at all for that.
 8 That's -- that's beyond absurd to have a witness testify
 9 directly contrary to the agreement of the parties.
 10 The parties' agreement forms the foundation of the
 11 relationship and it was up to the bank to exercise its
 12 rights if it felt there was a default or if it didn't think
 13 there was a default or if it didn't think there was a
 14 default that it cared about because we're talking about
 15 performing loans, then they would have done nothing, but
 16 there is no foundation for this witness to substitute his
 17 judgment for what's actually in the documents.
 18 THE COURT: You said there was an agreement as to
 19 the default rate?
 20 MR. KISE: There is a -- there is a --
 21 THE COURT: That was a yes or no.
 22 MR. KISE: Yes.
 23 THE COURT: Okay. Was there an agreement that it
 24 had to be applied?
 25 MR. KISE: No. It was up to the bank's discretion.

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1 MR. WALLACE: And, Your Honor, I'm just going to
 2 remind you the rules around disgorgement provide that it
 3 should be an approximation of what the benefit was. I'm
 4 just asking him now if his view is whether the default rate
 5 represented an appropriate way to establish lost interest.
 6 I think we have an objection.
 7 THE COURT: Overruled.
 8 MR. KISE: There are -- Your Honor, they're asking
 9 this witness to substitute its judgment for what was
 10 negotiated between the parties. That's completely improper.
 11 There is absolutely no basis for that.
 12 THE COURT: Are you -- Mr. Wallace, are you doing
 13 what you're being accused of?
 14 MR. KISE: It's exactly what he's doing.
 15 THE COURT: Are you violating an agreement between
 16 the parties?
 17 MR. WALLACE: I just want to make sure I have the
 18 question proper.
 19 No.
 20 MR. KISE: He's disregarding it. That's the record
 21 evidence. There is an agreement between the parties and
 22 he's asking this witness if that's an appropriate measure
 23 the parties negotiated that as the appropriate measure. You
 24 can't just throw that out by some expert.
 25 MR. WALLACE: Mr. McCarty has his opinion as to

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1 give an opinion even though you've agreed to something else.
 2 He's just saying he didn't consider it. He didn't say he's
 3 considered it at another number but for a different reason.
 4 He said he didn't consider it.
 5 MR. KISE: It's not appropriate to even introduce
 6 into the record and it's not appropriate for the Court to
 7 consider it that it contravenes the evidence in the record
 8 if there is no foundation for it.
 9 Q Did you actually conduct an analysis of what the
 10 differential would have been if you'd used the penalty rate?
 11 A I did.
 12 Q And what --
 13 MR. KISE: Objection.
 14 Q What knowledge did you come to?
 15 A It's a number that's larger than this.
 16 Q So it's larger than the numbers that we have on the
 17 differential in the loans here?
 18 A The total number, yes.
 19 THE COURT: You see, he's giving you a break.
 20 MR. WALLACE: I think speaking of breaks, Your
 21 Honor.
 22 THE COURT: I wish I had thought of that.
 23 All right. Let's say we'll call it a ten-minute
 24 break over the next 17 minutes, so I'll see you all at
 25 quarter to 12.

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1 whether it's -- he's presenting that to Your Honor.
 2 Mr. Kise has his arguments as to why it's not an appropriate
 3 measure and it's ultimately a decision for the Court to
 4 make. I don't think that's an actual objection to this
 5 evidence coming in now.
 6 THE COURT: Objection.
 7 MR. KISE: There is an objection.
 8 THE COURT: All right. Overruled.
 9 MR. WALLACE: I'll try to get this in the
 10 30 seconds I have.
 11 Q Mr. McCarty, did you make a consideration as to whether
 12 the default rate was an appropriate means to establish lost
 13 interest?
 14 A I've negotiated many dozens of loan documents that
 15 include default rates. Default rates are a penalty rate that is
 16 used to force compliance of covenants. It is not a measure of
 17 ill gotten gains or anything else. It's purely a penalty rate.
 18 It's usually standard four percent lately and I didn't consider
 19 it something that would be viable for the measurement I was
 20 trying to do.
 21 Q Did you analyze --
 22 MR. KISE: Objection. Move to strike. Assumes
 23 facts not in evidence.
 24 THE COURT: Overruled. And to borrow a phrase or
 25 two from Mr. Wallace, he's just giving his opinion. He can

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1 (Whereupon, there is a recess in the proceedings.)
 2 Transcript continues on the following page....
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1 THE COURT OFFICER: All rise. Part 37 is back in
 2 session. Be seated and come to order.
 3 THE COURT: Mr. Wallace, how much longer?
 4 MR. WALLACE: For my direct, I would say five to
 5 ten minutes at most.
 6 THE COURT: Good.
 7 Do you have any idea how long the cross-examination
 8 will be if he has five to ten minutes?
 9 MR. KISE: I would say probably three hours, could
 10 be two. We are going to have -- we're going to have the
 11 lunch break in between. That will help us review.
 12 THE COURT: Depends on what we eat.
 13 MR. KISE: Right.
 14 THE WITNESS: Witness entering.
 15 THE COURT: Let's go.
 16 Q It is still morning, Mr. McCarty.
 17 MR. WALLACE: If we could put Plaintiff's
 18 Demonstrative 4 back up on the screen, please.
 19 Q Mr. McCarty, just looking to clarify one thing about
 20 your calculations on Doral and Chicago.
 21 Under the year 2014, does that represent the full year
 22 calculation of interest or some other time period?
 23 A No. I probably should footnote that. As I started to
 24 say in the beginning, we modified this for the judge's ruling of
 25 July 13, 2014 as a no-look-back date, so that includes only

M. MCCARTY - PLAINTIFF - DIRECT(MR. WALLACE) Page 3081

1 July 14th forward.
 2 Q Thank you. If we go down to the bottom row, 40 Wall.
 3 First, can you give me your understanding of this loan
 4 transaction?
 5 A This was a re-financing of a Capital One mortgage that
 6 was done through Ladder Capital and for the 40 Wall Street
 7 building downtown Manhattan.
 8 Q And how did you calculate the lost interest for this
 9 loan?
 10 A Again, starting off, we took the actual interest off
 11 the books. This was a fixed rate loan and for the second one,
 12 we took -- the first one is Ladder Capital, not Deutsche Bank.
 13 There's a difference here. That's Ladder Capital's actual
 14 interest paid and the second line is an assumption we made that
 15 with the financial statements being determined to be false and
 16 misleading, they wouldn't have been able to get the Ladder
 17 Capital loan done and that they extended their existing facility
 18 with Capital One for the period.
 19 MR. KISE: Same objection. Move to strike, Your
 20 Honor.
 21 THE COURT: Overruled.
 22 Q Now, the loan to -- from -- for 40 Wall Street, that
 23 was not a guaranteed loan, correct?
 24 A There was usage of the financial statements material in
 25 the offering material by Ladder Capital, so that's why we viewed

M. MCCARTY - PLAINTIFF - CROSS(MR. SUAREZ) Page 3082

1 it as something that would be impinged.
 2 Q Were there any other transactions that you were asked
 3 to look at?
 4 A We were asked to look at the Bryn Mawr loan, which was
 5 a smaller loan, and we determined that it really wasn't material
 6 to the discussion, so we didn't put it in the calculation.
 7 Q And when you say "material," how did you interpret that
 8 to mean?
 9 A It was less than a million dollars of impact.
 10 Q Can I ask you the numbers reflected in your table, do
 11 they reflect compound interest or simple interest?
 12 A It's simple interest. There's no time value of money
 13 to these at all.
 14 Q And in your work compiling these numbers, did you
 15 consider any prejudgment interest in reaching these
 16 calculations?
 17 A No, we did not.
 18 MR. WALLACE: Nothing further, Your Honor.
 19 THE COURT: Okay. Let's start the
 20 cross-examination.
 21 CROSS-EXAMINATION
 22 BY MR. SUAREZ:
 23 Q Good morning, Mr. McCarty.
 24 A Good morning, sir.
 25 MR. SUAREZ: Is this on?

M. MCCARTY - PLAINTIFF - CROSS(MR. SUAREZ) Page 3083

1 THE COURT: No. There we go.
 2 MR. SUAREZ: Now can you hear me?
 3 THE COURT: I can.
 4 MR. SUAREZ: There we go.
 5 Q Good morning, Mr. McCarty.
 6 Banks historically have been willing to lend to
 7 high-net worth individuals because they get repaid. That's what
 8 you said on your direct, correct?
 9 A That's correct.
 10 Q And that's exactly what happened here, isn't it?
 11 A I believe everybody got repaid, yes.
 12 Q Okay. The Deutsche Bank loans, OPO Chicago and Doral,
 13 they were loans that were made to borrowers guaranteed by a
 14 high-net worth individual and they got repaid, right?
 15 A Yes.
 16 THE COURT: I'll give you some leeway, but this has
 17 been admitted, conceded, stipulated, et cetera, et cetera,
 18 so let's not spend a lot of time.
 19 MR. SUAREZ: The key difference here, Your Honor,
 20 is that he testified on his direct that banks have
 21 historically been willing to lend to high-net worth
 22 individuals because they get repaid.
 23 THE COURT: Go ahead.
 24 Q That's correct?
 25 A That's correct.

M. MCCARTY - PLAINTIFF - CROSS(MR. SUAREZ) Page 3084

1 Q And that specifically happens in the private wealth
 2 management environment, correct?
 3 A That's where most high-net worth individual loans are
 4 made, yes.
 5 Q And you've never worked in a private wealth group of a
 6 bank, correct?
 7 A I've worked in the banks that have private wealth, but
 8 I've never been an officer in a private wealth management group.
 9 Q So long story short, you've never worked in the private
 10 wealth management group of a bank, right?
 11 A No, not in the group.
 12 Q You've never worked at Deutsche Bank, correct?
 13 A No.
 14 Q You've never worked at Ladder Capital, right?
 15 A No.
 16 Q Before you got involved in this case, you had never
 17 read the Deutsche Bank credit policies, correct?
 18 A That one, I may have. I've done several transactions
 19 with Deutsche Bank and I believe I've probably seen it one time
 20 or another.
 21 Q Had you reviewed the Deutsche Bank private wealth group
 22 policies?
 23 A No. Again, I was a customer of private wealth
 24 management for a dozen or so years, so I might have seen it as
 25 part of my interaction as a customer.

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1 Q Your testimony is that as a customer of the private
 2 wealth group, you reviewed their private wealth management
 3 lending policies?
 4 A I was good friends with Tom Bowers who ran that group
 5 and set it up, so Tom Bowers, so I might have seen it. I don't
 6 recall it today.
 7 Q But you certainly have no expertise in them, correct?
 8 A Clarify for me what expertise you're looking for.
 9 Q Were you a specialist in the Deutsche Bank private
 10 wealth lending policies?
 11 A No.
 12 Q Were you a specialist in the Deutsche Bank credit
 13 policies?
 14 A As they consider consistent with Basel II, I'm familiar
 15 with their policies, yes.
 16 Q But you're not familiar prior to becoming involved with
 17 this case specifically with the Deutsche Bank credit policies,
 18 right?
 19 A With Deutsche Bank specifically, no.
 20 Q Okay. And the same is true for Ladder Capital,
 21 correct?
 22 A Correct.
 23 Q The New York Attorney General, I believe, is paying you
 24 \$950 an hour for your work on this case, correct?
 25 A That's my standard rate, yes.

M. MCCARTY - PLAINTIFF - CROSS(MR. SUAREZ) Page 3086

1 Q As of your deposition, the People of the State of New
 2 York has paid you approximately \$300,000, correct?
 3 A That's about right.
 4 Q How much more have you been paid since your deposition?
 5 A Well, I haven't been paid any more than that. I may
 6 have billed some.
 7 Q How much have you billed since your deposition?
 8 A I don't really recall, but it might be 40 or \$50,000.
 9 Q So in total, you've been paid to bill the Attorney
 10 General People of the State of New York over \$750,000 for your
 11 testimony today, correct?
 12 A The math -- 300,000 plus 40 or 50.
 13 Q I heard 450. I'm sorry.
 14 A 40 or 50.
 15 Q I'm having a hard time hearing.
 16 A Sorry about that. I'll get closer to the mic.
 17 Q Approximately \$400,000 for your work in this case?
 18 A A little less than that, but yes.
 19 Q How much more do you expect to charge the People of the
 20 State of New York for your work in this case?
 21 A Other than for my testimony today, I don't anticipate
 22 any more.
 23 Q Since your deposition, have you read any additional
 24 materials?
 25 A Not that I can recall.

M. MCCARTY - PLAINTIFF - CROSS(MR. SUAREZ) Page 3087

1 Q And have you reviewed any of the trial testimony in
 2 this case?
 3 A I haven't seen any of the daily transcripts, no.
 4 Q I notice you were here for the first day of Mr. Haigh's
 5 testimony; is that correct?
 6 A Partial day. I think I had the morning.
 7 Q You didn't see the entirety of the Mr. Haigh's
 8 testimony; is that correct?
 9 A No.
 10 THE COURT: That's another example of a question
 11 asked in the negative. The response is ambiguous. "You
 12 didn't do it, did you, no." That could mean "No, I didn't
 13 do it or "No, you're wrong. I did it." So I suggest to
 14 everybody again, ask questions in the positive. "Did you,"
 15 not "didn't you."
 16 Q Is it correct that you were not here for the entirety
 17 of Mr. Haigh's testimony?
 18 A I think I left after lunch.
 19 Q You were retained through Kroll in this case?
 20 A Excuse me? I didn't hear your question.
 21 Q Were you retained through Kroll, Kroll & Associates?
 22 A K-R-O-L-L. I was retained by the Attorney General's
 23 office and through Kroll, yes.
 24 Q That wasn't disclosed in your expert disclosures,
 25 correct?

M. MCCARTY - PLAINTIFF - CROSS(MR. SUAREZ) Page 3088

1 A I'm not aware if it was or not.
 2 Q You wrote your expert disclosures, correct?
 3 A I just don't recall whether it mentioned Kroll or not.
 4 Q You were the author of the expert disclosures that you
 5 submitted to this Court?
 6 A Yes.
 7 Q Did anyone else help you in preparing those expert
 8 disclosures?
 9 A Probably one of my associates, yes.
 10 Q Who typed them out?
 11 A Probably one of my associates.
 12 Q Were they reviewed by the New York Attorney General
 13 prior to submitting them to the Court?
 14 A I believe so, yes.
 15 Q Have you reviewed any other materials introduced at
 16 trial prior to your testimony today?
 17 A What time frame are you referring to?
 18 Q Since the inception of trial.
 19 A No, I don't believe so.
 20 Q Nobody has sent you exhibits that have been introduced?
 21 A No.
 22 Q Nobody has sent you trial transcripts? I believe you
 23 said you didn't read them.
 24 A No.
 25 Q But others did help you prepare the opinions that

M. MCCARTY - PLAINTIFF - CROSS(MR. SUAREZ) Page 3089

1 you're offering here today at trial, correct?
 2 A No, they're my opinions.
 3 Q That wasn't my question. Others helped you prepare
 4 them, correct?
 5 A Not my opinions. They helped me do the research and
 6 analysis. My opinions are from myself.
 7 Q So others helped you prepare the research and analysis
 8 that support the opinions that you gave today?
 9 A Parts of them that I gave them to do.
 10 Q In connection with giving your opinions here today, did
 11 you read the Deutsche Bank credit policies?
 12 A I've read them before.
 13 Q In connection with the testimony that you are giving
 14 here today, did you read the Deutsche Bank credit policies, yes
 15 or no?
 16 A Yes.
 17 Q In connection with the testimony that you're giving
 18 here today, did you read the Deutsche Bank lending policies?
 19 A Yes.
 20 Q In connection with the testimony you're giving here
 21 today, did you read the Ladder Capital lending policies?
 22 A No, I don't believe I read -- since it was an
 23 offering, I read the offering material, not the lending policy.
 24 Q Did you review the Ladder Capital lending policies?
 25 A No.

M. MCCARTY - PLAINTIFF - CROSS(MR. SUAREZ) Page 3090

1 Q How much time did you spend reviewing the Deutsche Bank
 2 lending and credit policies prior to your testimony here today?
 3 A Very hard to say. It's been a while, so I don't really
 4 have a recollection how long.
 5 Q You don't remember how long you spent looking at them?
 6 A No.
 7 Q Or when you looked at them?
 8 A No. I looked at them prior to my submission of my
 9 expert report, but I don't really recall how long.
 10 Q And that was only last July, right?
 11 A Actually, I think my report was May 26th.
 12 Q Okay. You testified in July in a deposition?
 13 A Deposition, yes.
 14 Q So as recently as May of this year, you reviewed the
 15 Deutsche Bank credit and lending policies, but you don't
 16 remember how much time you spent looking at them, correct?
 17 A No, I don't.
 18 Q You were assisted in the preparation of the research
 19 and analysis that supports your opinions here today by Kroll &
 20 Associates, right?
 21 A That's correct.
 22 Q And by another gentleman at your firm named Michael
 23 Espinal; is that correct?
 24 A That's correct.
 25 Q And Mr. Espinal and Kroll determined the documents that

M. MCCARTY - PLAINTIFF - CROSS(MR. SUAREZ) Page 3091

1 you would review in this case, correct?
 2 A No. They responded to my questions and provided
 3 documents related to my questions.
 4 Q They acted as a filter of information, correct?
 5 A They had a knowledge base of the production that was
 6 useful, save me time in looking through all the documents.
 7 Q Did they act as a filter of information?
 8 A No, I don't believe so. They responded to my
 9 questions.
 10 Q Because those were your words at your deposition. You
 11 said that they were a filter of information.
 12 A I think a more accurate portrayal would be that they
 13 responded to my questions for documents.
 14 Q But you don't doubt that you referred to it as a filter
 15 of information?
 16 A I may have, yes.
 17 Q You directed them to provide you with loan agreements,
 18 correct?
 19 A Yes.
 20 Q And annual reviews, correct?
 21 A Credit reviews, yes.
 22 Q Credit reviews. Also known as credit memos, right?
 23 A That's right.
 24 Q And loan documents?
 25 A Correct.

M. MCCARTY - PLAINTIFF - CROSS(MR. SUAREZ) Page 3092

1 A That's right.

2 Q Personal guarantees, correct?

3 A They were part of the documents.

4 Q All right. And you reviewed all of these documents and

5 understood them, right?

6 A I kind of seen the same thing before, so it is pretty

7 easy to understand.

8 Q They are pretty easy to understand?

9 A If you've done them hundreds of times.

10 Q Okay. And who prepared these documents for your

11 review? Who created the universe of documents for you to

12 review? It was the New York Attorney General, correct?

13 A I assume it was from the production from the case.

14 Q Did you review Deutsche Bank's entire production in

15 this case?

16 A No, I did not.

17 Q Did you review any of Mazars' production in this case?

18 A I believe some of it, but I didn't -- my focus wasn't

19 on the accounting aspect. Mr. Lewis took that, so I don't think

20 I delved deeply into the Mazars.

21 Q Did you review any of the testimony offered by Jack

22 Weisselberg in the trial in this matter?

23 A Not in the trial, no. I think I had looked at

24 deposition material.

25 Q You never interviewed any of the Deutsche Bank

M. MCCARTY - PLAINTIFF - CROSS(MR. SUAREZ) Page 3093

1 executives that were involved in the relevant loan transactions,

2 correct?

3 A No.

4 Q You never interviewed anyone from Mazars, correct?

5 A No.

6 Q You never introduced anyone from Ladder Capital, right?

7 A Nope.

8 Q You never interviewed anyone from the Trump

9 Organization either, correct?

10 A Nope.

11 THE COURT: By the way, that was four questions in

12 the negative in a row. I wish you would stop doing that.

13 These answers are ambiguous. "You didn't do that, did you"?

14 No could mean "No, I didn't do that, or it could mean "No,

15 you're wrong. I did that."

16 Q Did you ever interview anyone from Deutsche Bank?

17 A No.

18 Q Did you ever interview anyone from Ladder Capital?

19 A No.

20 Q Did you ever interview anyone from Mazars?

21 A No.

22 Q Did you ever interview anyone interest the Trump

23 Organization?

24 A No.

25 THE COURT: Thank you.

M. MCCARTY - PLAINTIFF - CROSS(MR. SUAREZ) Page 3094

1 MR. SUAREZ: Thank you, Your Honor. I appreciate

2 it.

3 MR. SUAREZ: Can we put the demonstrative exhibit

4 back up, please.

5 Q These are the four loan transactions that you testified

6 about today, correct?

7 A That's correct. I think there was one where I

8 testified about that we didn't include.

9 Q And that's not subject of your grand total of lost

10 interest, right?

11 A That's correct. We judged it immaterial.

12 Q Let start with Doral. Actually, let's start with this

13 chart. Did you prepare this chart?

14 A I did.

15 Q You went on Excel and created the actual chart?

16 A I do have a technical background. I can do Excel

17 spreadsheets, yes.

18 Q Is that a yes?

19 A That was a yes.

20 Q Okay. And you reviewed the credit memo prepared in

21 connection with the Doral transaction; is that correct?

22 A I did.

23 MR. SUAREZ: Can we pull up Plaintiff's

24 Exhibit 293.

25 Q Do you recognize this document, sir?

M. MCCARTY - PLAINTIFF - CROSS(MR. SUAREZ) Page 3095

1 A I do.

2 Q Is it correct that this document reflects the bank's

3 analysis of the Doral loan transaction?

4 A I believe it does, yes.

5 MR. SUAREZ: If we could turn to the following page

6 and zoom in on collateral.

7 Q Would you agree with me that the collateral for the

8 Doral loan transaction is a first mortgage lien and a first

9 priority security interest in the resort including the

10 borrower's fee, simple estate, all personal property, leases,

11 rent, revenue, operating accounts, reserves, and all other

12 related assets?

13 A Yes, I believe that was true.

14 Q Did you review the Doral loan agreement?

15 A I believe I read it, yes.

16 MR. SUAREZ: Can we pull that up, please. That's

17 Defendant's Exhibit 212.

18 Q Do you recognize this document?

19 A Term loan agreement dated June 11, 2012 by and between

20 Trump Endeavor as borrower and Deutsche Bank Trust Company

21 Americas as lender.

22 Q Did you review this document in connection with

23 preparing the opinions that you've offered in court today?

24 A I did.

25 MR. SUAREZ: Your Honor, we move to admit

M. MCCARTY - PLAINTIFF - CROSS(MR. SUAREZ) Page 3096

1 Defendants' Exhibit 212.

2 THE COURT: Granted. It is in evidence.

3 And Mr. McCarty, even closer to the mic, so that it

4 could bite you.

5 (Whereupon, the Document was marked in evidence as

6 Defendants' Exhibit 212.)

7 MR. SUAREZ: I'd like to pull up Defendants'

8 Exhibit 213.

9 Q Mr. McCarty, please identify this document.

10 A This appears to be the first amendment to the Trump

11 Endeavor agreement.

12 Q Did you review this document in connection with your

13 representation of the opinions that you've offered in this case?

14 A I believe so.

15 MR. SUAREZ: Your Honor, we would like to move

16 Defendants' Exhibit D213 in evidence.

17 THE COURT: Granted. It is in.

18 (Whereupon, the Document was marked in evidence as

19 Defendants' Exhibit 213.)

20 MR. SUAREZ: Please pull up defendants' premarked

21 Exhibit D387.

22 Q Mr. McCarty, can you identify this document, please?

23 A This is the second amendment to the term loan

24 agreement.

25 MR. SUAREZ: I believe we have an actual copy to

M. MCCARTY - PLAINTIFF - CROSS(MR. SUAREZ) Page 3097

1 hand up now in a second.

2 Q Did you review this document in connection with the

3 preparation of your opinions in this case?

4 A I believe I read it, yes.

5 MR. SUAREZ: Your Honor, we would like to move

6 Exhibit 387.

7 MR. WALLACE: Evidence.

8 THE COURT: Granted. It is in evidence.

9 (Whereupon, the Document was marked in evidence as

10 Defendants' Exhibit 387.)

11 MR. SUAREZ: Please pull up plaintiff's premarked

12 Exhibit 2315.

13 Q Mr. McCarty, can you identify this document?

14 A This is the third amendment to the term loan agreement.

15 Q And is this a document that you reviewed in connection

16 with the preparation of your expert opinions?

17 A Yes, I believe it is.

18 MR. SUAREZ: Your Honor, I'd move Exhibit 2315 in

19 evidence.

20 THE COURT: Granted. It is in.

21 (Whereupon, the Document was marked in evidence as

22 Defendants' Exhibit 2315.)

23 MR. SUAREZ: I'd like to show the witness

24 plaintiff's premarked Exhibit 1303, please.

25 THE COURT: Can we proceed with the question based

M. MCCARTY - PLAINTIFF - CROSS(MR. SUAREZ) Page 3098

1 on what's on the screen?

2 Q Mr. McCarty, can you please identify this document?

3 A This appears to be the guaranty from Donald J. Trump

4 guarantor to Deutsche Bank Trust.

5 Q Did you review this document in connection with your

6 opinions in this case?

7 A I believe I reviewed it, yes.

8 MR. SUAREZ: Your Honor, I would like to move

9 Defendants' 1303 into evidence.

10 THE COURT: Granted. It is in.

11 (Whereupon, the Document was marked in evidence as

12 Defendants' Exhibit 1303.)

13 MR. SUAREZ: Let's, please, pull up Defendants'

14 Exhibit 917.

15 Q Do you recognize this document, Mr. McCarty?

16 A I do. It's the first amendment to the guaranty.

17 Q Did you review this document in connection with the

18 preparation of your opinions in this case?

19 A I believe so, yes.

20 MR. SUAREZ: Your Honor, I'd like to move

21 Defendants' Exhibit 917 into evidence.

22 THE COURT: Granted. It is in.

23 (Whereupon, the Document was marked in evidence as

24 Defendants' Exhibit 917.)

25 MR. SUAREZ: Please pull up Plaintiff's 1304.

M. MCCARTY - PLAINTIFF - CROSS(MR. SUAREZ) Page 3099

1 Q Mr. McCarty, can you identify this document, please?

2 A This appears to be the second amendment to the

3 guaranty.

4 Q Did you review this document in connection with the

5 preparation of your opinions in this case?

6 A I believe so, yes.

7 MR. SUAREZ: Your Honor, I'd move Plaintiff's

8 Exhibit 1304 into evidence.

9 THE COURT: Granted. It is in.

10 (Whereupon, the Document was marked in evidence as

11 Plaintiff's Exhibit 1304.)

12 MR. SUAREZ: Defendants' 586, please.

13 Q Mr. McCarty, can you, please, identify this document?

14 A The third amendment to the guaranty.

15 Q Did you review this document in connection with your

16 preparation of your opinions in this case?

17 A I believe so, yes.

18 MR. SUAREZ: Your Honor, I'd like to move 586 into

19 evidence.

20 THE COURT: Granted.

21 (Whereupon, the Document was marked in evidence as

22 Defendants' Exhibit 586.)

23 MR. SUAREZ: Please pull up Defendants' 916.

24 Q Mr. McCarty, can you, please, identify this document?

25 A The fourth amendment to the guaranty.

M. MCCARTY - PLAINTIFF - CROSS(MR. SUAREZ) Page 3100

1 Q Mr. McCarty, did you review this document in connection
2 with your preparation of your opinions in this case?
3 A I believe so, yes.
4 MR. SUAREZ: Your Honor, I would like to move
5 Exhibit 916 into evidence.
6 THE COURT: Granted.
7 (Whereupon, the Document was marked in evidence as
8 Defendants' Exhibit 916.)
9 Q Mr. McCarty, in connection with your preparation of
10 your opinions in this case, you became familiar with loan
11 documents and the guaranty documents, correct?
12 A For the economic terms that we needed to analyze, yes,
13 but not on a complete basis.
14 Q Sorry?
15 A For the economic terms that I needed to prepare my
16 material I reviewed.
17 Q I didn't hear the second part of your answer.
18 A Sorry. For the economic results that I needed to
19 prepare my material is what I reviewed.
20 THE COURT: And not on a complete basis I think he
21 said.
22 MR. SUAREZ: Not on a complete basis. Understood.
23 Thank you.
24 Q But you understood how the economic terms worked,
25 correct?

Page 3102

1 Q No. We are talking about the Trump Endeavor 12 loan.
2 A No. I'm sorry, it wasn't.
3 Q Specifically with respect to the Trump Endeavor 12 loan
4 extended by Deutsche Bank, 40 Wall Street wasn't either, right?
5 A I said I don't recall.
6 Q It wasn't reflected in the credit memos pledged
7 collateral, correct?
8 A I don't specifically recall whether it was or wasn't.
9 Q We just reviewed it a minute ago.
10 A Yeah.
11 Q Do you want to me it back up?
12 A No. It's okay. You're asking me whether I recalled
13 it.
14 Q Okay. Was 40 Wall Street pledged as collateral for the
15 Trump Endeavor 12 loan?
16 A Again, I don't recall whether it was or not.
17 Q All right. Let's pull up the credit memo again.
18 (Continued on the next page.)
19
20
21
22
23
24
25

M. MCCARTY - PLAINTIFF - CROSS(MR. SUAREZ) Page 3101

1 A Yes, I was.
2 Q And you understood that the Trump Park Avenue was not
3 collateral pledged for this loan, correct?
4 A That's correct.
5 Q You understood the Trump Tower was not collateral
6 pledged for this loan, correct?
7 A I think also Niketown wasn't either, so...
8 Q Okay. Niketown was not part of the collateral pledged,
9 correct?
10 A That's correct.
11 Q 40 Wall Street was not part of the collateral pledged
12 in connection with this loan, correct?
13 A I'm not certain of 40 Wall, but I don't have a
14 recollection of it.
15 Q Well, earlier we went through the credit memo.
16 A Right.
17 Q Described the collateral for the Trump Endeavor 12
18 loan, correct?
19 A Right.
20 Q Was 40 Wall part of the collateral pledged for the
21 Trump Endeavor 12 loan?
22 A As I sit here, I don't recall whether it was or wasn't.
23 Q How about Seven Springs? Was Seven Springs pledged as
24 collateral?
25 A To the specific loan for Bryn Mawr, I believe it was.

M. McCarty - Plaintiff - cross (Suarez) Page 3103

1 Q Do you see Plaintiff's Exhibit 293?
2 A Yes.
3 Q This is something that you reviewed?
4 A Yes.
5 Q And the second page describes the collateral.
6 MR. SUAREZ: Can we blow it up?
7 Q "First mortgage lien on a first priority security
8 interest in the resort, including the borrower's fee, simple
9 estate, all personal property, leases, rents, revenue, operating
10 accounts, reserves, and all other related assets." Do you see
11 that?
12 A I do.
13 Q Do you have any reason to believe that 40 Wall Street
14 was pledged as collateral for this loan?
15 A No.
16 THE COURT: Mr. Suarez and Mr. Kise, I see why this
17 is going to take two or three hours. Every question -- some
18 questions come with three four or more questions. There is
19 no evidence that it was the collateral. He says he didn't
20 remember. We saw this document already. Why are you so
21 worried about whether it was or it wasn't? It wasn't as far
22 as I can tell. If someone in the audience has evidence that
23 it was pledged as collateral, raise your hand. Okay, nobody
24 raised his or her hand. Please stop making one question
25 into four or five.

M. McCarty - Plaintiff - cross (Suarez) Page 3104

1 MR. KISE: So, Your Honor, respectfully, I'm just
 2 going to, as I have before, object. You never interrupt the
 3 prosecution, you never give them speeches, you never limit
 4 their questions, you never limit them on time, so I'm just
 5 putting that on the record, Your Honor. I think it's
 6 unfair.
 7 THE COURT: I stand by my criticism.
 8 MR. SUAREZ: Your Honor, I asked the witness a very
 9 simple question he was for whatever reason reluctant to give
 10 a very simple answer.
 11 THE COURT: No, he did answer. He said he didn't
 12 remember that was the answer.
 13 MR. SUAREZ: That's even more concerning because we
 14 showed him the credit memo ten minutes ago.
 15 THE COURT: It doesn't say and 40 Wall Street is
 16 not on the collateral. That was a very general and vague
 17 statement, but let's move on.
 18 Q The airplanes owned by entities belonging to President
 19 Trump aren't part of the collateral either; right?
 20 A No, it doesn't appear to be, no.
 21 THE COURT: Well, that's -- it says what the
 22 collateral is. I don't see the word "President's airplanes"
 23 phrased.
 24 MR. SUAREZ: Your Honor, he said it was really
 25 simple to read these credit memos. If they're so simple he

M. McCarty - Plaintiff - cross (Suarez) Page 3105

1 should be able to answer them.
 2 THE COURT: They're so simple. You shouldn't have
 3 to ask him. That does not state the president's airplanes.
 4 That's why this is taking two or three hours.
 5 Go ahead, Mr. Kise.
 6 MR. KISE: Your Honor, we need to make our record
 7 with this witness. This witness is the only witness that
 8 they have that even hints at anything to do with ill gotten
 9 gains. Not going over that again, but we need to challenge
 10 his credibility, his memory, his ability to recite even
 11 simple things. I mean, all of that is at issue here. I
 12 mean, all of it. So I think we should be allowed -- you've
 13 allowed them the latitude of introducing him in the first
 14 place which I think is completely contrary to the case law
 15 as you know, and I respect your ruling. But we should be
 16 allowed some latitude. We've been going all of about 15 or
 17 20 minutes. I just don't understand why we always get
 18 interrupted. It's becoming a bit of a pattern,
 19 respectfully.
 20 THE COURT: I stand by my rulings and my
 21 statements.
 22 Please continue. Let's not go over everything that
 23 Trump owned and ask the witness is it true that that's not
 24 part of the collateral. The collateral is listed there.
 25 MR. SUAREZ: Your Honor, I heard you on the first

M. McCarty - Plaintiff - cross (Suarez) Page 3106

1 day of trial when you asked me to then summarize it and do
 2 it in a more rapid manner for the subsequent entities. I'm
 3 going to do it on the Doral loan and I'll do it in a much
 4 more summary fashion on the other transactions.
 5 THE COURT: Thank you.
 6 Q The guarantor of personal -- withdrawn.
 7 Mr. Trump's personal residences are not identified as
 8 collateral for this loan; correct?
 9 A That's correct.
 10 Q And in your review of the loan documents and the credit
 11 memos, would you agree with me that the personal guaranty on the
 12 Doral transaction was reduced to a ten percent level by
 13 August 3rd of 2015?
 14 A I think that's the right date. I realize it had a
 15 decrease in guaranty over time.
 16 Q You understood that the guaranty burns down?
 17 A That's correct.
 18 Q As the loan to value burns down?
 19 A That's correct.
 20 Q The loan to value being the value of the collateral
 21 divided by the loan; correct?
 22 A That's what they do.
 23 Q Okay. And would you agree with me there was a certain
 24 point in time that President Trump, the guarantor, elected to
 25 retain a ten percent guaranty level on the Trump Endeavor 12

M. McCarty - Plaintiff - cross (Suarez) Page 3107

1 loan?
 2 A Yes, I think to keep an interest rate differential.
 3 Q Let's talk about that interest rate differential.
 4 MR. SUAREZ: Can we please pull up Plaintiff's
 5 Exhibit 290 at the second page?
 6 And can we zoom into there the box that says "the
 7 revised terms" for the interest rate?
 8 Q You see here it says that the interest rate is LIBOR
 9 plus 1.75 percent or prime minus .75 percent?
 10 A Yes.
 11 Q And when the guarantee level falls below ten percent it
 12 steps up to LIBOR + 2 percent or prime -50 basis points;
 13 correct?
 14 A That's correct.
 15 Q A half a percent; correct?
 16 A Correct.
 17 Q I just want to establish that I'm using the same
 18 language. A percentage point is a hundred basis points; a half
 19 a percent is 50 basis points?
 20 A Yes.
 21 THE COURT: Please keep your voice up.
 22 Q So you would agree with me that the loan agreement
 23 between Deutsche Bank and Trump Endeavor 12 provided that the
 24 interest rate would step up by 25 basis points when the guaranty
 25 was eliminated; correct?

M. McCarty - Plaintiff - cross (Suarez) Page 3108

1 A That's correct.

2 Q And the benefit to keeping the guaranty in place was a

3 savings of 25 basis points; correct?

4 A Per the agreement, yes.

5 Q All right. Let's now take a look at the loan to 401

6 North Wabash.

7 MR. SUAREZ: If we could pull up Plaintiff's

8 Exhibit 291, please, at page three. And we could zoom into

9 the collateral property.

10 Q Mr. McCarty, you would agree with me that plaintiff's

11 -- actually, let me withdraw that.

12 Let's go back to the first page of Plaintiff's

13 Exhibit 291. Do you recognize this document, Mr. McCarty?

14 A I do, yes.

15 Q Is this a document that you reviewed?

16 A I did, yes.

17 Q What is this document?

18 A This is the credit report for credit approval of the

19 Chicago -- two of the Chicago facilities.

20 Q Would you agree with me that this document summarizes

21 Deutsche Bank's only analysis of this loan transaction?

22 A Yes.

23 Q Okay.

24 THE COURT: Please keep your voice up.

25 Q Let's go back to the collateral section.

M. McCarty - Plaintiff - cross (Suarez) Page 3109

1 And here it's a little more complicated, right,

2 Mr. McCarty? There are two tranches to the loan transaction?

3 A That's correct.

4 Q And the first facility, facility A, is a secured

5 facility; correct?

6 A That's correct.

7 Q And the collateral that's pledged in connection with

8 the secured facility is described here in this paragraph;

9 correct?

10 A That's correct.

11 Q It's a mortgage lien and a first priority security

12 interest in the residential component defined as the residential

13 component of the property consisting of but not limited to all A

14 -- excuse me -- all unsold A, residential condominium units; B,

15 deeded parking spaces; C, storage spaces; and D, associated

16 common areas, including the borrower's fee, simple estate, all

17 personal property, leases, rents, revenue, operating accounts,

18 reserves and all other related assets." Do you agree with me?

19 A Yes, that's what it says.

20 Q Okay. All right. And then facility A will be cross

21 collateralized with facility B with a subordinate lien on the

22 collateral under facility B; however, only for the period of

23 time that facility B remains outstanding; correct?

24 A Correct.

25 Q And I believe in your direct you testified that

M. McCarty - Plaintiff - cross (Suarez) Page 3110

1 facility B was retired early in the loan's history; correct?

2 A Yes.

3 Q And facility B, in much more summary fashion, you would

4 agree had a collateral of a mortgage lien and first priority

5 security interest in the commercial component of property;

6 correct?

7 A Correct.

8 Q And all of the related property interests to that

9 commercial component that are described in this credit memo;

10 correct?

11 A Correct.

12 Q And you would agree with me that this describes

13 accurately and fairly the collateral that was pledged in

14 connection with the loan to 401 North Wabash; correct?

15 A Correct.

16 Q I'd like to pull up Defendant's Exhibit 876 and I'd

17 like to ask the witness if he can identify?

18 A It's an amended and restated term loan agreement for

19 North Wabash.

20 Q Did you review this document in connection with the

21 preparation of your opinions in this case?

22 A Yes, I believe I did.

23 MR. SUAREZ: I'd like to move Defendant's

24 Exhibit 876 into evidence.

25 THE COURT: Granted. It's in.

M. McCarty - Plaintiff - cross (Suarez) Page 3111

1 (Whereupon, the item previously referred to is

2 received and marked Defendant's Exhibit Number 876 in

3 evidence.)

4 MR. SUAREZ: And I'd like to pull up Plaintiff's

5 Exhibit 1844 into evidence -- I'm sorry -- Plaintiff's

6 Exhibit 1844 on the screen.

7 Q Mr. McCarty, can you please identify this document?

8 A This is the amended and restated guaranty for

9 Donald J. Trump in favor of Deutsche Bank Trust.

10 Q Did you review this document in connection with the

11 preparation of your opinions in this case?

12 A I believe I did.

13 MR. SUAREZ: Your Honor, I'd like to move

14 Plaintiff's Exhibit 1844 into evidence.

15 THE COURT: Granted. It's in.

16 (Whereupon, the item previously referred to is

17 received and marked Plaintiff's Exhibit Number 1844 in

18 evidence.)

19 Q And Mr. McCarty, in connection with the opinions you've

20 given today, you reviewed and understood the economic terms

21 contained in these documents; correct?

22 A Yes, I focused on the economic terms. That's correct.

23 Q And we can agree other than the collateral we just

24 reviewed there was no other property that was pledged as

25 collateral for this loan; correct?

M. McCarty - Plaintiff - cross (Suarez) Page 3112

1 A That's correct.

2 Q And Mr. McCarty, would you agree with me that the

3 personal guaranty on this loan was extinguished by July 20,

4 2015?

5 A I believe that's correct.

6 Q All right.

7 MR. SUAREZ: Let's pull up Plaintiff's Exhibit 294.

8 Q Mr. McCarty, do you recognize this document?

9 A I do.

10 Q What is this document?

11 A This is a similar credit report for credit approval of

12 the North Wabash loans. I believe it's both the A and the B

13 loans.

14 Q Okay. And you agree that this document reflects the

15 bank's only analysis concerning the decision to make the loan --

16 I'm sorry -- Plaintiff's Exhibit 294.

17 A I have that.

18 Q You have that? It's not on the screen. There we go.

19 Would you agree with me that this document reflects the

20 bank's only analysis in making the determination to enter into

21 the loan transaction with Trump Old Post Office LLC as a whole?

22 A I do.

23 Q And have you reviewed this document prior to today?

24 A Yes, I believe I did.

25 MR. SUAREZ: Can we turn to page eight of this

M. McCarty - Plaintiff - cross (Suarez) Page 3113

1 document, please? Pull up the collateral.

2 Q And Mr. McCarty, would you agree with me that the

3 section reflected here, "Collateral," which describes the

4 security and the facility as -- I'm sorry -- "the facility will

5 be secured by (i) a first mortgage lien on borrower's leasehold

6 interest in X, the property, and Y, all improvements thereto,

7 two security interests in and to the extent assignable and as

8 applicable, assignments of the borrower's interest in all

9 permits, licenses, lease, contracts, agreements, operating

10 accounts, receivables, etc. and (ii)" -- I'm sorry -- "(iii),

11 borrower's interest in other customary, ancillary, collateral

12 relating to the property."

13 Okay. Do you agree with me that that adequately

14 describes the collateral for the Old Post Office loan

15 transaction?

16 A I thought we were on North Wabash.

17 Q No, 294 is the Old Post Office.

18 A Okay, yes.

19 Q Yes you would agree with me that this adequately

20 describes the collateral for the Old Post Office; correct?

21 A Yes.

22 Q And that no other property was pledged as collateral in

23 connection with the Old Post Office loan by Deutsche Bank to the

24 borrower Trump Old Post Office LLC; correct?

25 A I believe that's true.

M. McCarty - Plaintiff - cross (Suarez) Page 3114

1 Q And Mr. McCarty, can you please identify the document

2 that I'm going to ask to be pulled up Plaintiff's Exhibit 1238?

3 Turning to the next page.

4 A It's the loan agreement for the Old Post Office

5 project.

6 Q Did you review this document in connection with the

7 preparation of your opinions?

8 A Yes, I believe I did.

9 MR. SUAREZ: Your Honor, I'd like to move

10 Plaintiff's Exhibit 1238 into evidence.

11 THE COURT: Granted. It's in.

12 (Whereupon, the item previously referred to is

13 received and marked Plaintiff's Exhibit Number 1238 in

14 evidence.)

15 MR. SUAREZ: If we could please pull up D 1013.

16 Q Would you please, Mr. McCarty, identify this document?

17 A That's the guaranty of Donald J. Trump, I assume for

18 the Old Post Office.

19 Q And is this a document that you reviewed in connection

20 with the preparation of your opinions?

21 A I believe it is, yes.

22 MR. SUAREZ: Your Honor, I'd like to move D 1013

23 into evidence.

24 THE COURT: Granted. It's in.

25 (Whereupon, the item previously referred to is

M. McCarty - Plaintiff - cross (Suarez) Page 3115

1 received and marked Defendant's Exhibit Number D 1013 in

2 evidence.)

3 Q All right. Let's move to the Ladder Capital loan on 40

4 Wall Street.

5 MR. SUAREZ: If we could please pull up D 552.

6 MR. WALLACE: Your Honor, I would just note that

7 we're happy to stipulate to the entry of these documents.

8 As Mr. Suarez noted, we are paying Mr. McCarty by the hour

9 and so if we could cut down on the time we would certainly

10 appreciate it. I don't know if he's asking the witness

11 questions about these documents or just using them to enter

12 them, but they're generally unobjectionable documents.

13 MR. SUAREZ: Almost done with introducing the

14 documents.

15 THE COURT: Okay.

16 MR. SUAREZ: If you could turn to the second page.

17 Following page.

18 Q Do you recognize this document, Mr. McCarty?

19 A Yes, I believe it's the offering document for the 40

20 Wall Street offering by Ladder Capital.

21 Q Did you review this document in connection with the

22 preparation of your expert opinions?

23 A I believe I did, yes.

24 MR. SUAREZ: Your Honor, I move this document into

25 evidence.

PEOPLE OF THE STATE OF NEW YORK v. DONALD J. TRUMP, et al.

M. MCCARTY, DONALD TRUMP, JR. November 1, 2023

M. McCarty - Plaintiff - cross (Suarez) Page 3116

1 THE COURT: Granted.
 2 (Whereupon, the item previously referred to is
 3 received and marked Defendant's Exhibit Number D 552 in
 4 evidence.)
 5 Q And Mr. McCarty, would you agree with me that this
 6 document we moved to the section on the collateral? Describes
 7 the summary of the collateral for the 40 Wall Street loan?
 8 A Yes, I believe it does.
 9 Q And in general terms would you agree with me that the
 10 collateral for the 40 Wall Street loan was the building that
 11 sits on top of 40 Wall Street and the leasehold interests?
 12 A Yes, I believe it does.
 13 Q And with respect to the 40 Wall loan, you would agree
 14 that there is no other collateral that's pledged in connection
 15 with this loan; correct?
 16 A Other than the guaranty.
 17 Q Well, is the guaranty -- withdrawn.
 18 The collateral that's pledged as a security is the
 19 leasehold and the building; correct?
 20 A That's correct.
 21 Q Okay. But there is no other property that's pledged as
 22 collateral; correct?
 23 A No other property, no.
 24 Q No. There is no other property that secures the loan;
 25 correct?

M. McCarty - Plaintiff - cross (Suarez) Page 3117

1 A That's correct.
 2 Q And the loan-to-value ratio for this loan you would
 3 compute by dividing the value of the property, the 40 Wall
 4 property, by the amount of the loan; correct?
 5 A That's correct.
 6 Q And in this instance, speaking of the guaranty, if we
 7 could go back to the section that describes the guaranty. We're
 8 going to blow that up.
 9 You would agree with me that the guaranty that's at
 10 issue here isn't a full guaranty; correct?
 11 A That's correct.
 12 Q It's not an unconditional guaranty; correct?
 13 A It is limited, yes.
 14 Q Right. And it's limited to certain carve outs relating
 15 to unleased space; correct?
 16 A That's correct.
 17 MR. SUAREZ: And if we can blow up the section on
 18 the covenants. A little further down on this page.
 19 Q You would see here that the covenant that it describes
 20 is that the key principles must maintain a net worth equal to at
 21 least \$160 million and a liquidity of at least \$15 million?
 22 A That's correct.
 23 Q And the key principle described in this document is
 24 Donald John Trump?
 25 A That's correct.

M. McCarty - Plaintiff - cross (Suarez) Page 3118

1 Q Do you have any reason to believe during the life of
 2 this loan Mr. Trump didn't maintain a net worth equal to at
 3 least \$160 million in liquidity of at least \$15 million?
 4 A No, I don't think there was any violation of this
 5 covenant.
 6 Q And this document that we've been reviewing here,
 7 Mr. McCarty, you would agree with me reflects Ladder Capital's
 8 own analysis as to the loan transaction with 40 Wall Street LLC;
 9 correct?
 10 A The terms of the loan I think are described properly,
 11 yes.
 12 Q And it contains the analysis of Ladder Capital;
 13 correct?
 14 A Term sheets I don't normally say is an analysis, but I
 15 guess you could characterize it as analysis.
 16 Q It's a document that's prepared by Ladder Capital;
 17 correct?
 18 A Right.
 19 Q After Ladder Capital has performed underwriting;
 20 correct?
 21 A Right.
 22 Q And it describes the features of the transaction;
 23 correct?
 24 A That's correct. I just -- the word "analysis" I don't
 25 know if there is any analysis in it.

M. McCarty - Plaintiff - cross (Suarez) Page 3119

1 Q And if we could please pull Plaintiff's Exhibit 2973.
 2 I would ask Mr. McCarty to identify this document.
 3 A This is the loan agreement on 40 Wall Street.
 4 Q And did you review this document in connection with the
 5 preparation of your expert opinions in this case?
 6 A I did.
 7 MR. SUAREZ: Your Honor, I'd like to move
 8 Plaintiff's 2973 into evidence.
 9 THE COURT: Granted.
 10 (Whereupon, the item previously referred to is
 11 received and marked Plaintiff's Exhibit Number 2973 in
 12 evidence.)
 13 MR. SUAREZ: And I ask that Plaintiff's Exhibit 625
 14 marked for identification be pulled up.
 15 Q Mr. McCarty, did you review this document in connection
 16 with the preparation of your opinions in this case?
 17 A We're on 625 now?
 18 Q 625.
 19 A Yes, I believe I did.
 20 Q Can you identify this document, please?
 21 A This is the guaranty of recourse obligations for 40
 22 Wall.
 23 Q This is what we discussed earlier as a limited
 24 guaranty; correct?
 25 A Yes.

M. McCarty - Plaintiff - cross (Suarez) Page 3120

1 MR. SUAREZ: I'd like to move Plaintiff's
 2 Exhibit 625 into evidence.
 3 THE COURT: Granted.
 4 (Whereupon, the item previously referred to is
 5 received and marked Plaintiff's Exhibit Number 625 in
 6 evidence.)
 7 MR. KISE: Judge, Your Honor, I have to step out as
 8 mentioned for that hearing that I noted last week. I just
 9 didn't want to walk out without letting -- thinking that I
 10 was pounding the table and leaving in protest.
 11 THE COURT: We'll miss you.
 12 Q Mr. McCarty, in preparing your opinions you had an
 13 opportunity to review the deposition that was taken in this case
 14 of David Williams from Deutsche Bank; correct?
 15 A That's correct.
 16 Q And is the analysis that you performed in support of
 17 the opinions you've given today reflect Mr. Williams' testimony
 18 that President Trump was in the top tier of verifiable net worth
 19 in this regional market?
 20 A I don't think it was a relevant issue for me.
 21 Q You didn't think that was relevant to your analysis?
 22 A No.
 23 Q So it's safe to say that your analysis doesn't account
 24 for that testimony; correct?
 25 A I think that's a misstatement. I said I didn't think

M. McCarty - Plaintiff - cross (Suarez) Page 3121

1 it was relevant.
 2 Q So if you didn't think it was relevant did you fold it
 3 into your analysis?
 4 A Since it wasn't relevant I didn't need to fold it into
 5 my analysis.
 6 Q Okay. So your analysis doesn't account for that
 7 testimony; correct?
 8 A It does because I believed it to be not material.
 9 Q Okay. So Mr. Williams' testimony that President Trump
 10 was in the top tier of verifiable net worth in this regional
 11 market was not material to your analysis?
 12 A That's correct.
 13 THE COURT: Asked and answered three, four, five
 14 times.
 15 Q Did you consider Mr. Williams' testimony that Deutsche
 16 Bank Private Wealth Management had a pricing grid that was in
 17 effect since at least 2010?
 18 A I'm very familiar with their pricing grid, yes.
 19 Q Was that material to your analysis?
 20 A No.
 21 Q Did you consider Mr. Williams' testimony that Deutsche
 22 Bank Private Wealth Management would use a pricing grid to
 23 determine appropriate interest rates to charge on private wealth
 24 management loans depending on the credit or collateral type?
 25 A No, I didn't think it was relevant.

M. McCarty - Plaintiff - cross (Suarez) Page 3122

1 Q Was that material to your analysis?
 2 A No.
 3 Q Was Mr. Williams' testimony -- withdrawn.
 4 Did you review the Deutsche Bank Private Wealth
 5 Management pricing grid in reaching your opinions in this case?
 6 A I did.
 7 MR. SUAREZ: Can we please pull up D 205, which was
 8 Exhibit 16 to Mr. Williams' deposition.
 9 Q Do you recognize this document, Mr. McCarty?
 10 A I do.
 11 Q Did you review this document in connection with
 12 preparing your opinions in this case?
 13 A I did.
 14 MR. SUAREZ: I'd like to move in Defendant's
 15 Exhibit 205.
 16 THE COURT: Granted.
 17 (Whereupon, the item previously referred to is
 18 received and marked Defendant's Exhibit Number D 205 in
 19 evidence.)
 20 Q Mr. McCarty, you would agree with me that this is the
 21 Deutsche Bank pricing grid for the Private Wealth Management
 22 Americas group; correct?
 23 A For that group, yes.
 24 Q And it reflects here -- the first column reflects the
 25 geographic region; correct?

M. McCarty - Plaintiff - cross (Suarez) Page 3123

1 A That's correct.
 2 Q And then the subsequent columns describe different type
 3 of loan products; correct?
 4 A That's correct.
 5 Q And that in the Americas group the commercial real
 6 estate column is the one that would have applied to the loans
 7 that are the subject of your opinions in this case and were made
 8 by Deutsche Bank?
 9 A For the actual interest rates, yes.
 10 Q And this reflects a pricing of LIBOR plus that spread;
 11 correct?
 12 A That's correct.
 13 Q And in reaching your opinions in this case did you
 14 consider Mr. Williams' testimony that Deutsche Bank Private
 15 Wealth Management would depart downward from this range if there
 16 was a competitive business case for doing so?
 17 A It's one of the standard bank issues in pricing this
 18 competition response, so yes, I believe it's correct for Private
 19 Wealth Management loans.
 20 Q One issues that the bank can consider that wants to be
 21 competitive in the marketplace and in the loan is departing from
 22 this?
 23 A That's correct. They have some discretion to go lower.
 24 THE COURT: Five-minute warning.
 25 Q Did you consider -- was Mr. Williams' testimony

M. McCarty - Plaintiff - cross (Suarez) Page 3124

1 material to your analysis?
 2 A No, it was not.
 3 Q Was Mr. Williams' testimony that Deutsche Bank Private
 4 Wealth Management would not depart upwards from this range
 5 material to your analysis?
 6 A No, it was not.
 7 THE COURT: I think that's the same question. If
 8 he's -- if he says it was not material to his analysis -- we
 9 only have four more minutes of this.
 10 Q Did you consider whether the pricing grid would allow
 11 for Deutsche Bank Private Wealth Management to charge a higher
 12 interest rate for a riskier type of collateral?
 13 A No, I don't think they could take a riskier position,
 14 so they couldn't change the rate.
 15 Q Was Mr. Williams' testimony that he could not recall a
 16 single instance where Deutsche Bank Private Wealth Management
 17 charged a higher interest rate than what was provided in the
 18 pricing grid material to your analysis?
 19 A No, it wasn't.
 20 Q Was Mr. Williams' testimony that even where the risk
 21 commensurate with the particular transaction warrants charging a
 22 higher rate he could not recall a single instance when Deutsche
 23 Bank Private Wealth Management had done that material to your
 24 analysis?
 25 A No, it wasn't.

Page 3126

1 A No.
 2 Q And was it material to your analysis Mr. Williams'
 3 testimony that Deutsche Bank's Private Wealth Management pricing
 4 would probably be unchanged because a net worth of a billion
 5 dollars constitute a strong borrower or guarantor?
 6 A No.
 7 Q That was not material to your analysis?
 8 A No.
 9 MR. SUAREZ: Your Honor, I'm at a good stopping
 10 point.
 11 THE COURT: All right, and we're at a good time to
 12 stop. So 2:15 everybody. Have a good lunch.
 13 THE COURT OFFICER: Everybody remain seated while
 14 the witness steps out.
 15 THE COURT: And I'll direct the witness not to
 16 discuss this case, his testimony or anything related during
 17 the break until your testimony is finished this afternoon.
 18 (Whereupon, there is a recess in the proceedings.)
 19 Transcript continues on the following page....
 20
 21
 22
 23
 24
 25

M. McCarty - Plaintiff - cross (Suarez) Page 3125

1 Q In reaching your opinions in this case was it material
 2 to your analysis to consider whether Deutsche Bank Private
 3 Wealth Management would enter into these loan transactions
 4 regardless of whether the guarantor had a net worth of a
 5 billion, two billion or two and a half billion?
 6 A No.
 7 Q That didn't factor into your analysis?
 8 A No.
 9 Q Was it material to your analysis that Deutsche Bank's
 10 Private Wealth Management pricing grid would probably be
 11 unchanged even if the net worth of the sponsor was a billion
 12 dollars instead of two and a half billion?
 13 A No.
 14 Q Did you consider material to your analysis
 15 Mr. Williams' testimony that Deutsche Bank's pricing would be
 16 unchanged even if President Trump's net worth was only a billion
 17 dollars?
 18 A I think there is one caveat there. You used just
 19 "Deutsche Bank." Did you mean "Deutsche Bank PWM?"
 20 Q Thank you for correcting me. That's absolutely
 21 correct. The private wealth management pricing grid would be
 22 unchanged even if President Trump's net worth was only a billion
 23 dollars?
 24 A It wasn't relevant for me, no.
 25 Q Okay. It wasn't material to your analysis?

M. MCCARTY - PLAINTIFF - CROSS(MR. SUAREZ) Page 3127

1 AFTERN OON SESSION
 2 * * * * *
 3 THE COURT OFFICER: All rise. Part 37 back in
 4 session. The Honorable Judge Arthur Engoron presiding.
 5 Please be seated and come to order.
 6 THE COURT: Welcome back, everyone. We are ready
 7 to continue with the cross-examination.
 8 MR. SUAREZ: Yes, Your Honor.
 9 THE COURT: Let's get the witness.
 10 THE COURT OFFICER: Court's ready for the witness?
 11 THE COURT: Yes.
 12 THE COURT OFFICER: Witness entering.
 13 (Witness resumes the stand.)
 14 THE COURT: I'll remind the witness that
 15 he's -- like I always do, that he's still under oath.
 16 THE WITNESS: Okay.
 17 THE COURT: And let's proceed.
 18 Q Mr. McCarty, you understood David Williams to be the
 19 senior lender and team leader within the Deutsche Bank Private
 20 Wealth Management Group?
 21 A As the lender, yes.
 22 Q I'm sorry?
 23 A As the lender, yes.
 24 Q Did you discuss the subject matter of your testimony
 25 with anyone during the lunch break?

M. MCCARTY - PLAINTIFF - CROSS(MR. SUAREZ) Page 3128

1 A Nope. I just had a solo salad.

2 Q Now, Mr. McCarty, in reaching your opinions you've

3 given today in court, you didn't consider the deposition

4 testimony of Tom Sullivan, correct?

5 A No. I mistakenly in our deposition didn't recall

6 reviewing Sullivan, but I had. I just didn't recall the name

7 when we did it, but I didn't use his deposition in my opinion

8 today.

9 Q So you did read it?

10 A I did it read ultimately. I didn't use it in my

11 opinion today.

12 Q Because earlier today I had asked if you read anything

13 additional since your deposition. You told me you hadn't.

14 A I had read it before my deposition. I just didn't

15 recall it in my deposition that I read it.

16 Q You didn't remember reading the deposition of Tom

17 Sullivan?

18 A That's right.

19 Q That's right?

20 A That's right in my deposition.

21 Q It wasn't listed as a document that you relied upon in

22 your report, correct?

23 A Not relied on. I reviewed it. The listing I had was

24 just of the documents that I relied on.

25 Q If we pull up Exhibit B to your report, you listed all

M. MCCARTY - PLAINTIFF - CROSS(MR. SUAREZ) Page 3129

1 of the documents that you relied on.

2 A That's correct.

3 Q And this one wasn't listed?

4 A No.

5 Q But you did list the deposition of David Williams,

6 correct?

7 A David Williams and Haigh, I believe, were the two key

8 ones I looked at.

9 Q Okay. Now, do you understand Tom Sullivan was the head

10 of structured lending at Deutsche Bank during the time it made

11 the three loans at issue in your testimony?

12 A Yes, I do.

13 Q And I understand you don't recall having or at the time

14 of your deposition you didn't recall having read his testimony,

15 but now you do, but would it be the case that it was material to

16 your analysis -- let me withdraw that.

17 Was it material to your analysis that Mr. Sullivan

18 testified that Deutsche Bank was not mislead in any aspect of

19 any credit decision it made based on information that was

20 included in President Trump's Statement of Financial Condition?

21 A No.

22 MR. ROBERT: Objection.

23 THE COURT: He answered it. What's the objection

24 unless you want to withdraw the objection?

25 MR. ROBERT: I don't want to withdraw the

M. MCCARTY - PLAINTIFF - CROSS(MR. SUAREZ) Page 3130

1 objection. I believe that misstates Mr. Sullivan's

2 testimony, but the witness was able to answer.

3 Q Was it material to your analysis that Mr. Sullivan

4 testified at his deposition that Deutsche Bank was not mislead

5 because Deutsche Bank developed its own independent view

6 concerning President Trump's financial condition?

7 A No, I don't think it is material to my analysis.

8 Q And was it material to your analysis that Mr. Sullivan

9 testified that Deutsche Bank's decision making was based on what

10 Deutsche Bank was comfortable with as a result of the assessment

11 that it independently performed rob?

12 MR. WALLACE: I'm happy to make a standing

13 objection to the characterization of Mr. Sullivan, but the

14 questions, I'm fine with them. I just want to note our

15 standing objection.

16 THE COURT: Okay. Noted.

17 A No, it is not material.

18 Q Not material. And is it material to your analysis that

19 Mr. Sullivan testified that he would have likely recommended a

20 credit facility sponsored by President Trump even if he was only

21 worth a billion dollars?

22 A No, I don't think it is material.

23 Q And do you think it is material to your analysis that

24 Mr. Sullivan testified that this was because a \$1 billion net

25 worth is still significant wealth?

M. MCCARTY - PLAINTIFF - CROSS(MR. SUAREZ) Page 3131

1 A No. I'm aware of the testimony. I don't think it's

2 material to my analysis.

3 Q It is not material to your analysis?

4 A No.

5 Q Was it material to your analysis that such a

6 determination according to Mr. Sullivan's testimony would be

7 based on what the net worth looked like based on asset

8 allocation, quality of the assets and assuming asset allocation,

9 a \$1 billion net worth would be sufficient?

10 A No, I don't think it is material.

11 Q You don't think it is material?

12 THE COURT: Please don't keep repeating the answer

13 unless you think he can't be heard.

14 MR. SUAREZ: I'm having a little trouble hearing

15 it. That's why I'm doing it, but I understand.

16 Q Are you aware that Mr. Sullivan testified at his

17 deposition in this case that he would recommend the Doral credit

18 facility based on the project strength alone?

19 A No, I don't think it's material.

20 Q That was not material to your analysis in this case?

21 THE COURT: That's what I just asked you not to do

22 and you said you wouldn't do it.

23 MR. SUAREZ: I'll try. Are you aware -- let me

24 withdraw that.

25 Q Was it material to your analysis in this case that Mr.

M. MCCARTY - PLAINTIFF - CROSS(MR. SUAREZ) Page 3132

1 Sullivan testified that he was not aware of any
 2 misrepresentation with respect to any asset provided by the
 3 guarantor?
 4 A No.
 5 Q Did the NYAG ask you not to review the Sullivan
 6 deposition?
 7 A No.
 8 Q Was there -- withdrawn.
 9 Can we agree that regardless of how the loans were
 10 procured from Deutsche Bank, the guaranty was still in place for
 11 a period of time?
 12 A Yes.
 13 Q And if there was an extreme situation that impacted the
 14 cash flow of any of the particular borrowers, the guarantor
 15 could have been responsible?
 16 A Yes, probably.
 17 Q Let's go up to your demonstrative from earlier today.
 18 Going back to the CRE interest rate of ten percent, isn't it the
 19 case that that's a number that you used because the New York
 20 Attorney General provided to you documents relating to a
 21 proposed transaction from CRE at that interest rate?
 22 A No. It originally started from the credit reports
 23 where I looked at BB rating that it assigned to the collateral
 24 and the BB rating to me had a market movement somewhere between
 25 nine and ten percent.

M. MCCARTY - PLAINTIFF - CROSS(MR. SUAREZ) Page 3133

1 MR. SUAREZ: Your Honor, I move to strike that as
 2 not responsive. I was asking if the documents were provided
 3 by the NYAG.
 4 THE COURT: It is -- all right. Were the
 5 documents provided by the NYAG?
 6 Q Were the documents provided by the NYAG from which you
 7 determined that the CRE had offered an interest rate of ten
 8 percent?
 9 A I received documents produced from Deutsche Bank
 10 through New York -- the AG that showed the terms and conditions
 11 of all three of the loans.
 12 Q Okay. The terms and conditions of all
 13 three -- of the offers from the CRE Group, correct?
 14 A That's correct.
 15 Q Those were documents that were provided to you by the
 16 NYAG, correct?
 17 A The confusion I had on your question is that wasn't the
 18 primary basis of my decision to use the numbers.
 19 Q That's not what I'm asking you. Those were documents
 20 that were provided to you by the NYAG, right?
 21 A The numbers are not necessarily the documents.
 22 Q Sorry?
 23 A No.
 24 THE COURT: The numbers are not documents.
 25 Q The documents that you reviewed in order to get those

M. MCCARTY - PLAINTIFF - CROSS(MR. SUAREZ) Page 3134

1 numbers came from offers that the CRE Group made that were
 2 provided to you by the NYAG?
 3 A Only as a portion. I said the other portion was the
 4 credit report, my own analysis of comparable transactions and
 5 the knowledge of the rated companies.
 6 Q Correct, but you knew that those CRE numbers existed
 7 because they were provided to you in documents by the NYAG?
 8 A After I had started the analysis that I described, yes.
 9 Q Okay. Those documents weren't in your possession until
 10 they were provided to you?
 11 A That's correct.
 12 Q Okay.
 13 THE COURT: Mr. McCarty, a little closer to the
 14 microphone and a little louder.
 15 THE WITNESS: Will do. Thank you.
 16 Q So with respect to the CRE proposal that was not
 17 accepted on the Doral transaction, would you agree with me that
 18 that proposal could have been further negotiated?
 19 A I'm not aware of whether it was final or not, so I
 20 don't have an opinion whether it was negotiated or there may
 21 have been negotiations. I'm not aware of.
 22 Q It was never a final proposal, correct?
 23 A I don't know that that's true.
 24 Q Well, you reviewed the documents, didn't you?
 25 A I did. It had a signature block on it for the ones I

M. MCCARTY - PLAINTIFF - CROSS(MR. SUAREZ) Page 3135

1 saw, so that, to me, usually indicates it is a fairly final
 2 document.
 3 Q But you're not certain if that was a final offer from
 4 the CRE Group?
 5 A Not either way, no.
 6 Q So you're not certain if the CRE Group would have
 7 extended credit on those terms, correct?
 8 A Based on my experience of banks, I think the projection
 9 of a multi-page term sheet with details and a signature block
 10 indicates that they would have provided credit under those
 11 terms.
 12 Q So your testimony is that based on your review of those
 13 documents, you are certain that the CRE Group would have
 14 provided a loan on those terms?
 15 A I don't think that's what I said.
 16 Q So are you certain sitting here today that the CRE
 17 Group would have provided a loan on those terms?
 18 A I don't have an opinion. I believe that those are
 19 serious, could be final documents.
 20 Q I'm asking if you are certain. Either you're certain
 21 or you're not certain.
 22 A I can't really give you a judgment about it.
 23 Q You don't know whether you're certain or not that CRE
 24 Group would have provided a loan on those terms?
 25 A I think my testimony was that I think they would have.

M. MCCARTY - PLAINTIFF - CROSS(MR. SUAREZ) Page 3136

1 Q Okay. So you can't be certain? You think?

2 A I think --

3 Q It is a supposition, correct?

4 A Based on experience.

5 Q You can base it on whatever you want, but it is still a

6 supposition, right?

7 A I guess so.

8 Q "I guess so" means yes?

9 A I'm uncertain.

10 Q You're not certain. So that, you are not certain

11 about?

12 A I'm uncertain about your question.

13 Q Are you certain whether the CRE Group would have

14 provided financing on those terms?

15 A I believe my best judgment is that they would have

16 provided financing on those terms.

17 Q Your opinion is is that they would have?

18 A My best judgment based on experience.

19 Q Is it not your opinion that they would have?

20 A No.

21 Q Okay. So, then, you're not certain if they would have

22 produced -- if they would have done that loan on those terms?

23 A No. My best judgment is they would have.

24 Q Okay. But you can't be certain?

25 THE COURT: Oh, come on. Enough is enough. How

M. MCCARTY - PLAINTIFF - CROSS(MR. SUAREZ) Page 3137

1 many times does he have to say he can't be certain. He's

2 not certain.

3 MR. SUAREZ: He says it is his opinion, maybe it is

4 maybe, it isn't.

5 THE COURT: He said it is his best judgment, but he

6 refused to say, "Yes, I was certain."

7 MR. SUAREZ: "Are you certain" is a yes-or-no

8 question. I'm certain it is Wednesday.

9 THE COURT: I wish he had answered yes or no. I

10 think he could have but he's not going to. So let's move

11 on.

12 MR. SUAREZ: So would Your Honor agree with me that

13 the response was not responsive?

14 THE COURT: Yes. So let's ask him.

15 It is a yes-or-no question. Are you certain that

16 they would or not have, whatever, offered a loan on those

17 terms? Are you certain?

18 THE WITNESS: It is a hypothetical question. I

19 can't be certain.

20 THE COURT: I'll take that to mean no, he's not

21 certain because he said "I can't be certain."

22 Q Your analysis here doesn't consider whether the

23 borrower could have obtained another source of financing,

24 correct?

25 A No, we decided that the only way we could look at it

M. MCCARTY - PLAINTIFF - CROSS(MR. SUAREZ) Page 3138

1 was to do it on a static basis, no refinancing, no increase in

2 terms to keep the situation static from the original start.

3 Q Again, it is a yes-or-no question. It either considers

4 it or it doesn't.

5 THE COURT: Can you read back the question and the

6 response.

7 (Whereupon, the requested portion of the record was

8 read back.)

9 THE COURT: Stricken.

10 Please answer yes or no. If you need the question

11 asked again or read back, we can do that.

12 MR. SUAREZ: Yes, please. Please read back my

13 question.

14 THE COURT: One more readback, just the question.

15 (Whereupon, the requested portion of the record was

16 read back.)

17 THE COURT: Hold on. Objection by the judge. It

18 is a negative question. Just ask it in a positive way.

19 Q Does your analysis here consider whether the borrower

20 could have obtained another source of financing?

21 A No, it does not.

22 Q Does your analysis here consider whether the sponsor

23 could have borrowed money against another asset?

24 A No, it does not.

25 Q Does yours analysis consider whether the borrower could

M. MCCARTY - PLAINTIFF - CROSS(MR. SUAREZ) Page 3139

1 have pledged another asset as collateral?

2 A No.

3 Q Does your analysis consider whether the borrower or

4 sponsor could have just not done the deal?

5 A No.

6 Q But you would agree with me, Mr. McCarty, that the

7 collateral in your hypothetical analysis here for the CRE rate

8 is the same collateral as that for the actual loan that was

9 made, correct?

10 A Absent the guaranty, it is the same collateral.

11 Q So the only difference in your analysis is whether the

12 guaranty is there or not, correct?

13 A Correct.

14 Q And I have the same question for the OPO loan. Does

15 your analysis consider whether the borrower could have obtained

16 another source of financing?

17 A No.

18 Q Does your analysis consider whether the sponsor could

19 have borrowed against another asset?

20 A No.

21 Q Does your analysis consider whether the sponsor could

22 have pledged another asset as collateral?

23 A No.

24 Q Does your analysis consider whether or not the sponsor

25 could have chosen not to do the deal?

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M. MCCARTY, DONALD TRUMP, JR. November 1, 2023

M. MCCARTY - PLAINTIFF - CROSS(MR. SUAREZ) Page 3140

1 A No.

2 Q And you would agree with me, Mr. McCarty, that the only

3 difference in your analysis between the actual interest charged

4 and the CRE interest that you've included in this calculation is

5 the existence of the guaranty, correct?

6 A That's correct.

7 Q It is -- it -- your analysis is based on the exact

8 same collateral, correct?

9 A I need to clarify the question. You're asking if

10 that's the only difference between the two lines?

11 Q Let me ask it differently. Is the difference between

12 the assumption that you made -- withdrawn.

13 The analysis for the interest rate that you provided at

14 eight percent, that contemplates the same collateral, correct?

15 A Correct.

16 Q And with respect to the Chicago loan, the analysis that

17 you've provided with the CRE interest rate at seven and-a-half

18 percent, that contemplates the same collateral as the actual

19 transaction, correct?

20 A That's correct.

21 Q And with the 40 Wall loan in the bottom, the same

22 thing, the same question, it contemplates the use of the same

23 collateral, correct?

24 A Correct.

25 Q With respect to the Doral loan, your opinion doesn't

M. MCCARTY - PLAINTIFF - CROSS(MR. SUAREZ) Page 3141

1 consider whether the sponsor of the transaction could have gone

2 to hundreds, if not thousands, of other lenders, correct?

3 A No, it only -- the only consideration I have made was

4 that there was an alternative offer from Beal, so there was

5 another alternative.

6 Q So it doesn't include that consideration?

7 A It included the consideration of Beal, yes.

8 Q But not the fact that he could have gone to hundreds,

9 if not thousands, of other borrowers?

10 A I had no knowledge that there was available other than

11 Beal.

12 Q And your knowledge as to what was available came from

13 the documents that were provided to you from the -- by the New

14 York Attorney General, correct?

15 A Everything was provided by the Attorney General, but

16 the Beal reference I don't think was the same documentation.

17 Q But it was provided to you by the New York Attorney

18 General?

19 A As part of production, yes.

20 Q Would it be fair to say that your analysis only

21 contemplates the alternatives that were provided by -- excuse

22 me.

23 Would it be fair to say that your analysis only

24 contemplates alternatives that were reflected in documents that

25 were provided to you by the New York Attorney General?

M. MCCARTY - PLAINTIFF - CROSS(MR. SUAREZ) Page 3142

1 A No, I'd say it also includes my judgment about credits

2 and pricing of credits in the market.

3 Q Is it the case that the sponsor in any of these

4 transactions could have gone out and solicited additional

5 financing from many other different types of lenders?

6 A Again, I'm not sure it was a broad spectrum of

7 available credits for these properties at the time.

8 Q My question was a little different. Isn't it the case

9 that the sponsor could have gone out and solicited from

10 hundreds, if not thousands, of other lenders loans on these

11 transactions?

12 A My answer was I'm not sure that that type of market

13 existed.

14 Q But I wasn't asking you whether you thought the market

15 existed. I was asking you whether you thought the

16 lender -- sorry -- the sponsor could go out and solicit lending

17 from hundreds, if not thousands, of other lending institutions?

18 A If he wanted to, sure.

19 Q Okay. And that fact is not contemplated in your

20 analysis?

21 A No.

22 Q All of the different other financing alternatives that

23 were available to the sponsor of each of these individual

24 transactions are not contemplated by your analysis?

25 THE COURT: It is a negative question and it has

M. MCCARTY - PLAINTIFF - CROSS(MR. SUAREZ) Page 3143

1 been asked and answered.

2 MR. SUAREZ: All right. I'll withdraw it.

3 Q Now, let's talk specifically about the three Deutsche

4 Bank transactions.

5 Does your analysis contemplate President Trump's

6 obligation to maintain deposits, assets under management at

7 Deutsche Bank?

8 A No, it doesn't contemplate the \$20 million deposit.

9 Q And isn't the case that at a certain point in time,

10 President Trump and entities related to him had over

11 \$100 million on deposit in Deutsche Bank?

12 A I'm not aware of that fact.

13 Q It is in the credit memos.

14 A No, I don't recall it.

15 Q Isn't that part of the reason why private wealth

16 management goes and seeks out high net worth individuals?

17 A In my experience in wealth management, it is not a

18 major item. Deposits are worth very little.

19 Q But you agree with me that you have never worked at a

20 private wealth management group?

21 A I've only managed them.

22 Q The calculations that you have here for the Doral loan

23 don't factor the cost of maintaining those deposits at Deutsche

24 Bank, correct?

25 A No. We decided to exclude them and the fees associated

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1 with the other loans, so we thought they canceled each other
 2 out.
 3 Q So there is no credit given for the additional
 4 requirements that President Trump had to meet in order to
 5 qualify for the private wealth group, correct?
 6 A It does because we canceled out the fees for the CRE
 7 loans to be equal.
 8 Q But the wealth management loans had fees, didn't they?
 9 A They were smaller.
 10 Q The Private Wealth Group, however, has a different
 11 business model than the CRE Group, correct?
 12 A That's correct.
 13 Q And the CRE Group doesn't have the same requirements
 14 that you maintain assets under management, correct?
 15 A No, they have different requirements.
 16 Q But that wasn't my question. My question was whether
 17 the CRE Group had the same requirement that you maintain assets
 18 under management?
 19 A No, they didn't.
 20 Q That's an additional benefit to the bank, right?
 21 A It is one of the benefits, yes.
 22 Q And the other benefit is the opportunity to cross-sell,
 23 right?
 24 A That's available with any customer, yes.
 25 Q But it is a benefit to the bank, right?

M. MCCARTY - PLAINTIFF - CROSS(MR. SUAREZ) Page 3145

1 A In any division, yes.
 2 Q Excuse me?
 3 A In any division of the bank, it is available.
 4 Q Do you consider that to be an emphasis of the Private
 5 Wealth Group?
 6 A I think it is an emphasis on every banking group.
 7 Q You don't think that's anything specific to the Private
 8 Wealth Group?
 9 A Not necessarily, no.
 10 Q The ability to develop relationships with ultra high
 11 net worth individuals, is that an objective of the Private
 12 Wealth Group?
 13 A It is, yes.
 14 Q And was it the case that they were able to do that with
 15 President Trump as a client?
 16 A I don't know the specifics. They did multiple loans,
 17 yes.
 18 Q And are you aware that the co-chairman of the bank
 19 expressed an interest in developing a relationship with
 20 President Trump and his companies?
 21 A Yes, I read that.
 22 Q And that Deutsche Bank sought President Trump's
 23 business?
 24 A Yes.
 25 Q And that Deutsche Bank wanted to have President Trump's

M. MCCARTY - PLAINTIFF - CROSS(MR. SUAREZ) Page 3146

1 business in the Private Wealth Group?
 2 A They marketed to him and I suspect that's true.
 3 Q They marketed to him, correct?
 4 A Yes.
 5 Q He is the type of person that a Private Wealth Group
 6 would market to?
 7 A Yes.
 8 Q Now, in your analysis of the 40 Wall Street loan, does
 9 that take into account the \$6 million swap break fee that the
 10 borrower had to pay to do the transaction?
 11 A It was in the case that we assumed that it was in both.
 12 Since we're continuing the Capital One, we considered it not
 13 relevant.
 14 Q So, part of the 40 Wall analysis is just an assumption
 15 that the Capital One loan would have stayed in place correct?
 16 A Correct, would have rolled over.
 17 Q And it is your testimony that if the Capital One loan
 18 would have stayed in place, the borrower would still have had to
 19 pay the \$6 million swap fee?
 20 A No, we don't believe so. We considered it be a
 21 rollover on the same terms.
 22 Q It would roll over on the same terms?
 23 A Right.
 24 Q So there was a cost to doing the transaction with
 25 Ladder Capital, correct?

M. MCCARTY - PLAINTIFF - CROSS(MR. SUAREZ) Page 3147

1 A There was a cost to Ladder Capital, yes.
 2 Q But the \$6 million swap breakage fee was paid for by
 3 the borrower?
 4 A Yes.
 5 Q Okay. That was a cost of doing that transaction,
 6 correct?
 7 A Yes.
 8 Q So that cost would not have existed if they stayed with
 9 Capital One bank, correct?
 10 A That's correct.
 11 THE COURT: Move a little closer to the mic,
 12 please, or bend the mic more towards you.
 13 MR. SUAREZ: May I have a second to confer with my
 14 colleagues?
 15 THE COURT: Sure.
 16 (Whereupon, there was a pause in the proceedings.)
 17
 18
 19
 20
 21
 22
 23
 24
 25

M. McCarthy - Plaintiff - cross (Suarez) Page 3148

1 Q All right. I think at some point somebody described
 2 this as an exercise; correct?
 3 A Not totally simple math, but it's an exercise in
 4 mathematics.
 5 Q It's an exercise in mathematics. I'd like to ask you
 6 to engage in an exercise in mathematics.
 7 A Okay.
 8 Q If you take the Doral transaction and we agree that the
 9 guaranty went down to ten percent in the middle 2015; correct?
 10 A Yes.
 11 Q And if we take out all of the interest delta after the
 12 middle of 2015, this grand total here goes down to about
 13 \$63 million; correct? Goes down by \$63 million?
 14 A I haven't done math, so I don't know.
 15 Q Well, if you take 4.7 million and half of
 16 10.08 million, that leaves you with about 9.5 million?
 17 A In order to do that you would have to make an
 18 assumption that I didn't make which is you have to say it would
 19 be refinanced.
 20 Q I'm asking to you do just the math with me. Walk me
 21 through the math here, okay? It's just a math exercise.
 22 A Okay.
 23 Q All right. Can we do a math exercise?
 24 A Sure.
 25 Q And understand that I'm a lawyer and the typical

M. McCarthy - Plaintiff - cross (Suarez) Page 3149

1 disclaimer we're not good at math, so I won't be offended if you
 2 correct me, but if you take all of the interest delta from the
 3 middle of 2015 and take it out from the date, approximately
 4 ballpark, we're not being very precise here, but if you ballpark
 5 the interest delta from the middle of 2015 and you subtract that
 6 from the grand total, that leaves you with about nine million
 7 dollars in interest delta; correct?
 8 A Nine million and change.
 9 Q Nine million and change.
 10 And if we go down to Chicago and you subtract the
 11 interest delta from when the guarantee was extinguished in the
 12 middle of 2015, the \$17 million number goes down to about 1.7?
 13 A It's about right.
 14 Q And if you take the 40 Wall Street loan and you back
 15 out the 60 -- I'm sorry -- the \$6 million swap fee that they had
 16 to pay in order to do the 40 Wall Street loan with Ladder
 17 Capital, that number goes down to 18.2 million; right?
 18 A Correct.
 19 Q And you would agree with me in rough numbers that if
 20 you back that out of your analysis you get 18.2, plus 1.7, plus
 21 53.4, plus 99.5, that number would only be 82.8 million?
 22 A It's about right.
 23 Q That's about right?
 24 MR. SUAREZ: Your Honor, I have no further
 25 questions on cross examination.

Proceedings Page 3150

1 THE COURT: Any redirect?
 2 MR. WALLACE: Was there other cross from any other
 3 defendant?
 4 MR. ROBERT: No, thank you.
 5 MR. WALLACE: No redirect, Your Honor.
 6 THE COURT: Okay. I'll let the witness go.
 7 Thank you.
 8 (Whereupon, the witness is excused from the witness
 9 stand.)
 10 MS. FAHERTY: On behalf of the People again, we
 11 call Donald Trump, Jr. to the stand for our next witness.
 12 THE COURT: Let's get the witness.
 13 And Ms. Faherty, you're not coming through that
 14 loud. Maybe move it up.
 15 I believe we have some photographers that have
 16 interest in this situation? Let them come in.
 17 MS. FAHERTY: I was not forewarned and my hair is a
 18 mess.
 19 THE COURT: I was forewarned and my hair is still a
 20 mess.
 21 MS. FAHERTY: I like your hair better, Judge.
 22 THE COURT: I'll ask the witness to take the stand.
 23 (Whereupon, the witness enters the courtroom and
 24 approaches the witness stand.)
 25 THE COURT OFFICER: Please raise your right hand.

D. Trump, Jr. - Plaintiff - direct (Faherty) Page 3151

1 Do you solemnly swear or affirm that any testimony you give
 2 will be the truth, the whole truth and nothing but the
 3 truth?
 4 DONALD TRUMP JR., called by and on
 5 behalf of the Plaintiff, having been first duly sworn, was
 6 examined and testified as follows:
 7 THE WITNESS: I do.
 8 THE COURT OFFICER: Please have a seat.
 9 Please state your name and either home or business
 10 address on the record.
 11 THE WITNESS: Donald Trump, Jr., 725 Fifth Avenue,
 12 New York, New York 10022.
 13 THE COURT: Voice sounds good, but get a little
 14 closer to the mic. It's very temperamental.
 15 And let's proceed with the questioning.
 16 DIRECT EXAMINATION
 17 BY MS. FAHERTY:
 18 Q Good afternoon, Mr. Trump.
 19 A Afternoon. How are you.
 20 Q Good, thank you. Nice to see you again.
 21 Mr. Trump, are you taking any medication or drugs of
 22 any kind that might make it difficult for you to understand and
 23 answer my questions today truthfully and accurately?
 24 A No.
 25 Q Are you suffering from any conditions that would make

D. Trump, Jr. - Plaintiff - direct (Faherty) Page 3152

1 it difficult for you to understand my questions and answer
2 questions today truthfully and accurately?
3 A No.
4 Q Just a few brief questions about your educational
5 background and work history.
6 First, did you attend college?
7 A I did.
8 Q Did you earn a degree?
9 A I did.
10 Q From where did you earn a degree from the college
11 institution you attended?
12 A The University of Pennsylvania.
13 Q Is it the Wharton School of Business that you attended?
14 A Yes, as a division of the business school of, yes.
15 Q And what degree did you receive from the University of
16 Pennsylvania?
17 A Bachelor of science.
18 Q In what concentrations, if any?
19 A Real estate finance and marketing.
20 Q And in what year did you earn that degree, Mr. Trump?
21 A 2000.
22 Q Any sub majors?
23 A I guess the real estate finance and marketing are sort
24 of all the sub majors that are, you know, part of the bachelor
25 of science.

D. Trump, Jr. - Plaintiff - direct (Faherty) Page 3153

1 Q Okay. How about professional certifications or
2 licenses?
3 A I'm a real estate broker.
4 Q And when did you receive that real estate broker's --
5 sorry -- withdrawn.
6 Do you have a license to be a real estate broker?
7 A Yes.
8 Q Okay. And when did you receive that real estate
9 broker's license?
10 A I don't recall.
11 Q Refresh your recollection that it was about the mid
12 2000s?
13 A That seems about right. That probably was my
14 salesperson license and then took it further after that, but
15 yes, that's probably about right.
16 Q So you have a real estate broker's license and there
17 are degrees contained within that license; yes?
18 A Correct.
19 Q And is there a brokerage firm that sponsors your real
20 estate broker's license?
21 A Trump International Realty.
22 Q What is Trump International Realty?
23 A Let's call it the brokerage arm of the Trump
24 Organization.
25 Q And are you employed at Trump International Realty?

D. Trump, Jr. - Plaintiff - direct (Faherty) Page 3154

1 A Not specifically, no.
2 Q Are you one of the executive officers that oversees
3 Trump International Realty?
4 A I believe I am.
5 Q Okay. Are you familiar with anyone else who is an
6 executive that oversees Trump International Realty?
7 A Likely my brother Eric.
8 Q Anyone else?
9 A Not off the top of my head.
10 Q At any point in time did your sister Ivanka Trump also
11 serve as an executive officer that oversaw Trump International
12 Realty?
13 A I believe she would have, yes.
14 Q Did the three of you Eric, Ivanka and you serve as the
15 initial executive officers that established the Trump
16 International Realty brokerage arm of the Trump Organization?
17 A That would make sense, but I don't recall.
18 Q Okay. Any other licenses or certifications that you
19 have not told me about?
20 A Not off the top of my head.
21 Q Are you familiar with an acronym GAAP or GAAP?
22 A I'm familiar with it, yes.
23 Q What -- how are you familiar what that acronym GAAP?
24 A Well, I understand what it stands for.
25 Q What does it stand for?

D. Trump, Jr. - Plaintiff - direct (Faherty) Page 3155

1 A Generally accepted accounting principles.
2 Q And how did you become familiar with what the acronym
3 GAAP stands for?
4 A I believe that was an accounting 101 back in the late
5 90s.
6 Q At Wharton?
7 A Yes.
8 Q Anything else that you're familiar with with regards to
9 the acronym GAAP or what it stands for?
10 A No, that's what I have CPAs for.
11 Q Okay. Have you ever been employed in the position that
12 required you to apply GAAP to your work?
13 A Not to my knowledge.
14 Q And correct you're not a certified public accountant;
15 right?
16 A That is correct.
17 Q And you don't hold any professional certifications in
18 accounting; right?
19 A Not even a little bit.
20 Q And fair to say you're not a member of the American
21 Institute of CPAs or similar types societies; right?
22 A Sounds very exciting, but no.
23 Q Those certifications aside, have you received any
24 professional training in applying GAAP in the course of your
25 work?

D. Trump, Jr. - Plaintiff - direct (Faherty) Page 3156

1 A I have not, no.

2 Q Okay. So I'm going to ask a series of questions

3 related to GAAP. I'm sure we'll move through quickly, but I

4 just want to just confirm some of your knowledge with regards to

5 GAAP.

6 Is it fair to say based on your testimony that you're

7 not familiar with how revenue is recognized in accordance with

8 GAAP?

9 MR. ROBERT: Objection. The witness has already

10 testified he's not familiar with GAAP. Now asking more

11 questions about what he knows about GAAP is going to get us

12 nowhere.

13 THE WITNESS: Yes, I know nothing about GAAP in

14 terms of that capacity and I'll leave it to my accountants.

15 That's why we have Big 5 CPA firms to do all of that.

16 Q So any further probing questions I would ask you about

17 GAAP and how GAAP would be applied your answer would

18 consistently be "I have no such knowledge?"

19 A That's correct.

20 Q Thank you.

21 Are you familiar with the Financial Accounting

22 Standards Board or FASB otherwise referred to as FASB?

23 A Not to my recollection, no.

24 Q No specification understanding as to its function or

25 its work?

D. Trump, Jr. - Plaintiff - direct (Faherty) Page 3157

1 A No.

2 Q How about the accounting standards codification? Any

3 understandings -- any understanding as to the accounting

4 standards codification and sub rules contained within?

5 A No.

6 Q So if I asked you about any of the NASC rules you would

7 not have any specific knowledge as to those rules?

8 A That's correct.

9 Q Similarly, if I asked you a question about the ASC

10 rules as they applied to statements of financial condition or

11 compilation work, no specific understanding as to those rules or

12 the application to statements of financial condition?

13 A Correct.

14 THE COURT: Those are negative questions. You can

15 ask him if he does, not --

16 MS. FAHERTY: I promised I wasn't going to do it,

17 Judge.

18 THE COURT: It's a tough habit to break.

19 MS. FAHERTY: It is.

20 THE COURT: Just ask Mr. Suarez.

21 Q Fair to say you don't have that understanding?

22 A No.

23 Q Thank you.

24 THE COURT: I think that was just a negative

25 question. "Fair to say you don't have that understanding?"

D. Trump, Jr. - Plaintiff - direct (Faherty) Page 3158

1 You should ask him "do that you have that understanding."

2 THE WITNESS: I have no understanding. Simplify

3 it.

4 MR. ROBERT: That was about GAAP he meant.

5 Q I'll take the answer.

6 Is it fair to infer that any work, if any, that you did

7 on the Statement of Financial Condition you are not applying the

8 AFCs or any rules included in the FAS?

9 THE COURT: That's a negative question.

10 Q You didn't apply any work --

11 MS. HABBA: Excuse me. I'm going to object to

12 that. We've already run through that. He said he doesn't

13 have qualifications. We've asked and answered this so now

14 you're asking him something about a statement of financials

15 and applying AFC rules. This will take a lot longer if we

16 keep doing it.

17 THE WITNESS: I -- that's what you do in business.

18 If you don't have that understanding, I rely on the

19 professionals and CPAs that we paid millions of dollars that

20 have that degree and probably have a great degree of

21 understanding and I rely on their opinions and their

22 assessments to make those decisions.

23 MS. FAHERTY: Move to strike, Your Honor.

24 THE COURT: Well, the last part, yes, but I've

25 sustained the objection. It will be a lot simpler if he

D. Trump, Jr. - Plaintiff - direct (Faherty) Page 3159

1 says he doesn't understand some standards, not to ask him

2 about the standards.

3 MS. FAHERTY: No problem, Your Honor. Thank you.

4 THE COURT: Sure.

5 Q Mr. Trump, who is your current employer?

6 A I believe it's still Trump Payroll Corp.

7 Q Do you work for an umbrella organization known as the

8 Trump Organization?

9 A Generally speaking.

10 Q You just made a reference to Trump Payroll Corp. Who

11 is Trump Payroll Corp?

12 A An entity designed to pay the employees of the Trump

13 Organization.

14 Q And what is Trump Payroll Corp's business other than

15 paying employees of the Trump Organization?

16 A That's the extent of it. So you can again talk to the

17 lawyers and the accountants who structured those things that way

18 for corporate structure purposes.

19 Q And you just made reference to employees of the Trump

20 Organization. What is the Trump Organization?

21 A Generally speaking it's a -- let's call it an umbrella

22 term for the entities under the purview of our family's

23 business.

24 Q So if I make a reference to the Trump Organization and

25 work you've performed for the Trump Organization do you have an

D. Trump, Jr. - Plaintiff - direct (Faherty) Page 3160

1 understanding as to the business I'm referring to when I use the
 2 term "the Trump Organization?"
 3 A Generally speaking, yes.
 4 Q Okay. When did you start working for the Trump
 5 Organization?
 6 A Shortly after September 11th, 2001. So I think it was
 7 the 17th, right after 9/11.
 8 Q Was that after a gap year from college?
 9 A That was.
 10 Q And when you first began working for the Trump
 11 Organization, what was your title?
 12 A I worked as a project manager on West Side Yards
 13 project, so it wasn't even for the Trump Organization. It was
 14 for Hudson Waterfront LLC or one of the derivatives of that.
 15 Q There is a derivative entity known --
 16 A I think it's Hudson Waterfront Associates perhaps.
 17 Q Hudson Waterfront Associates.
 18 Is that still affiliated with the Trump Organization?
 19 A It's been awhile. I'm not sure.
 20 Q Any reason to doubt that it is an entity affiliated
 21 with the Trump Organization?
 22 A Well, the assets were sold, so perhaps they are gone.
 23 I don't know.
 24 Q At the time on which you were working on that project
 25 was it affiliated with the Trump Organization?

D. Trump, Jr. - Plaintiff - direct (Faherty) Page 3161

1 A Yes.
 2 Q And through your work on the west side Yards project is
 3 it correct that you became familiar with Vornado Realty Trust?
 4 A Yes.
 5 Q And you became familiar with the partnership
 6 arrangement between Vornado and the Trump Organization; correct?
 7 A Really didn't have anything to do with what I was doing
 8 at the time, but I generally knew of it. I was a low level guy
 9 learning how to build ground-up construction, so I didn't really
 10 deal with those entities, but generally speaking, yes.
 11 Q And generally you're familiarity with that partnership,
 12 with Vornado, is that the Trump Organization or the umbrella
 13 Trump Organization maintains a 1/3 partnership relationship with
 14 Vornado; yes?
 15 A Yes.
 16 Q After the Hudson West Side Yards project, is it correct
 17 that you then still were working as a project manager you
 18 handled construction and development at Trump Park Avenue?
 19 A Yes.
 20 Q Is that a prewar building?
 21 A Yes.
 22 Q And what specifically did you do as project manager at
 23 Trump Park Avenue?
 24 A Little bit of everything; design construction,
 25 overseeing some of the banking relationships we had, anything

D. Trump, Jr. - Plaintiff - direct (Faherty) Page 3162

1 and everything.
 2 Q And correct that there are certain units contained at
 3 Trump Park Avenue that are rent stabilized, yes?
 4 A Hotel stabilized, but yes.
 5 Q And you're familiar with rent stabilized laws here in
 6 New York City; correct?
 7 A I was then. I've probably forgotten most of it now.
 8 Q Fair to say at the time you had that knowledge about
 9 the rent stabilization laws that impacted development at Trump
 10 Park Avenue; correct?
 11 A Yes.
 12 Q And the limitations imposed by those laws; correct?
 13 A Correct.
 14 Q Subsequent to the Trump Park Avenue project is it
 15 correct you then eventually worked at the Trump International
 16 Realty Hotel in Chicago; right?
 17 A Yes.
 18 Q Again, as a project manager still?
 19 A I don't recall my specific title, but probably, yes.
 20 Q And what exactly were your duties at the Trump
 21 International Realty Hotel in Chicago?
 22 A Well, when I got involved it was still the Chicago Sun
 23 Times building. We had a partnership with them and we were
 24 going to build the tallest residential building in Chicago
 25 there. So everything from design, architecture, sales, and

D. Trump, Jr. - Plaintiff - direct (Faherty) Page 3163

1 marketing, finance, construction. You name it.
 2 Q And do you recall the time period that you were working
 3 on that particular project?
 4 A Early 2000s. It was quite a bit of time, but probably
 5 three, four years I spent three days a week there for three,
 6 four years.
 7 Q And then subsequent to your time working on the Chicago
 8 project, fair to say you had a change in title in your work for
 9 the Trump Organization?
 10 A I may have. I don't specifically recall when that
 11 happened, but yes. I was progressing.
 12 Q What do you recall your next title was at the Trump
 13 Organization after you progressed from being a project manager?
 14 A I don't recall.
 15 Q Fair to say you eventually became an EVP or executive
 16 vice president at the Trump Organization?
 17 A Eventually, yes.
 18 Q How many other titles have you held in the course of
 19 your tenure with the Trump Organization?
 20 A I'm not sure.
 21 Q More than five?
 22 A Probably not, no.
 23 Q Less than five then?
 24 A Yes, but I don't know specifically.
 25 Q Have you at any point become an executive vice

D. Trump, Jr. - Plaintiff - direct (Faherty) Page 3164

1 president at the Trump Organization?
 2 A Yes.
 3 Q So we've got project manager; yes?
 4 A Yes.
 5 Q Executive vice president; correct?
 6 A Correct.
 7 Q What other titles as you sit here today did -- can you
 8 think of that you've had in the time that you've worked for the
 9 Trump Organization?
 10 A I imagine I was a VP somewhere along the way and I'm
 11 not exactly sure.
 12 Q And at what point in time do you think you were just a
 13 VP, not an executive VP?
 14 A I can't recall.
 15 Q Before 2011?
 16 A I would imagine so, yes.
 17 Q Fair to say beginning at least from 2011 you have
 18 served as an executive vice president for the Trump
 19 Organization; yes?
 20 A On or about, yes.
 21 Q And considering the hierarchy of executive titles
 22 within the Trump Organization where does an executive vice
 23 president fit within such hierarchy?
 24 A Fairly high.
 25 Q Who is above you in your role as an executive vice

D. Trump, Jr. - Plaintiff - direct (Faherty) Page 3165

1 president at the Trump Organization?
 2 MR. ROBERT: Time period?
 3 MS. FAHERTY: I think we've got from 2011 forward
 4 he has served as an executive vice president, so the
 5 question was related to in his time as an executive vice
 6 president who was above him.
 7 MR. ROBERT: At what point in time? You're talking
 8 about a decade.
 9 MS. FAHERTY: I can narrow it down. I can ask the
 10 question.
 11 THE COURT: Or you can keep it broad. Was anyone
 12 ever among you?
 13 THE WITNESS: Obviously, I would have reported to
 14 my father during that period of time. I imagine, you know,
 15 in the early transition to that title I would have still
 16 been, you know, people like an Allen Weisselberg still would
 17 have been senior to me. Those would have been the primary.
 18 Q When was the time period when Allen Weisselberg was
 19 senior to you?
 20 A Well, certainly initially in that time frame and, you
 21 know, as other projects and especially as we started expanding
 22 more abroad and outside of New York City obviously I was going
 23 to be on the road a lot of that time. So the seniority started
 24 let's call it equalling up, then I guess that would have been
 25 mid teens, mid, early teens.

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1 Q So around 2013?
 2 A Perhaps off the top of my head, yes.
 3 Q So from the period of 2011 to 2013, what, if any,
 4 decisions did you need to report in to Allen Weisselberg for his
 5 approval?
 6 A There is not a specific list.
 7 Q Did Allen Weisselberg have authority over your work at
 8 the Trump Organization between the time period of 2011 to 2013?
 9 A I would say yes on some things and other things I'd
 10 have total autonomy to do what I wanted.
 11 Q Describe for me the specific things you were thinking
 12 about with that testimony that Allen Weisselberg had an
 13 authority over you between 2011 to 2013?
 14 A Well, I wouldn't have done a refinance without, you
 15 know, the involvement of our CFO obviously. Those are the kinds
 16 of things. If I was making a construction decision or even a
 17 deal decision to do a -- say, a licensing deal abroad, I had the
 18 autonomy to do that. Again, there is not sort of a defined list
 19 of where you would or would not go, but there are definitely
 20 things I would bring to him because I was naturally his
 21 wheelhouse.
 22 Q In 2011 to 2013, which refinancing deals did Allen
 23 Weisselberg supervise you on?
 24 A I don't recall.
 25 Q No specific recollection as you sit here today?

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1 A I'm just using refinance deals as an example of
 2 something I would bring. I'm not talking about a specific one,
 3 so if you have specific ones you can ask them, I can give you
 4 the answer.
 5 Q I'm asking your specific knowledge as you sit here
 6 today.
 7 A I don't specifically recall in that time frame which
 8 ones we refi'd or didn't.
 9 Q Any other areas of supervision between 2011 to 2013 for
 10 which you reported to Allen Weisselberg for his supervision?
 11 A Not that I recall.
 12 Q I believe you also said your father during this period.
 13 What is the period to which you are referring to between 2011
 14 forward for which your father Donald J. Trump was a supervisor
 15 who had authority over the work you performed at the Trump
 16 Organization?
 17 A Until he assumed the presidency.
 18 Q When was that?
 19 A January of 2017.
 20 Q And how about your siblings? Between 2011 to present
 21 -- let's do 2011 to 2017. What, if any, authority did Eric
 22 Trump have over your work between 2011 to 2017?
 23 A We were on a similar plane, so we had our own silos and
 24 we tried to stick to that. And if someone would be better at a
 25 certain thing or had a more institutional knowledge he would

D. Trump, Jr. - Plaintiff - direct (Faherty) Page 3168

1 bring them in, but we had our own silos.
 2 Q So in the hierarchy would you say that you were equal
 3 footing with Eric between 2011 and 2017?
 4 A Yes.
 5 Q How about Ivanka between 2011 and 2017?
 6 A Same.
 7 Q And fair to say your father was above the three of you
 8 during that time period, 2011 to 2017?
 9 A Yes.
 10 Q Was Allen Weisselberg similarly over Ivanka and Eric
 11 between 2011 and 2013 that you testified to just a few moments
 12 ago?
 13 A I don't know the exact dates, but that would make
 14 sense. As they matured and as they figured out more, those
 15 levels blended together a lot more.
 16 Q And in 2017, how, if at all, did the hierarchy above
 17 you serving continuing sales in EVP change?
 18 A We stopped reporting to my father on decisions
 19 involving the business.
 20 Q So who at that point in January 2017 was in charge of
 21 the Trump Organization?
 22 A It would have been a combination of myself, Allen
 23 Weisselberg and my brother.
 24 Q Anyone else?
 25 A No.

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1 Q And was there a change in title in January 2017 to
 2 reflect that supervisory change?
 3 A Not that I remember, no.
 4 Q Okay. Focusing on your time as an EVP.
 5 You've spoken about some of them, but let's dig in a
 6 little bit more.
 7 What were your general responsibilities serving as an
 8 executive vice president at the Trump Organization?
 9 A It's an all-encompassing developmental role for me.
 10 Specifically, I focused a lot on our international business, a
 11 lot on our hotel company and development of new licensing deals
 12 and such, but you could have done anything at any given day.
 13 Q Fair to say you handled acquisitions?
 14 A Yes.
 15 Q You worked on development projects; yes?
 16 A Yes.
 17 Q You worked on the operation side of the business?
 18 A Correct.
 19 Q I heard you just say you worked on financing; correct?
 20 A At times, yes.
 21 Q And you've worked on the leasing side of the business;
 22 yes?
 23 A Yes.
 24 Q You've worked on the branding side of the business;
 25 correct?

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1 A Yes.
 2 Q And that was generally the types of responsibilities
 3 you had between this time period 2011 through 2017?
 4 A Correct.
 5 Q Is that still current today?
 6 A Yes.
 7 Q Focusing after January of 2017, you've said you did not
 8 have a title change, but the responsibilities changed insofar as
 9 you did not have to report in to anyone above you; correct?
 10 A Correct. I became a trustee of the trust. My title
 11 stayed the same, but I functioned as a trustee as well.
 12 Q Since January 2017, who has the ultimate authority over
 13 decisions made at the Trump Organization?
 14 A Then it would have been again Allen Weisselberg, myself
 15 and my brother.
 16 Q And by your brother, you're referencing Eric, not
 17 Barron; correct?
 18 A Correct.
 19 Q Does Allen Weisselberg still retain that same authority
 20 that it transitioned to in January 2017?
 21 A No, he does not.
 22 Q Why did that change?
 23 A Because some legal issues he got himself into, so that
 24 switched and I became the trustee.
 25 Q Does Allen Weisselberg still work at the Trump

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1 Organization?
 2 A No.
 3 Q When did Allen Weisselberg stop working for the Trump
 4 Organization?
 5 A I don't know the exact date.
 6 Q Can you approximate the year in which Allen Weisselberg
 7 stopped working for the Trump Organization?
 8 A Probably within the last two years. I'm not sure
 9 exactly what the date was, so.
 10 Q Was there a specific event that occurred that marked
 11 the basis for Mr. Weisselberg's termination from the Trump
 12 Organization?
 13 A The specific event could be his indictment.
 14 Q So your testimony as you sit here today is because
 15 Mr. Weisselberg was indicted at that time his position at the
 16 Trump Organization was terminated?
 17 A His position wasn't terminated, but that role as
 18 trustee was.
 19 Q And just so that I'm clear, you're referring to a role
 20 of trustee. Was that a job assignment or was that something
 21 else?
 22 A I'm not sure I understand the difference.
 23 Q You don't understand the difference between serving the
 24 Trump Organization in an employment role and serving as a
 25 trustee over a trust?

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1 A Well, our obligations as trustee were to serve the
 2 beneficiary of the trust. That was my father. That was similar
 3 perhaps to our jobs before. I imagine there is difference in
 4 nuance to that.
 5 Q Okay. You said that Mr. Weisselberg was not
 6 terminated. What is your understanding of how Mr. Weisselberg
 7 ended his employment relationship with the Trump Organization?
 8 A I don't know the exact details.
 9 Transcript continues on the following page...

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1 Q Did he retire?
 2 A No.
 3 Q Did you ask him to leave?
 4 A I did not.
 5 Q Did your brother ask him to leave?
 6 A I'm not sure.
 7 Q You have no knowledge as you sit here today as to the
 8 reason why Mr. Weisselberg is no longer employed by the Trump
 9 Organization?
 10 A I have no knowledge of the specifics of how it
 11 happened, so I was not involved, so I can't tell you.
 12 Q What is your general knowledge?
 13 A He is no longer working at the Trump Organization.
 14 MS. HABBA: I'm just going to object. I think she
 15 mischaracterized his testimony, first of all. Secondly, we
 16 are now going down a rabbit hole of the same question asked
 17 seven different ways.
 18 THE COURT: Sustained. Let's move on.
 19 MS. FAHERTY: Okay.
 20 Q Did Donald J. Trump have any role in decision making at
 21 the Trump Organization between January 20, 2017 and January 20,
 22 2021?
 23 A No.
 24 Q How about since January 20, 2021?
 25 A Since January, I'm sure he made some decisions, yes.

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1 Q When did his ability -- when did he resume making
 2 decisions at the Trump Organization after the January 20, 2021
 3 date?
 4 A I don't specifically recall.
 5 Q Sometime shortly thereafter or was it just yesterday?
 6 A I don't know.
 7 MS. FAHERTY: 1330.
 8 Your Honor, I'm handing to the witness -- I've
 9 marked as PX-1330. I'm going to ask the witness to take a
 10 look at it and then I'll ask a few questions before I move
 11 to admit this exhibit.
 12 THE COURT: Five-minute warning.
 13 (Witness reviewing document.)
 14 A Okay.
 15 Q Do you recognize this document, Mr. Trump?
 16 A I don't.
 17 Q I'll ask you a few questions.
 18 Did you receive power of attorney over certain of Mr.
 19 Donald J. Trump's affairs in or about March of 2017?
 20 A Yes.
 21 Q The document in front of you, you can see on page one,
 22 it says, "This is a Power of Attorney New York Statutory Short
 23 Form," right?
 24 A Yes.
 25 Q You could see the front page, there are some cautions

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1 issued to the principal.
 2 Do you have any understanding as to what a principal
 3 would be in a power of attorney short form?
 4 A None that I recall at this time. Though, I may have
 5 been briefed.
 6 Q Fair to say that the principal -- if we turn to
 7 the -- page 6 of 8, looking at the signature block where
 8 there's a signature and acknowledgment section --
 9 A Yes.
 10 Q -- there's the word "PRINCIPAL" in capital letters.
 11 You see that there?
 12 A Yes.
 13 Q Do you recognize the signature that is beside that?
 14 A I do.
 15 Q Whose signature do you recognize that to be?
 16 A It's my father's.
 17 Q So fair to say that this document, if you don't have a
 18 specific understanding, but this document reflects that the
 19 principal would be Donald J. Trump, yes?
 20 A Yes.
 21 Q Okay. So on the front page, we have some warnings to
 22 the principal, your father, correct?
 23 A Yes.
 24 Q Page two, there is a Subsection B, drawing your
 25 attention to that there. "Designation of agents," do you see

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1 that?

2 A I do.

3 Q It states, "I, Donald J. Trump, having an address at

4 1600 Pennsylvania Avenue, N.W. Washington, D.C. 20500," that was

5 his address in Washington at the White House, yes?

6 A Yes.

7 Q So from the White House, he hereby appointed. Is that

8 your name there, "Donald J. Trump, Jr."?

9 A It is.

10 Q Is that your brother's name, Eric Trump, yes?

11 A Yes.

12 Q Each of you having an address, "care of the Trump

13 Organization, 725 Fifth Avenue, New York, New York 10022 as my

14 agents." You see that?

15 A I do.

16 Q And the Trump Organization at 725 Fifth Avenue, New

17 York, New York, that was the same address you gave when you gave

18 a business address at the beginning of your testimony here, yes?

19 A Yes.

20 Q And that's, again, affiliated with the umbrella entity,

21 the Trump Organization, right?

22 A Yes.

23 Q And that marking underneath that looks like a quick D,

24 is that your father's initial?

25 A It is.

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1 Q And he has designated you as his agents in the

2 Subsection B?

3 A Yes.

4 Q And then if we turn to the next page, Subsection F, it

5 says, "The grant of authority." Do you see that header there?

6 A I do.

7 Q And then the explanation paragraph says, "To grant your

8 agent some or all of the authority below, either (1) initial the

9 bracket at each authority you grant or (2) write or type the

10 letters of each authority you grant on the blank line at (P) and

11 initial the bracket at (P). If you initial P, you did not need

12 to initial the other lines." And do you see he's indicated next

13 to the "(P)?"

14 A I do.

15 Q Fair to say that the grant of authority included A,

16 real estate transactions?

17 A Yes.

18 Q And D, banking transactions?

19 A Yes.

20 Q And so the grant of authority you had with this power

21 of attorney was for real estate transactions and banking

22 transactions, yes?

23 A Yes.

24 Q And under "modifications," it says, "The authority

25 granted hereunder is solely with respect to the execution and

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1 delivery of certifications and similar documentation (including,

2 without limitation, compliance certificates) in connection with

3 existing financing in which Donald J. Trump is a guarantor."

4 Yes?

5 A Yes.

6 Q And you understood you had this authority, correct?

7 A Yes.

8 Q And then drawing your attention to page 7 of 8 of this

9 document, Section O says, "Agent's signature and acknowledgment

10 of appointment." Is that your signature there as agent?

11 A Yes.

12 Q And then the signature just below yours, do you

13 recognize that signature?

14 A I think so.

15 Q Whose signature do you recognize it to be?

16 A I believe it's my brother's.

17 MS. FAHERTY: We can take a break now.

18 Put that down, Mr. Trump.

19 THE COURT: As usual, we will take a 10-minute

20 break that ends in 15 minutes. See you all at 3:42. I'll

21 direct the witness not to talk to anybody about this case or

22 his testimony or anything related to it while he's still a

23 witness.

24 THE WITNESS: Thank you, your Honor.

25 (Witness exits the stand.)

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1 (Whereupon, a recess was taken.)

2 THE COURT OFFICER: All rise. Part 37 is back in

3 session. Please be seated and come to order.

4 (Witness resumes the stand.)

5 THE COURT: Let's continue.

6 MS. FAHERTY: Your Honor, I did not move to admit

7 PX 1330 at the end of my last inquiry. I so move to admit

8 now.

9 THE COURT: Granted. It is in evidence.

10 (Whereupon, the Document was marked in evidence as

11 Plaintiff's Exhibit 1330.)

12 MS. FAHERTY: Thank you, your Honor.

13 Q We've spoken a little bit about it, Mr. Trump, but

14 you're familiar with the Donald J. Trump Revocable Trust,

15 correct?

16 A Yes.

17 Q And what do you understand the Donald J. Trump

18 Revocable Trust to be?

19 A It was the trust that governed my father's assets

20 especially while he was president.

21 Q It said -- it contains for the exclusive benefit of

22 Donald J. Trump, his assets, yes?

23 A Yes.

24 THE COURT: Hold on. We finally have an

25 opportunity to ask a real trustee. Is it revocable or

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1 revocable?

2 THE WITNESS: Your Honor, its's a good question

3 that I actually don't have the answer for, so it is -- I

4 actually used both and I'm not sure actually which is

5 correct.

6 THE COURT: Ms. Faherty has sort of started us off

7 on revocable, right? Is that how you pronounce it?

8 THE WITNESS: Revocable is easier, it seems.

9 THE COURT: That's what we'll do.

10 MS. FAHERTY: Riveting.

11 Q And you are, in fact, a trustee of the Donald J. Trump

12 Revocable Trust?

13 A I'm not sure what this is. I only understand

14 revocable. Yes. Yes, I am.

15 Q Do you recall when you first became appointed a trustee

16 of the trust? If I say "the trust," would you understand that

17 to mean the trust that we're talking about?

18 A Yes, ma'am.

19 Q Thank you.

20 Do you recall when you became a trustee of that trust?

21 A Not specifically, no.

22 Q In or around the time period that you can recall?

23 A Probably before my father assumed the presidency.

24 Q In or around January of 2017, does that seem fair?

25 A Sounds about right.

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1 Q We'll get some documents. Maybe that'll help.

2 MS. FAHERTY: Your Honor, PX 769 is already in

3 evidence. We have it on the screen here.

4 THE COURT: Okay.

5 Q Mr. Trump, taking a look at this document, you can see

6 at the top it is the Donald J. Trump Revocable Trust and it

7 states as a subheading, "Acceptance of Donald J. Trump, Jr. as

8 trustee of the Donald J. Trump Revocable Trust."

9 Do you see that there?

10 A I do.

11 Q And do you recognize the signature at the bottom of

12 this page?

13 A I believe it's mine.

14 Q And the date, do you recognize that that date,

15 January 19, 2017, to be in or about the time at which you became

16 the trustee of the trust?

17 A Yes.

18 Q Are you familiar with the Attorney General's complaint

19 in this case?

20 A Vaguely, yes.

21 Q Do you recall filing an answer and then an amended

22 answer to the complaint filed by the Attorney General in this

23 case?

24 A I recall my attorneys filing it, but generally

25 speaking, yes.

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1 Q You are aware that an answer was filed on your behalf,

2 yes?

3 A Yes, I am.

4 Q And no -- you believe that that answer contains

5 truthful representations of your actual position in responding

6 to the Attorney General's pleadings in this case, yes?

7 A I do.

8 Q I'll represent to you that paragraph 38 at the

9 complaint states that "Donald Trump, Jr. and Allen Weisselberg

10 were trustees of the Donald J. Trump Revocable Trust until Mr.

11 Weisselberg resigned in June of 2021. On information and belief

12 Donald Trump, Jr. is now the sole trustee of the Donald J. Trump

13 Revocable Trust. Donald Trump, Jr. is named in both his

14 personal capacity and as the trustee of the Donald J. Trump

15 Revocable Trust." That was the allegation.

16 And your answer submitted, as you've just stated by

17 your attorneys, is that as to paragraph 38, "Defendant denies

18 the allegations therein except admits only that he is the sole

19 trustee and was named in this action in his personal capacity

20 and that Mr. Weisselberg was removed as a trustee in 2021."

21 Did you review any documents in order to prepare that

22 answer to the complaint?

23 A I don't recall.

24 Q Do you have any basis to deny that answer?

25 A I don't know.

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1 THE COURT: You mean to deny the answer or deny the

2 question?

3 MS. FAHERTY: To rebut the answer that he filed in

4 response.

5 THE COURT: To rebut, okay.

6 A You have to ask the attorneys. I don't know.

7 Q I'm asking you do you have any basis to rebut that

8 answer?

9 A Not that I recall.

10 Q Any reason to believe that the answer your attorneys

11 filed in regards to the Attorney General's pleadings -- any

12 reason to believe that it contains false or incorrect responses?

13 A No.

14 Q Can you explain the basis for that answer to me?

15 A You'd have to ask them.

16 Q You have no basis as to who the trustees were and Mr.

17 Weisselberg's resignation in June of 2021?

18 A I'm not sure I understand the question.

19 Q Okay. Let's look at a document.

20 MS. FAHERTY: Your Honor, our next document is PX

21 1016. It is already in evidence. I'm putting it on the

22 screen here. It is a multi-page document. There are one,

23 two, three pages of this document.

24 Q This document, can you see at the very top there, it

25 says -- it is a reference to the trust again, yes?

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1 A Yes.

2 Q And then the subheading on that particular document is

3 "Appointment and Acceptance of Trustee." Do you see that at the

4 top there?

5 A Yes.

6 Q And do you see in the middle of the page, there is

7 language -- I'll just draw your attention to the very first

8 "whereas" clause. It states, "On April 7, 2014, Donald J.

9 Trump," that's your father, correct?

10 A Yes.

11 Q It identifies him as the settlor and trustee. You see

12 that there?

13 A Yes.

14 Q Okay. So "Mr. Trump as settlor and trustee entered

15 into an agreement of trust and by amendments," those dates are

16 there, and then there are a number of "whereas" clauses. Do you

17 see those?

18 A Yes.

19 Q If we go further down on the page, you'll see that

20 there's a "whereas" clause that, "Through the trust appointment,

21 Mr. Trump or the settlor appoints himself as trustee under the

22 assignment of trust and accepts such appointment effective as of

23 12:00 p.m. eastern standard time, January 20, 2021."

24 Do you see that in the very last "therefore" clause?

25 A I do.

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1 Q Did you have an understanding that in or about

2 January 20, 2021, your father appointed himself as trustee of

3 the trust?

4 A I'm sorry. What was the date?

5 Q January 20, 2021.

6 A I believe I'm aware of that, yes.

7 Q How did you become aware of that?

8 A Conversations with counsel.

9 MR. ROBERT: I'm just going to object to the

10 witness talking about any conversation with counsel as it is

11 privileged.

12 MS. HABBA: I instruct the witness not to discuss

13 privileged conversations.

14 THE COURT: Okay. Can we let the answer stand, but

15 from now on, we will be very vigilant.

16 So I assume you are aware of the attorney-client

17 privilege.

18 THE WITNESS: I am, sir.

19 THE COURT: So keep that in mind.

20 Q Just turning to the next page of this document,

21 recognize that signature there?

22 A Yes.

23 Q Whose signature is that?

24 A That's my father's.

25 Q And does this indicate to you that between -- at some

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1 point in 2 -- January of 2021, specifically on the 20th of

2 January 2021, Donald J. Trump restored himself as trustee of the

3 trust?

4 A It would appear that way, but I'm not all that well

5 versed.

6 Q What was your role as trustee, if at all, at that time?

7 A I don't recall.

8 Q Did you have a continuous time period serving as the

9 trustee of the Donald J. Trump Revocable Trust from January 2017

10 until present?

11 A I'm not sure. I don't remember.

12 Q No understanding as it relates to this document whether

13 at this particular time in January of 2021 you were still

14 serving as a trustee; is that fair?

15 A I think so.

16 Q Other than the fact that Mr. Trump restored his rights

17 to serve as trustee in January of 2021, what else do you know?

18 Don't tell me about conversations with counsel, but other than

19 that, what do you know about Donald Trump serving as trustee

20 over the trust in January of 2021 and going forward?

21 A Anything to that matter would have been done with

22 counsel, so I don't know. I can't talk about it.

23 Q Other than conversations with counsel, no independent

24 knowledge of Mr. Trump serving as trustee over the trust in

25 January of 2021?

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1 A Right. I would rely on counsel for that kind of stuff.

2 MS. FAHERTY: Your Honor, I handed forward an

3 exhibit marked for identification as PX-1015. It is not in

4 evidence. I am going to ask a few questions before I move

5 to admit.

6 Q Looking at this cover e-mail and I'll just represent to

7 you that this is how the documents attached to this e-mail were

8 produced from the records of the Trump Organization by counsel,

9 so this is from the files of the Trump Organization.

10 Any understanding as to whom Adam Rosen is at the Trump

11 Organization?

12 A He is a lawyer.

13 Q How about Alan Garten? Do you recognize that name?

14 A I do.

15 Q Who is he?

16 A He is our general counsel.

17 Q Are Adam Rosen and Alan Garten both attorneys at the

18 Trump Organization?

19 A Yes.

20 Q Are they still currently employed by the Trump

21 Organization?

22 A They are.

23 Q And this is dated February 22, 2022. You see that

24 there is a subject "trustee documents"?

25 A Yes.

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1 Q And then there are a series of attachments. Do you see
 2 those listed there?
 3 A I do.
 4 Q And I'll represent to you the body of the e-mail which
 5 says, "see attached." There are a number of bullets, one, two,
 6 three, four, five, six. You see them?
 7 A I do.
 8 Q I'll represent to you those six bullets seem to
 9 correspond with the attachments to this message and you'll see
 10 that the first bullet is the resignation of DJT as trustee, yes?
 11 A Yes.
 12 Q And then there's an acceptance of Donald J. Trump, Jr.
 13 as trustee. That's you, correct?
 14 A Yes.
 15 Q Then there is an acceptance of Allen Weisselberg as
 16 business trustee. You see that?
 17 A I do.
 18 Q Do you have any understanding as to what that's a
 19 reference to, a business trustee?
 20 A I don't.
 21 Q Did you have an understanding that after January 20,
 22 2017, Allen Weisselberg's role as a trustee of the trust was to
 23 serve as a business trustee?
 24 A Not that I recall specifically.
 25 Q And then you see that the next bullet is the amendment

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1 to the trust?
 2 A Yes.
 3 Q It states that it is removing AW and Don as trustee.
 4 Do you see that there?
 5 A Yes.
 6 Q Any understanding as to who AW would be?
 7 A Off the top of my head, would probably be Allen
 8 Weisselberg.
 9 Q And any understanding as to who Don is?
 10 A Me.
 11 Q Any understanding that there were trustees other than
 12 you and Allen Weisselberg serving as trustees to the trust?
 13 A Not that I recall.
 14 Q And then there is a document that says, "removal of DJT
 15 as trustee." You see that?
 16 A I do.
 17 Q And then there's lastly an acceptance of Donald J.
 18 Trump, Jr. as trustee. Again, you see that there?
 19 A Yes.
 20 Q Again, that's a reference to you. You're Jr.?
 21 A Yes.
 22 Q Let's turn to page 13 of this document. You'll see in
 23 the bottom there are numbers. It says -- page -- we'll look at
 24 13 of 18. Tell me when you got there or otherwise, we have it
 25 projected on the screen for you.

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1 A I'm here.
 2 Q I will represent to you this corresponds with bullet
 3 five of that cover e-mail, okay. Do you see the very last
 4 "whereas" clause?
 5 A I do.
 6 Q It says, "Pursuant to Sub Article A of Article
 7 Thirteenth of the agreement of the trust, little romanette one,
 8 settlor." Remember that's a reference to Donald J. Trump,
 9 right?
 10 A Yes.
 11 Q "Hereby appoints Donald J. Trump, Jr. as trustee under
 12 the agreement of trust and little romanette two, Donald J.
 13 Trump, Jr. hereby accepts such appointment effective as of
 14 2:30 p.m. eastern standard time, July 7, 2021."
 15 Did you, in fact, restore your position as trustee on
 16 July 7th of 2021 over the trust?
 17 A It would appear so.
 18 Q Turning to the next page, you'll see a signature, a
 19 witness thereof, July 7, 2021. Do you recognize that signature?
 20 A I do.
 21 Q Whose signature is that?
 22 A My father's.
 23 Q If we turn to the next page, recognize that signature?
 24 A That is my signature.
 25 Q That's your signature. So fair to say that as of

D. TRUMP, JR. - PLAINTIFF - DIRECT(MS. FAHERTY) Page 3191

1 July 7, 2021, you were restored as trustee, correct?
 2 A I believe so.
 3 Q Any understanding as to what occurred in January 2021
 4 and July 7, 2021 during which Donald J. Trump had assumed rights
 5 as trustee for that time period?
 6 A Not outside of conversations with counsel.
 7 Q As you sit here today, are you aware of whether there
 8 has been any revocation of the January 20, 2021 appointment of
 9 Donald J. Trump as trustee?
 10 A I'm not sure.
 11 Q As you sit here today, are you aware of whether Donald
 12 J. Trump is, in fact, still serving as a trustee of the trust?
 13 A I don't recall.
 14 MS. FAHERTY: Your Honor, I move to admit PX-1015
 15 into evidence.
 16 THE COURT: Granted. It is in evidence.
 17 (Whereupon, the Document was marked in evidence as
 18 Plaintiff's Exhibit 1015.)
 19 Q I have marked for identification another exhibit. It
 20 is marked as PX-865. It is an e-mail. Take a quick look at
 21 that, Mr. Trump, and I'll just ask you a few questions when you
 22 are ready.
 23 A I can't read it because of that box. Is there anything
 24 that can tell me what's -- what's behind the "per discussion
 25 with" box?

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1 Q Let's look at the underlying document. Do you
 2 recognize the name Christopher Schreiber?
 3 A No.
 4 Q Do you recognize the name Sheri Dillon?
 5 A Yes.
 6 Q Who do you recognize the name Sheri Dillon to be?
 7 A She is tax counsel with Morgan Lewis and was also
 8 trustee counsel and generally speaking worked as a lawyer,
 9 outside counsel for us.
 10 Q When you say she was trustee counsel, is she one of the
 11 attorneys who provided you advice? Don't give me any substance
 12 of conversations, but she provided you advice as to the Donald
 13 J. Trump Revocable Trust?
 14 A I believe she set it up.
 15 Q Other than setting it up, did you understand her to be
 16 one of the outside counsel that provided legal advice as to the
 17 trust?
 18 A Yes.
 19 Q Do you recognize the name Donald Bender?
 20 A I do.
 21 Q Who do you recognize the name Donald Bender to be?
 22 A Donald Bender was a CPA. He worked as Mazars, LP.
 23 Prior to that, I guess Weiser. He was our accountant at the
 24 Trump Organization, outside accountant for decades handling -- I
 25 mean everything, practically everything. They did the audits

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1 for some of our rental buildings, so he was an outside
 2 accountant that we relied heavily on for all of your accounting
 3 needs.
 4 Q Your name is not included in this e-mail, right?
 5 A It is not.
 6 Q Okay.
 7 A I got off of this one.
 8 Q This is a 2017 e-mail between Sheri Dillon -- from
 9 Sheri Dillon to Donald Bender with the subject "confirmation of
 10 trust facts." You see the date on that e-mail as March 7, 2017?
 11 A Yes, ma'am.
 12 Q And let me just clarify. You have no understanding
 13 that Christopher Schreiber was another accountant who worked at
 14 WeiserMazars, do you?
 15 A I don't know that. I've never heard the name, no.
 16 Q But Donald Bender was at Mazars? That's what you
 17 testified to?
 18 A Correct. Donald Bender would have been a point person
 19 for just about anything we did accounting wise.
 20 Q And I heard you to reference that there is a box, the
 21 red box in the upper right-hand corner of this document, yes?
 22 A Yes.
 23 Q That document says, "Per discussion with Sheri Dillon
 24 on 1/8/21 and Adam Rosen, assistant general counsel of the Trump
 25 Organization, on January 9, 2021-no amendments to the trust."

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1 You see that there?
 2 A I do.
 3 Q So does this -- would you agree with me this appears
 4 to be a stamp relating to a 2021 conversation on top of a 2017
 5 e-mail?
 6 A Perhaps it appears that way, but I don't want to
 7 speculate as to something I had nothing to do with.
 8 Q Okay. Do you have any understanding as to a
 9 conversation Sheri Dillon had on January 8, 2021 with Adam
 10 Rosen, counsel of the Trump Organization, on January 9, 2021
 11 regarding no amendments to the trust?
 12 A I have no knowledge of it.
 13 Q Okay. We can put that to the side. Don't tell me the
 14 substance of the conversation, but did you have any
 15 conversations with Ms. Dillon on or about January 8th or
 16 January 9, 2021 with regards to the status of the trust?
 17 A Not to my knowledge, no.
 18 Q Did you have any conversation -- do not tell me the
 19 substance of it -- with Adam Rosen on or about January 8th or
 20 January 9, 2021 with regards to the status of the trust?
 21 A Not that I'm aware of or can recall, no.
 22 Q Okay. And did you have any conversations with anyone
 23 at Mazars on January 8th or January 9, 2021 with regards to the
 24 status of the trust?
 25 A Not that I know of.

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1 THE COURT: Try not to say "okay" after each
 2 answer.
 3 MS. FAHERTY: I did it as a whisper, Your Honor,
 4 but I will do it. I'm sorry.
 5 THE COURT: That was quiet. Other times, it is
 6 more audible.
 7 Q What is your understanding as to the responsibilities
 8 of the trustees over the trust?
 9 A I have an obligation as a fiduciary to function in the
 10 best interest of the beneficiary of the trust.
 11 Q What does that mean?
 12 A Do what's in the best interest of the beneficiary of
 13 the trust.
 14 Q Do you manage the assets of the trust?
 15 A Yes.
 16 Q What are the types of decisions you make as a trustee
 17 of the trust?
 18 A Any of the business decisions related to the ongoing
 19 operating businesses of the trust. If we were working on new
 20 deals, that would fall in there, but we are very limited in
 21 terms of what new deals we were going to do because when my
 22 father assumed presidency, we stopped doing all of the
 23 international deals that was -- it -- primary part of my role
 24 in the organization, but anything and everything.
 25 Q And who do you consult with with regards to the

D. TRUMP, JR. - PLAINTIFF - DIRECT(MS. FAHERTY) Page 3196

1 decisions of the trust as a trustee?

2 A Well, I could have consulted with any number of people

3 in the organization. I mean, you have individual deals that

4 have point people. You're going to talk with them. Many cases,

5 you're talking with counsel. Many cases, you're talking

6 obviously with accounting. So I mean, it could be dozens of

7 people that we're dealing with on a daily basis to make an

8 informed decision about an individual asset.

9 Q I believe you testified that you and Allen Weisselberg

10 for a period of time were both trustees of the trust at the same

11 time, right?

12 A That's correct.

13 Q Until he was removed from serving as a trustee,

14 correct?

15 A That's correct.

16 Q You don't have a specific recollection as to the time,

17 but it was within about one to two years from today, right?

18 A Correct.

19 Q Any other persons serving as a trustee over the trust

20 with you other than the exception we discussed with Mr. Trump

21 appointing himself as a trustee in January of 2021 until

22 July 2021?

23 A Not that I recall.

24 Q How about Eric Trump? Was he ever a trustee over the

25 trust?

Page 3198

1 read back.)

2 (Continued on the next page.)

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D. TRUMP, JR. - PLAINTIFF - DIRECT(MS. FAHERTY) Page 3197

1 A I don't believe he was.

2 Q Did you ever have to consult with Eric Trump in your

3 decisions with regards to the trust?

4 A I would obviously consult with Eric. He was a key

5 point person on many, many deals and operating entities and I

6 trust him explicitly and if I needed to consult with him on

7 issues that he was more well-versed than I would have been.

8 Q And did Eric Trump have any authority to make decisions

9 on behalf of the trust?

10 A He would have had authority to do things within the

11 Trump Organization. I don't know if that gives him authority

12 specifically within the trust, but if he said something that he

13 wanted to do on a project that he was in charge of, I'd have no

14 issue with that and I understand that he would do the

15 appropriate diligence to make that decision and that's how I

16 would base my decision.

17 Q Do you need me to have the court reporter read the

18 question again? I don't think that was responsive.

19 A Please ask it again.

20 MS. FAHERTY: Can I have a readback?

21 MS. HABBA: I think that was perfectly responsive.

22 THE COURT: I thought it was responsive, too, but

23 let's have a readback of the question and the answer, right.

24 MS. FAHERTY: Sure.

25 (Whereupon, the requested portion of the record was

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1 THE COURT: Are you still objecting on grounds of

2 nonresponsiveness?

3 MS. FAHERTY: Confirm for me your understanding

4 Eric Trump did not have any authority to make decisions on

5 behalf of the trust?

6 THE COURT: Is that a different question?

7 MS. FAHERTY: A different question. I'm going to

8 let the answer stand.

9 THE COURT: Okay.

10 A That's correct, I guess, ma'am.

11 Q So focusing on the time period from 2011 to 2020, I

12 heard you just say earlier that you worked on licensing deals?

13 A Yes.

14 Q For the Trump Organization; yes?

15 A Yes.

16 Q How about management deals?

17 A Yes.

18 Q Are those similar to each other?

19 A They can be. They can often overlap, but sometimes a

20 licensing deal may involve licensing the brand to put a Trump

21 building somewhere in the world. That may or may not come with

22 a management deal. A management deal may be if it was a hotel

23 entity. If it was in the United States or if it was in New

24 York, it would likely come with a management deal to operate the

25 building afterwards because we do that. That may not make the

D. Trump, Jr. - Plaintiff - direct (Faherty) Page 3200

1 most sense somewhere else in another part of the world where we
 2 don't have that level of expertise, so there is not a fixed
 3 rule.
 4 Q And what is your role with regard to the management
 5 deals? Again, focusing on the time period 2011 to 2020.
 6 A Just depends on which deals you're talking about.
 7 Q Generally speaking.
 8 A If you're talking about hotel management deals, I would
 9 have been, you know, a point person on getting a lot of those
 10 done.
 11 Q What does that mean?
 12 A I would have been likely the guy in charge of a lot of
 13 those deals, certainly internationally where we were doing a lot
 14 of that kind of, you know, hotel management deals and setting
 15 that up. That would have been something that fell into my
 16 court.
 17 Q Is it a fair characterization that the management deals
 18 would be putting Trump Organization personnel to assist in the
 19 management of a hotel operation even if it wasn't necessarily a
 20 Trump Organization hotel?
 21 A Yes.
 22 Q But it could also include Trump Organization hotels;
 23 yes?
 24 A That's correct. We owned and operated as well as
 25 managed for others.

D. Trump, Jr. - Plaintiff - direct (Faherty) Page 3201

1 Q On licensing agreements what is your role with regards
 2 to licensing agreements?
 3 A Again, I was probably the primary point person for a
 4 lot of our international licensing deals.
 5 Q And what is a licensing deal?
 6 A Developer wants to build a building, they want to know
 7 how to do that better, they want to put the Trump brand on it,
 8 they want to learn to build to that standard, they want to learn
 9 how to value, engineer and create luxury perhaps in a market
 10 where that's not as common. So, you know, again, anything and
 11 everything to take, you know, a building and make it something
 12 befitting our brand.
 13 Q Would it be permitting a third party to use the Trump
 14 name in the course of its business?
 15 A Yes.
 16 THE COURT: I'll ask the interrogator and
 17 interrogatee to talk a bit slower. The report is having a
 18 lot of difficulty keeping up with the rapid fire.
 19 THE WITNESS: I apologize, Your Honor. I moved to
 20 Florida, but I kept the New York pace.
 21 THE COURT: We've noticed.
 22 Q I heard you just say that this could be worldwide.
 23 Fair to say that between these management deals and licensing
 24 deals. Would that be domestic deals; yes?
 25 A Yes.

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1 Q And was there a period of time when that also included
 2 foreign deals?
 3 A Yes.
 4 Q So, for example, did you have any management or
 5 licensing deals in the Asias?
 6 A In what?
 7 Q The Asias?
 8 A The Asian continent? Yes, we did.
 9 Q How about in the Middle East?
 10 A Yes, we did.
 11 Q Would those be considered the foreign deals that you
 12 had?
 13 A We call them international, but yes.
 14 Q And then the domestic deals, that would be here in the
 15 continental United States?
 16 A Correct.
 17 Q Including Hawaii, too?
 18 A Yes.
 19 Q Do you recall how you were compensated for work you
 20 performed on management deals and licensing deals for the Trump
 21 Organization?
 22 A Generally speaking, yes.
 23 Q Describe for me how you were compensated for this work.
 24 A Well, I mean, I'd have to go through each deal, right,
 25 sort of -- it was different, but there was an evolution in our

D. Trump, Jr. - Plaintiff - direct (Faherty) Page 3203

1 compensation where, you know, as we started, you know, seeking
 2 other deals abroad and that -- certainly to have a person with a
 3 last name Trump and a principal in the room help make that
 4 happen and we were branching out from New York quite a bit and
 5 we started taking and getting a small piece of the revenue that
 6 came in from those deals.
 7 Q And I believe earlier today you testified that you were
 8 paid by an entity Trump Payroll Corp; yes?
 9 A For our salary, correct.
 10 Q For salary.
 11 A Yes.
 12 Q Did you receive compensation for your licensing and
 13 management deals separate and apart from the salary you received
 14 from the Trump Payroll Corp?
 15 A If we brought in deals we got a small piece of those
 16 deals as we, you know, brought and signed up new deals and
 17 created revenue for the business, yes.
 18 Q And what was the entity that paid you for those deals?
 19 A I believe it was TTT Holdings.
 20 Q Sorry. Say that again?
 21 A I believe it was TTT Holdings.
 22 Q If I said the name TTT Consulting LLC?
 23 A Maybe that's what it is.
 24 Q Okay.
 25 A It's been awhile.

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1 Q And TTT Consulting LLC, is that an entity by which not
 2 just you, but your siblings Eric and Ivanka, were paid for those
 3 licensing and management deals that you worked on with regards
 4 to the Trump Organization's brands?
 5 A Yes.
 6 MS. FAHERTY: Your Honor, I'm going to hand up to
 7 the witness a document that I've marked for identification
 8 as PX 1259. It's not in evidence yet. I'm going to ask a
 9 few questions and then I'll move to admit.
 10 Q And Mr. Trump, please just take a moment, look at the
 11 document in front of you and when you're ready I will ask you a
 12 few questions.
 13 A Okay.
 14 Q Looking at this cover e-mail --
 15 MR. KISE: Your Honor, Your Honor, sorry, but this
 16 is one of those times I'm just going to object on relevance.
 17 This is one of those times I would expect the Court as it
 18 has done to us to move the government along. I'm not sure
 19 what any of this has to do with TTT Consulting. We've spent
 20 an hour here and we're basically just talking about what
 21 roles he had and who he reported to and some trust documents
 22 and now we're talking about TTT Consulting which last I
 23 checked isn't in the complaint. Maybe it's somewhere in the
 24 850 paragraphs, but I don't see where we're going at all
 25 with this and I would expect the Court as it has done

D. Trump, Jr. - Plaintiff - direct (Faherty) Page 3205

1 repeatedly to the defense to ask them to move it along.
 2 Whether they do or not, I don't know, but I would certainly
 3 expect the same instruction.
 4 THE COURT: Move it along as fast as you can.
 5 MS. FAHERTY: You already told me not to speak so
 6 fast, Your Honor. I'm doing my best.
 7 THE COURT: The substance, move along as fast as
 8 you can.
 9 Q Did you have a moment to look at this document, sir?
 10 A Yes.
 11 Q Looking at the very bottom --
 12 MR. ROBERT: Objection. Relevancy and statute of
 13 limitations.
 14 THE COURT: Well, I don't know what it is yet.
 15 MR. ROBERT: I'm having difficulty hearing
 16 Ms. Faherty. I thought she said move it in.
 17 THE COURT: No, she did not.
 18 MR. ROBERT: If you can talk a little bit louder,
 19 so I could hear it.
 20 MS. FAHERTY: I'm happy to speak louder if that's
 21 helpful.
 22 MR. ROBERT: That would be great.
 23 Q Look at the bottom e-mail, Mr. Trump.
 24 Do you recognize the name Katherine Feigin,
 25 F-e-i-g-i-n?

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1 A Yes.
 2 Q Who do you recognize that name to be?
 3 A My assistant during that time frame.
 4 Q Your assistant at the Trump Organization?
 5 A Correct.
 6 Q Okay. And it's from an e-mail address
 7 Scane-mail@Trumporg.com. Is it your understanding that's an
 8 e-mail from a scanner at the Trump Organization?
 9 A I would imagine so, yes.
 10 Q Okay. And this appears to be a forward without any
 11 message in the body from Ms. Feigin to you. Do you see that?
 12 A Yes.
 13 Q On June 25, 2013 at 2:52 p.m., and in the very top
 14 e-mail, that's your e-mail address at the Trump Organization --
 15 well, that's you, Donald Trump, Jr.; right, in the "from"
 16 column?
 17 A It would appear so.
 18 Q And it's addressed to Jeff McConney, Ivanka Trump and
 19 Eric Trump; yes?
 20 A Correct.
 21 Q Subject is a forward. Nothing else in there; right?
 22 A Correct.
 23 Q You see that there is an attachment to this message
 24 now?
 25 A I do.

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1 Q And then in the body of your message you write, "signed
 2 TTT." Do you see that there?
 3 A I do.
 4 Q Is TTT the entity we were just referring to, TTT
 5 Consulting LLC?
 6 A I believe it is.
 7 Q Okay. And just drawing your attention to the
 8 attachment again, I'll represent to you that this is the
 9 document produced from the Trump Organization's files.
 10 This is the attachment that was contained -- attached
 11 to that message. Do you recognize this document?
 12 A Not specifically, but I have no reason to believe it's
 13 not a real document.
 14 Q Okay. And there is a signature block at the bottom
 15 right hand corner of this page? Do you see it says "okay" and
 16 then it looks like that "D" symbol your dad initials with?
 17 A Yes.
 18 Q You recognize that to be an "okay" and an initial from
 19 your father, Donald J. Trump?
 20 A Yes.
 21 Q And the heading on this document says "Donald J. Trump
 22 et al., Schedule of Fees due to TTT Consulting LLC for the
 23 period April 1, 2013 to June 21, 2013." Do you see that?
 24 A Yes.
 25 Q And then there is a series of columns on this document.

PEOPLE OF THE STATE OF NEW YORK v. DONALD J. TRUMP, et al.

M. MCCARTY, DONALD TRUMP, JR. November 1, 2023

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1 The first is an entity column. You see it on there?
 2 A Yes.
 3 Q So DT Marks & Baku LLC?
 4 A Yes.
 5 Q And then DT Dubai Wealth Manager LLC?
 6 A Yes.
 7 Q It goes down THC. Is that Trump Hotel Collection?
 8 A Which one is that?
 9 Q THC, is that a reference to Trump Hotel Collection?
 10 A Well, specifically to Vancouver Management, but yes,
 11 that was likely Trump Hotel Collection.
 12 THE COURT: Yes, Mr. Kise.
 13 MR. KISE: This is a very interesting sojourn into
 14 a decade old TTT document, but I just have to object on this
 15 entire line of questioning. It's completely irrelevant to
 16 this case. Is there any connection that's going to happen
 17 at any point?
 18 THE COURT: Ms. Faherty, what is the relevance?
 19 MS. FAHERTY: Your Honor, there are licensing deals
 20 and management deals. First, the entities that are
 21 identified here in this column are the entities for which
 22 receive licensing fees and management fees which feed into
 23 the Statement of Financial Condition. It is a category
 24 within the Statement of Financial Condition and the three
 25 children or adult children Eric Trump, Mr. Trump, Jr. on the

D. Trump, Jr. - Plaintiff - direct (Faherty) Page 3209

1 stand right now, and Ms. Ivanka Trump, who we will appear
 2 here later next week, all were members of TTT Consulting LLC
 3 that received the benefits for the deals they secured abroad
 4 that fed in the Statement of Financial Condition.
 5 THE COURT: And the relevance of that?
 6 MR. KISE: Right.
 7 MS. FAHERTY: It all feeds into the statement of
 8 financial condition. It's a category of the Statement of
 9 Financial Condition, Your Honor.
 10 THE COURT: Not everything in the statements of
 11 financial condition is relevant or at issue.
 12 MS. FAHERTY: It's the transactions of third
 13 parties. I mean, it has been apart of our case, Your Honor.
 14 MR. KISE: I think everything has been apart of
 15 their case.
 16 MS. FAHERTY: You don't think anything has been
 17 apart of our case as well as everything has been apart of
 18 our case. I know you don't like it when certain questions
 19 come in, but I'd move faster if I would be permitted to ask
 20 my questions.
 21 MR. KISE: If you would stick to relevant topics,
 22 certainly but this is ten years ago a distribution sheet for
 23 consulting deals with no plausible connectivity to anything
 24 that's at issue here.
 25 MS. FAHERTY: For which Donald Trump reviewed the

D. Trump, Jr. - Plaintiff - direct (Faherty) Page 3210

1 spreadsheet of the fees, saw them, approved of them.
 2 MS. HABBA: Now you're testifying, Colleen.
 3 MS. FAHERTY: I am not. I got him to testify as to
 4 the signature on this page. You know you don't like it when
 5 good evidence comes in, but please, allow me to continue.
 6 MR. ROBERT: There is no reason to raise your
 7 voice, Ms. Faherty. There is no way compensation paid or
 8 whatever is here showing to Mr. Trump on the stand his
 9 brother or his sister flows into the Statement of Financial
 10 Condition. It's apples and oranges. It's completely
 11 irrelevant and I agree that this line of questioning should
 12 end.
 13 THE COURT: Well, let me go back to Ms. Faherty.
 14 I understand you're saying these figures feed into
 15 this the Statement of Financial Condition. So what. Not
 16 everything -- am I correct not everything that fed into the
 17 any Statement of Financial Condition is relevant or am I
 18 missing something?
 19 MS. FAHERTY: No, Your Honor. You're not missing
 20 anything. You've appropriately heard me to say that this
 21 was one aspect of financial information contained on the
 22 Statement of Financial Condition. I'm going to continue
 23 asking, if you'll allow it, about the foreign deals, several
 24 of those are listed on here, the foreign deals that were
 25 represented to have ceased to exist. We have testimony from

D. Trump, Jr. - Plaintiff - direct (Faherty) Page 3211

1 other witnesses that have already come in as to whether
 2 those foreign deals were actually reflected in the Statement
 3 of Financial Condition. I think I'm allowed a little bit of
 4 room, Your Honor, to continue.
 5 And also, just noting again this was reviewed by
 6 and approved by Donald J. Trump with the numbers and figures
 7 on this particular document.
 8 MS. HABBA: Your Honor, I'm just going to state one
 9 objection as the President's attorney. He will be here on
 10 Monday. We have Donald Trump, Jr. on the stand.
 11 THE COURT: Objection overruled without prejudice.
 12 I see possible relevance at this point. I hope it will be
 13 clearer later on.
 14 MS. FAHERTY: I have two more questions on this
 15 document and we'll move along.
 16 Q So in this document I was starting to ask there is a
 17 column for entities; right?
 18 A Yes.
 19 Q And then the categorization of where that deal location
 20 is in that second column. You see that there?
 21 A Correct.
 22 Q And there is a third column, a fee received for those
 23 particular transactions; yes? That's included in there?
 24 A Correct.
 25 Q Those are redacted line for "fees paid to Daewoo." Any

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1 understanding about that?

2 A Vaguely.

3 Q Then there is "amount subject to fee;" right?

4 A Yes.

5 Q And then you have a column "fees due to TTT." You see

6 that in there?

7 A Yes.

8 Q And then it's split amongst DJT, Jr., Ivanka and Eric;

9 yes?

10 A Yes.

11 Q We can move on.

12 MS. FAHERTY: Your Honor, I move into evidence PX

13 865 and 1259. Those are the prior two exhibits we just

14 discussed.

15 MR. ROBERT: Objection. Statute of limitations and

16 relevance.

17 THE COURT: Overruled.

18 MS. FAHERTY: Thank you, Your Honor.

19 (Whereupon, the items previously referred to are

20 received and marked Plaintiff's Exhibit Numbers 865 & 1259

21 in evidence.)

22 Q So with regards to the deals that TTT Consulting LLC

23 paid you for, do you recall the way in which you reported back

24 to the Trump Organization that those management or licensing

25 deals had been confirmed?

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1 A I don't specifically recall, ma'am.

2 Q Would there have been a contract that was signed with

3 whatever the third party was?

4 A Of course.

5 Q Any other way in which you may have reflected that

6 there were confirmed deals whether they were management or

7 licensing?

8 A Conversations, but obviously everything would have been

9 contractual, right. You're not doing a deal on a handshake

10 anymore.

11 Q All right. Let's look at the Statement of Financial

12 Condition for June 30, 2017.

13 MS. FAHERTY: Your Honor, this is already in

14 evidence as PX 755.

15 Q Mr. Trump, a court officer will hand it to you, but

16 I'll also represent to you it's on the screen. You can follow

17 along at either. Do you recognize this document, sir?

18 A No.

19 Q Did you ever perform work on --

20 MS. FAHERTY: Excuse me, Your Honor.

21 Q Did you ever perform work on the Donald J. Trump

22 Statement of Financial Condition for any year?

23 A Not that I recall, no.

24 Q No specific knowledge, sir?

25 A No.

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1 THE COURT: That was a negative question with an

2 ambiguous answer.

3 THE WITNESS: I have no specific knowledge, no.

4 THE COURT: That answer is not ambiguous.

5 Q Can we turn to the second page of this document?

6 A Yes.

7 Q The second page is an "Independent Accounts'

8 Compilation Report." In the opening paragraph it states:

9 "The trustees of the Donald J. Trump Revocable Trust

10 dated April 7th 2014 as amended on behalf of Donald J. Trump are

11 responsible for the accompanying Statement of Financial

12 Condition as of June 30, 2017 and the related notes to the

13 financial statement in accordance with accounting principles

14 generally accepted in the United States of America."

15 If we go down to the bottom of the page you'll see it

16 as dated October 30, 2017. Do you see that?

17 A I do.

18 Q It's signed by WeiserMazars. This is WeiserMazars'

19 representation that this Statement of Financial Condition was

20 prepared at the responsibility of the Donald J. Trump Revocable

21 Trust trustees. Is it your testimony that this statement

22 contained in the Statement of Financial Condition does not

23 include you, Donald Trump, Jr.?

24 A I don't know. I signed off on a document that Mazars

25 prepared with intimate knowledge and as a trustee I have an

D. Trump, Jr. - Plaintiff - direct (Faherty) Page 3215

1 obligation to listen to those who are expert -- who have an

2 expertise of these things. So I trust in Allen Weisselberg who

3 is an accountant. I trust Mazars who is a CPA and a Big 5

4 accounting firm to put together a document of this nature.

5 So if they put something in, I wasn't working on the

6 document, but if they tell me it's accurate based on their

7 accounting assessment of all of the material -- and, again,

8 Mazars, you know, when you look at Trump Park Avenue they did

9 the tax return for the condominium that we no longer necessarily

10 even own. We may have a couple units left, but these people had

11 an incredible intimate knowledge and I rely on them.

12 MS. FAHERTY: Your Honor, I move to strike that

13 response.

14 THE COURT: Can you read the question back, please?

15 (Whereupon, the requested portion of the

16 proceedings was read back by the court reporter.)

17 THE COURT: I'll strike the answer because it goes

18 all over the place. I don't think the question is that

19 clear.

20 MS. FAHERTY: Okay.

21 I won't re-read this first.

22 Can you move up, Ashley, to the first sentence?

23 Q "WeiserMazars have made a representation as to whom is

24 responsible for this Statement of Financial Condition." You see

25 that statement there?

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1 A Yes.

2 Q Is it your -- is it your testimony that you are not

3 involved --

4 THE COURT: It's a negative. Can't you just ask

5 him if he was responsible?

6 MS. FAHERTY: Your Honor, I did ask him if he was

7 involved in the preparation of the Statement of Financial

8 Condition. I'm now asking a question as to this statement

9 if he understands if he is not included in this statement.

10 A I'm not included in this statement or I am included in

11 the statement?

12 Q Are you a trustee of the Donald J. Trump Revocable

13 Trust?

14 A I am.

15 Q As of October 30, 2017?

16 A October 30, 2017? I believe by then I would have been,

17 yes.

18 Q Did you work on the Statement of Financial Condition

19 for June 30, 2017 for Donald J. Trump?

20 A I did not. The accountants worked on it. That's what

21 we pay them to do.

22 THE COURT: Five-minute warning.

23 Q I'll draw your attention to page 21 of 24 of this

24 document, footnote five, "Real Estate Licensing Developments."

25 A Yes.

D. Trump, Jr. - Plaintiff - direct (Faherty) Page 3217

1 Q Turning your attention to the second paragraph. The

2 second sentence states that "the estimated current value of

3 \$246 million was based on an assessment made by the trustees in

4 conjunction with their associates and outside professionals of

5 the cash flow that is expected to be derived from these

6 associations as their potential is realized."

7 You did not provide this estimated current value of

8 \$246 million as is represented in this paragraph here; correct?

9 A I didn't give them a value of \$246 million, but I could

10 have sat there and gone through each one of the deals

11 individually with Allen Weisselberg, with Jeff McConney, with

12 Donald Bender and given them an idea of what I believe the cash

13 flow coming from those deals would be worth not even knowing

14 that it was for the purpose of this. So I could have certainly

15 partaken and I probably would have had the most intimate

16 knowledge about those deals, but it doesn't mean that I used

17 that to put this together. They did that and so I could have

18 very well been involved in inferring that number but not

19 specifically know that I was working for that purpose.

20 They could have asked me on any given day what some

21 deal was going to produce and, you know, again, for a lot of the

22 deals on that list I would have been the primary point person

23 and had the most intimate knowledge and I could have given them

24 that answer but not known it was used to compile in this, but,

25 correct. Meaning, I could have discussed the details of a deal

D. Trump, Jr. - Plaintiff - direct (Faherty) Page 3218

1 which they would then infer is going to generate X number of

2 revenue. They may have done that a hundred times with me to get

3 a number but I may not have known that it was going to be used

4 in aggregate for the Statement of Financial Condition so that --

5 I mean --

6 Q I know you said you could have. What is your specific

7 recollection as to this paragraph valuing the \$246 million

8 figure under sub point five, "real estate licensing

9 developments" contained in the 2107 Statement of Financial

10 Condition?

11 MR. ROBERT: Objection, Your Honor.

12 THE COURT: Overruled.

13 A I don't recall. I don't remember.

14 MR. KISE: Your Honor.

15 THE COURT: One or two minutes.

16 MR. KISE: So I just want to understand something.

17 PX 1259 which was the document we spent so much time

18 debating, the 2013 TTT Consulting document, is this now the

19 connection that's being drawn between -- this was admitted

20 subject to connection based on your prior statements that

21 the relevance wasn't completely clear, but you think it was

22 going to become clear. So I --

23 THE COURT: Well, I think it became clear, so.

24 MR. KISE: Well, this is 2013 and this is 2017. So

25 I'm just wondering is this is what Ms. Faherty is drawing is

D. Trump, Jr. - Plaintiff - direct (Faherty) Page 3219

1 the connection. She said she was going to connect this up,

2 so I'm just trying to figure out whether it's this line of

3 questioning or there is some line of questioning that

4 relates to the 2013 Statement of Financial Condition.

5 THE COURT: Can you answer that?

6 MS. FAHERTY: I also think his very long extended

7 answer provided plenty of a connection as to that particular

8 document. I understand if they want to object to statute of

9 limitations, but I have proved it up, Your Honor. I still

10 stand by the admission.

11 MR. KISE: Your Honor, we've gone completely

12 through the looking glass, completely, fully. This is a

13 2013 document. 1259 is a 2013 document and this is a 2017

14 Statement of Financial Condition. What the two have to do

15 with one of another other than in the most general sense I'm

16 not sure, but I would very much object to the fact that

17 there's been a connection.

18 THE COURT: Well, is there a connection and if so,

19 what is the connection?

20 MS. FAHERTY: The connection is as it relates to

21 the work he performed for TTT.

22 Q At any point did you stop providing work for TTT

23 Consulting LLC?

24 A Well, we stopped doing a lot of our international

25 deals when my father assumed the presidency because we weren't

D. Trump, Jr. - Plaintiff - direct (Faherty) Page 3220

1 -- we voluntarily chose not to do that so as not to create a
2 conflict.
3 Q TTT Consulting LLC?
4 A We wouldn't do any new deals, so those deals would have
5 fallen under the purview of TTT.
6 Q And your father assumed the presidency in 2017; yes?
7 A Correct.
8 Q And you still maintained domestic deals; yes?
9 A We maintained existing deals that you couldn't just
10 back out of if you had contractual obligations to.
11 Q Do you still receive payment from TTT Consulting LLC?
12 A I don't actually know.
13 Q You have no knowledge as you sit here today what, if
14 any, distributions you receive from TTT Consulting LLC?
15 MR. KISE: Objection. Relevance.
16 A Not really no.
17 THE COURT: Objection. Ground?
18 MR. KISE: Relevance today?
19 THE COURT: Overruled, but he did answer. It's
20 asked and answered. You asked him twice do you remember or
21 did he have deals.
22 MS. FAHERTY: I think we said foreign deals and I
23 went to domestic deals. There was the distinction there,
24 Your Honor, because as you can see in this particular
25 document which --

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1 THE COURT: Objection overruled. I see the
2 connection. We'll see you all tomorrow at 10 o'clock.
3 MS. FAHERTY: Thank you, Your Honor.
4 THE WITNESS: Thank you, Your Honor.
5 THE COURT: I'll order the witness again don't
6 discuss this case or your testimony or anything related to
7 it while you're still a witness which will continue until
8 tomorrow.
9 THE WITNESS: Yes, sir.
10 THE COURT: Thank you.
11 (Whereupon, the trial proceedings are adjourned to
12 Thursday, November 2, 2023 at 10:00 a.m.)
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PEOPLE OF THE STATE OF NEW YORK v. DONALD J. TRUMP, et al.

M. MCCARTY, DONALD TRUMP, JR. November 1, 2023

Table with 5 columns: Dollar amounts (\$), Alphabetical (A), and various legal terms (act, acted, action, activity, actual, adult, advice, advise, AFC, AFCs, affairs, affiliated, affirm, afford, afternoon, afterwards, AG, again, additional, addressed, adequacy, adequately, ADJ, accused, adjourned, adjusted, Administration, admission, admit, act, acted, action, activity, actual, adult, advice, advise, AFC, AFCs, affairs, affiliated, affirm, afford, afternoon, afterwards, AG, again, additional, addressed, adequacy, adequately, ADJ, accused, adjourned, adjusted, Administration, admission, admit, Agent's, aggregate, ago, agree, agreed, agreement, agreements, ahead, airplanes, al, Alan, ALEX, ALINA, allegation, allegations, ALLEN). Each term is followed by a list of associated page numbers.

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In The Matter Of:
PEOPLE OF THE STATE OF NEW YORK v.
DONALD J. TRUMP, et al.

DONALD TRUMP, JR., ERIC TRUMP
November 2, 2023

NICOLE C. ROBINSON

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1 SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF NEW YORK : CIVIL TERM : PART 37
 2 ----- X
 3 PEOPLE OF THE STATE OF NEW YORK, BY
 LETITIA JAMES, ATTORNEY GENERAL OF
 THE STATE OF NEW YORK,
 4
 Plaintiff,
 5
 Index No.
 6 -against- 452564/2022
 7 DONALD J. TRUMP; DONALD TRUMP, JR.; ERIC TRUMP;
 IVANKA TRUMP; ALLEN WEISSELBERG; JEFFREY MCCONNEY;
 8 THE DONALD J. TRUMP REVOCABLE TRUST; THE TRUMP
 ORGANIZATION, INC.; TRUMP ORGANIZATION, LLC;
 9 DJT HOLDINGS, LLC; DJT HOLDINGS MANAGING MEMBER;
 TRUMP ENDEAVOR 12, LLC; 401 NORTH WABASH VENTURE,
 10 LLC; TRUMP OLD POST OFFICE, LLC; 40 WALL STREET,
 LLC.; AND SEVEN SPRINGS, LLC,
 11
 Defendants. ----- X
 12 Supreme Courthouse
 60 Centre Street
 New York, New York
 November 2, 2023
 13
 B E F O R E:
 14 HONORABLE ARTHUR F. ENGORON,
 Justice, Supreme Court
 15
 16
 17
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 24 SHERIEF GABER, ESQ.
 25 ALEX FINKELSTEIN, ESQ.

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PROCEEDINGS

1 THE COURT OFFICER: All rise. Part 37 is now in
 2 session. The Honorable Judge Arthur Engoron presiding.
 3 Make sure all cellphones are on silent. Laptops and
 4 cellphones will be permitted, but only to members of the
 5 press. There's absolutely no recording or photography of
 6 any kind allowed in the courtroom. Now, be seated and come
 7 to order.
 8 THE COURT: There is no photography allowed in the
 9 courtroom, but we're going to let in the photographers now.
 10 (Whereupon, there was a pause in the proceedings.)
 11 THE COURT: I understand we have at least one
 12 housekeeping matter about three witnesses.
 13 MR. WALLACE: Certainly, Your Honor. We just noted
 14 our objection to defendant's plan to call three witnesses,
 15 former and current Deutsche Bank employee, by videotaped
 16 deposition because the witnesses are amenable to subpoena in
 17 New York.
 18 THE COURT: What is the defendant's current
 19 position and intention?
 20 MR. ROBERT: We will be talking to their lawyers as
 21 we were informed. As we've been talking to their lawyers in
 22 the past, they said the witnesses will be unavailable, but
 23 we'll continue to speak with them and report back what we
 24 learn.
 25 THE COURT: Okay. There's unavailable and there's

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 Senior Court Reporters

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PROCEEDINGS

1 unavailable. So they can testify in person like --
 2 MR. ROBERT: Two of them are definitely out of
 3 state. The third is, as I understand it, a resident of New
 4 York State, but we had been told previously may be
 5 unavailable, but we'll confirm all that.
 6 THE COURT: All right. Just let us know.
 7 MR. ROBERT: Yes. Thank you, Your Honor.
 8 MR. WALLACE: I would just note that we agree, as
 9 we note in our letter, that two witnesses are out of state.
 10 One is still a current Deutsche Bank employee and to our
 11 view is amenable to subpoena through the bank and the other
 12 one is employed in New York and so is regularly appearing in
 13 Manhattan to work at Morgan Stanley.
 14 MR. ROBERT: Our view, and we don't need to belabor
 15 the issue, we argued this last Friday with the deal with Ms.
 16 Trump's subpoena. We're dealing with the lawyers for the
 17 parties. They'll let us know their position. If they want
 18 to get involved at some point, they will, but we will report
 19 back in due course.
 20 THE COURT: Perfect. Shall we resume the
 21 testimony?
 22 MS. FAHERTY: Yes, Your Honor.
 23 We recall Mr. Donald J. Trump, Jr., please.
 24 (Witness resumes the stand.)
 25 THE COURT: Let's continue.

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1 MS. FAHERTY: Thank you, Your Honor.
 2 DONALD TRUMP, J.R., a witness called by the
 3 Plaintiff, after having been previously sworn by the Clerk of
 4 the Court, took the witness stand and testified as follows:
 5 Q Good morning, Mr. Trump?
 6 A Good morning.
 7 Q Did you have any conversations regarding your testimony
 8 yesterday since you left the courthouse?
 9 A No, I didn't.
 10 MS. FAHERTY: All right. I'm going to hand up to
 11 the witness a document that has already been admitted into
 12 evidence. It is identified as PX-756.
 13 Q Mr. Trump, it will also be on the screen. The court
 14 officer will hand it over to you. I'll represent that this is
 15 the June 30, 2016 Statement of Financial Condition of Donald J.
 16 Trump.
 17 Do you have that in front of you, sir?
 18 A I do.
 19 Q Are you familiar with this document?
 20 A No.
 21 Q Did you help prepare this document?
 22 A I did not.
 23 Q Did you review this document?
 24 A I may have seen this document in preparation for either
 25 my testimony here or in my -- at my prior deposition, but

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1 otherwise, no.
 2 Q Fair to say you didn't specifically prepare any of the
 3 valuations contained within in document?
 4 A That's correct.
 5 Q And just turning to the second page of this document,
 6 do you see under the independent accountant's compilation report
 7 dated March 10, 2017?
 8 A I do.
 9 Q And at the very top, the opening paragraph says, "That
 10 the trustees of the Donald J. Trump Revocable Trust are
 11 responsible for this Statement of Financial Condition"?
 12 A Yes.
 13 Q Okay. You can put that down.
 14 MS. FAHERTY: Your Honor, I'd like to put on the
 15 screen Plaintiff's Exhibit PX 742. It has already been
 16 admitted into evidence.
 17 Q Mr. Trump, it's a spreadsheet, so it will only be on
 18 the screen because it is a pretty large document.
 19 A Fair enough.
 20 Q Are you familiar with this document on the screen?
 21 A Not to my knowledge.
 22 Q Fair to say you did not help prepare this document?
 23 A I don't know anything about the document, so I imagine
 24 so, yes.
 25 Q And I'll represent to you that the title on this

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1 document is "Donald J. Trump Statement of Financial Condition as
 2 of June 30, 2016."
 3 Fair to say you're not familiar with a support data
 4 spreadsheet prepared in connection with the Donald J. Trump
 5 Statement of Financial Condition?
 6 A I don't know. If that is this, then I'm not familiar
 7 with it. I'm not familiar with a document of that nature, no.
 8 Q And specifically referencing this document on this
 9 screen, you have no specific familiarity with this document,
 10 correct?
 11 A Correct. I don't believe I've seen this document.
 12 Q Did you specifically prepare -- withdrawn.
 13 MS. FAHERTY: I'm going to hand up to the witness a
 14 document that is not yet in evidence. It is marked for
 15 identification as PX-1344. Take a moment to look at it and
 16 I will ask you a few questions, sir.
 17 (Witness reviewing document.)
 18 A Okay.
 19 Q Do you see in the underlying e-mail, there is a message
 20 from Noah K-I-R-S-C-H at forbes.com e-mailing Alan Garten on
 21 Friday, March 3, 2017 at 10:00 a.m. a message with the subject
 22 "urgent, fact checking inquiry from Forbes."
 23 Do you see that underlying e-mail?
 24 A I do.
 25 Q And contained within that e-mail, do you see that there

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1 are a number of emboldened headings. The first one on the cover
 2 page of this e-mail, it says, "Trump Organization."
 3 Do you see that there?
 4 A I do.
 5 Q If you turn to the next page of this e-mail, do you see
 6 in the middle of that page there is an e-mail with a heading
 7 "Trump Tower penthouse"?
 8 A I do.
 9 Q And you see that there are a series of questions
 10 related to that heading "Trump Tower penthouse, one through
 11 ten"?
 12 A Yes.
 13 Q And in the first sentence, it references, "President
 14 Trump has told Forbes in the past that his penthouse occupies
 15 30,000 square feet comprising the entirety of floors 66-68 of
 16 Trump Tower "--
 17 THE COURT: It says 33,000, not 30,000.
 18 Q 33,000.
 19 MS. FAHERTY: Thank you for the correction, Your
 20 Honor.
 21 Q Do you see that first line there?
 22 A Yes.
 23 Q And then it subsequently says, "It shows President
 24 Trump's apartment is 10,996.39 square feet' referencing the
 25 property records in the prior sentence. Do you see that?"

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1 A I do.

2 Q Okay. And then on that very same day, if we go back to

3 the cover page, Alan Garten, he works at the Trump Organization.

4 We discussed him yesterday?

5 A Correct.

6 Q Alan Garten forwards this message to you, correct?

7 A It would appear so, yes.

8 Q And then Allen Weisselberg and Eric Trump, right?

9 A Correct.

10 Q As well as Amanda Miller?

11 A Yes.

12 Q Who's Amanda Miller?

13 A She was running our marketing department at the time.

14 Q Another employee of the Trump Organization?

15 A Yes.

16 Q And then the very top e-mail, that's your e-mail

17 address responding at 12:46 p.m., yes?

18 A Correct.

19 Q And you write "insane amount of stuff there," yes?

20 A Yes.

21 Q Do you recall receiving this message?

22 A No.

23 Q Aside from this specific message, what, if any, fact

24 checking did you do to follow up on the message contained in Mr.

25 Kirsch's e-mail?

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1 A I don't know that I did any. I don't know that I would

2 spend hundreds of questions worth of time on answering Forbes

3 Magazine.

4 Q So no specific recollection as to what you did, yes?

5 You don't have that recollection?

6 A I have no specific recollection of doing anything with

7 it.

8 Q What conversations did you have about this e-mail?

9 A I don't know that I had any.

10 Q So no specific recollection about conversations?

11 A No.

12 Q Okay.

13 MS. FAHERTY: Your Honor, I move to admit

14 Plaintiff's Exhibit P X-1344.

15 THE COURT: Granted. It is in.

16 MS. FAHERTY: Thank you, your Honor.

17 (Whereupon, the Document was marked in evidence as

18 Plaintiff's Exhibit 1344.)

19 Q Mr. Trump, I'm going to display on the screen and ask

20 the court reporter to hand up to you a document already in

21 evidence. It is identified as PX 741.

22 Do you see that document in front of you, sir?

23 A Yes.

24 Q And this is on Trump Organization letterhead, yes?

25 A Correct.

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1 Q I'll turn your attention to page three of this letter.

2 Do you recognize that signature on the bottom right-hand corner

3 of page three?

4 A That's my signature.

5 Q Okay. Turning back to the front page, this letter is

6 dated March 10, 2017, correct?

7 A That is correct.

8 Q This is one week after your e-mail in which you stated

9 "insane amount of stuff here" with regards to the Forbes

10 inquiry?

11 A Presumably, yes.

12 Q Mr. Trump, in connection with the work Mazars performed

13 on the Statement of Financial Condition, the Trump Organization

14 presented Mazars with a signed representation letter, correct?

15 A I believe so.

16 Q And this is one such representation letter, correct?

17 A I believe that's correct.

18 Q Okay. Turning your attention to the first page, the

19 third paragraph states, "We confirm, to the best of our

20 knowledge and belief, as of March 10, 2017, the following

21 representations made to you during your compilation."

22 Do you see that language there?

23 A I do.

24 Q And then following that confirmation, there is a

25 subparagraph number one. Do you see it?

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1 A I do.

2 Q And then if you turn to the next two and three pages,

3 you'll see there are numbered paragraphs going up to paragraph

4 16. Do you see those?

5 A I do.

6 Q And we'll just talk about a couple of the

7 representations that the Trump Organization confirmed in this

8 letter.

9 Do you see point two, the representation is, "We have

10 made available to you all financial records and related data,

11 and any additional information you requested from us for the

12 purpose of the compilation. We have not knowingly withheld from

13 you any financial records or related data that in our judgment

14 would be relevant to your compilation."

15 You see that that was a representation in this letter?

16 A I do.

17 Q And in paragraph four, there's another representation.

18 "We acknowledge and have fulfilled our responsibility for

19 designing, implementing and maintaining internal control

20 relevant to the preparation and fair presentation of the

21 personal financial statement that is free from material

22 misstatement whether due to fraud or error."

23 Do you see that representation?

24 A I do, yes.

25 Q And at point five, there's another representation, "We

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1 acknowledge our responsibility for designing, implementing and
 2 maintaining internal control to prevent and detect fraud."
 3 A I do.
 4 Q One more representation just to draw your attention to
 5 it. Make sure that you see it is there. Number 15, "We have
 6 responded fully and truthfully to all inquiries made to us by
 7 you during your compilation."
 8 Do you see that representation on behalf of the Trump
 9 Organization there?
 10 A I do.
 11 Q Do you agree with those representations in this letter?
 12 A I do. Every decision I made was based on all of the
 13 information that I would have gotten from Mazars who ironically
 14 is also the one we're writing this letter to, but they were
 15 intimately involved in every aspect of that. And again, for
 16 purposes of accounting, I rely on the accountants and so while I
 17 make these representations to them, they have frankly as much,
 18 if not more, information in the details of all of this than I
 19 ever would have had.
 20 Q So you relied on Mazars to make these representations
 21 to Mazars?
 22 A I relied on Mazars and our accounting team to tell me
 23 what is accurate within the confines of accounting. That's why
 24 we have accountants.
 25 Q So in addition to Mazars, you make a reference to "our

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1 accounting team."
 2 Who is that accounting team you're referencing as
 3 you're sitting here today?
 4 A That would have been Allen Weisselberg, Jeffrey
 5 McConney and their team.
 6 Q And in specifically as it relates to this 2016
 7 representation letter, were you relying on Allen Weisselberg to
 8 make the representations in this rep letter?
 9 A I'd have to see what the backup is. I don't recall
 10 ever being involved in any of that. But yes, I would
 11 imagine -- I'll try to slow it down. Yes, I would have relied
 12 on them, but again, I would have also relied knowing that
 13 they're working intimately with Mazars and I understand, you
 14 know, the world around this time is changing and this could
 15 be, let's call it, a cover your butt, but Mazars for 30 years is
 16 intimately involved in literally every aspect, every
 17 transaction, every LLC. They would have been a key point in
 18 compiling anything as it related to accounting and they would
 19 have been well aware of that.
 20 MS. FAHERTY: Your Honor, I would move to strike
 21 that answer and I can ask my question again.
 22 THE COURT: I remember the question. Overruled.
 23 That's his response.
 24 MS. FAHERTY: Okay.
 25 THE COURT: And I think it responded to the

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1 question, maybe at great length, but --
 2 MS. FAHERTY: Okay.
 3 THE WITNESS: I'm just trying to give the details,
 4 sir. Sometimes things aren't, unfortunately, yes or no when
 5 it comes to the complex transactions.
 6 THE COURT: Okay.
 7 THE WITNESS: I'll try to hone it down.
 8 Q As it relates to this representation letter, did you
 9 specifically rely on Jeffrey McConney to assure yourself of the
 10 representations contained in this letter?
 11 A Specifically as it relates to this letter, I don't
 12 recall who I relied on.
 13 MS. FAHERTY: Your Honor, I'm putting before the
 14 witness a document that is not yet in evidence. We have
 15 marked it for identification as PX-391.
 16 Q Mr. Trump, I'll turn your attention to the second page
 17 of this document. Do you recognize that signature on the second
 18 page of this document?
 19 A That is my signature.
 20 Q And it is signed as "attorney in fact"?
 21 A Correct.
 22 Q Do you have any understanding as to what "attorney in
 23 fact" is a reference to?
 24 A Well, I guess I'm functioning as an attorney for my
 25 father as per, I guess, whatever the lawyers structured for me

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1 at the time.
 2 Q Okay. Turn your attention back to the first page of
 3 this document.
 4 MS. FAHERTY: Oh, Your Honor, I move to admit this
 5 into evidence.
 6 THE COURT: Granted. It is in.
 7 (Whereupon, the Document was marked in evidence as
 8 Plaintiff's Exhibit 391.)
 9 MS. FAHERTY: Thank you.
 10 Q Turning to the first page, do you see that this is on
 11 letterhead "Donald J. Trump 725 Fifth Avenue, New York, New York
 12 10022"?
 13 A Yes.
 14 Q That's the address of the Trump Organization?
 15 A Yes.
 16 Q The date on this certification, this is dated March 13,
 17 2017, yes?
 18 A Correct.
 19 Q Okay. I'll draw your attention to point one in this
 20 certification. Sorry. I'll just frame your reference, the
 21 very, very top, it says, "There is a lender Deutsche Bank Trust
 22 Company of Americas." You're familiar with Deutsche Bank Trust
 23 Company as a lender to the Trump Organization?
 24 A Yes.
 25 Q You'll see that there is an entry for a guarantor.

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1 That's Donald J. Trump, yes?
 2 A Correct.
 3 Q And the borrower identified in the certification is
 4 Trump Endeavor 12, LLC. You see that there?
 5 A I do.
 6 Q And you're familiar with Trump Endeavor 12, LLC,
 7 correct?
 8 A I believe so, yes.
 9 Q Sorry?
 10 A I believe so, yes.
 11 Q Turning to point one, "financial information," it says,
 12 "The underlined guarantor hereby certifies to lender as of the
 13 date hereof that as of June 30, 2016 (the "reporting date") one,
 14 financial information. As applicable (please check the
 15 applicable box below and insert the applicable date below)."
 16 You'll see the very first bullet is "X"-ed. "Attached
 17 hereto is guarantor's Statement of Financial Condition as of
 18 June 30, 2016 (Section 11(A) of the guaranty)" and then there
 19 are two other bullets of financial information checked, right?
 20 A Yes.
 21 Q Then it states, "The foregoing presents fairly in all
 22 material respects the financial condition of the guarantor at
 23 the period presented," right?
 24 A Yes.
 25 Q Did you take any steps to assure yourself of this

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1 certification?
 2 A As with all of the certifications, as I think we
 3 discussed yesterday, I would have sat with the relevant parties;
 4 namely, in accounting, whether that's the Trump team and/or
 5 Donald Bender. I would have asked them if everything that is in
 6 here is correct. I would have likely also checked with our
 7 legal department to make sure that the conditions are met as it
 8 relates to anything I would sign for Deutsche Bank and if they
 9 assured me in their expert opinion that these things were fine,
 10 I would have been fine with that and signed off accordingly.
 11 Q Is that specific to this particular certification, sir?
 12 A Well, I think I probably would save us some time and
 13 say that's probably specific to all of these certifications
 14 because I'm sure I've signed dozens of these in my time as a
 15 trustee.
 16 Q So no specific recollection as to this particular
 17 certification, right?
 18 A Correct.
 19 Q You're providing me your general recollection as to
 20 what you would do, correct?
 21 A Correct. I'm providing you the process I would have
 22 gone through. I would have relied on the people who are the
 23 experts in compiling all of this who deal with these things down
 24 to the very granular levels. If they're telling me it is okay
 25 and then legal tells me, it goes through the appropriate

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1 processes for whatever it may be, you know. I would be
 2 comfortable trusting my team both inside and outside that this
 3 is fine for me to sign.
 4 Q And did the legal department indeed confirm it was okay
 5 to sign the certification?
 6 A I don't recall specifically, but that would have
 7 generally been my process.
 8 Q Do you have any specific recollection that the legal
 9 department informed you it was not okay to sign a certification?
 10 A No, because I would not have signed it had they done
 11 that.
 12 Q Aside from those conversations you had with the
 13 accounting department, with Mr. Bender and with
 14 Mr. Legal -- with the legal department?
 15 A Mr. Legal doesn't work at the Trump Organization
 16 anymore. He's out of state. It may be hard to subpoena him.
 17 Q They're all out of state. Okay.
 18 Aside from those conversations, did you yourself
 19 specifically take any steps to assure yourself of the
 20 information you were certifying in this certification?
 21 A Well, I mean, I would think speaking to them -- I may
 22 have spoken to individuals if there was details that I don't
 23 recall right now. I may have taken it further down the line,
 24 but I think if the people who are running the numbers on each
 25 and every one of the things that would be an aspect of this or

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1 are telling me that this is okay, I'd probably would have been
 2 fine with it, but I don't recall specifically having
 3 conversations about, you know, an individual or an anomaly or
 4 whatever it may be.
 5 Q Specifically as it relates to this certification, which
 6 documents did you review?
 7 A I don't recall this specific certification, so I
 8 couldn't tell you.
 9 Q Other than what you just testified generally, no
 10 specific knowledge to share about what you did to assure
 11 yourself of the certification here?
 12 A Correct. No, I don't recall that.
 13 Q When you signed this certification, you intended for
 14 the bank to rely upon it, correct?
 15 A Sure.
 16 Q You could put that down, sir.
 17 MS. FAHERTY: Your Honor, I'm going to turn to a
 18 document already in evidence. We discussed it yesterday
 19 briefly. It is identified as PX-755.
 20 Q Do you see that document in front of you, Mr. Trump?
 21 A I do.
 22 Q We discussed this yesterday. Am I correct you don't
 23 have any specific familiarity with the 2017 Statement of
 24 Financial Condition of Donald Trump, right?
 25 A Correct.

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1 Q If I asked you the same question as I did about 2016,
 2 we can turn to page two confirming that it is, in fact, the
 3 trustees responsible for the Statements of Financial Condition
 4 in 2017, it states that there, correct?
 5 A Correct.
 6 Q And this independent accountant's report was finalized,
 7 at the bottom of this letter you can see, October 30, 2017. You
 8 see that?
 9 A I do.
 10 Q You were a trustee, correct?
 11 A Yes.
 12 Q And if I asked you the same questions I asked before
 13 about what you specifically did to prepare this document, you
 14 have no specific knowledge about that, right?
 15 A Correct. It would be the same for all of the
 16 Statements of Financial Condition.
 17 Q So if I showed you the 2018 Statement of Financial
 18 Condition, same answer?
 19 A I think we could save each other a lot of time and
 20 effort and yes, it would be the same thing.
 21 Q If I showed you the 2019 Statement of Financial
 22 Condition, it would be the same answer?
 23 A Yes, ma'am.
 24 Q And if I showed you the 2020 Statement of Financial
 25 Condition, it would be the same answer?

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1 A I believe that's correct.
 2 Q I may show you the 2021 Statement of Financial
 3 Condition. Do you have any knowledge that you retained a
 4 different accounting firm to commission the Statement of
 5 Financial Condition in 2021?
 6 A Yes, I'm aware of that.
 7 Q Who was that accounting firm?
 8 A That's Whitley Penn.
 9 Q Did you work specifically on the 2021 Statement of
 10 Financial Condition with Whitley Penn?
 11 A If I did, it would have been in the same manner that I
 12 would have with Mazars.
 13 Q No specific knowledge as to the work you performed on
 14 the 2021 Statement of Financial Condition with Whitley Penn; is
 15 that true?
 16 A That's accurate, yes.
 17 MS. FAHERTY: And I'll just put it on the screen.
 18 We can expedite, your Honor. I'm putting up a document
 19 already in evidence.
 20 Q Again, Mr. Trump, it is a spreadsheet, so it is rather
 21 large. Nothing to hand up. It is PX 758.
 22 The title on this document is, "The Donald J. Trump
 23 Statement of Financial Condition as of June 30, 2017." This is
 24 the supporting data spreadsheet.
 25 Similar to 2016, no specific knowledge as to the

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1 supporting data spreadsheet created for the 2017 Statement of
 2 Financial Condition, correct?
 3 A Correct.
 4 Q And if I asked you questions about the specific work
 5 you did on this particular spreadsheet, no specific knowledge of
 6 that work, correct?
 7 A Correct.
 8 Q And if I asked you the same question if I put up the
 9 2018 supporting data spreadsheet for the 2018 Statement of
 10 Financial Condition, would your answer still be the same?
 11 A I believe it would, yes.
 12 Q No specific knowledge as to the spreadsheet, correct?
 13 A Correct.
 14 Q No specific knowledge as to work you performed on the
 15 supporting data spreadsheet, correct?
 16 A Correct.
 17 Q And if I asked those same questions for 2019, would
 18 your answers remain the same?
 19 A Rinse and repeat, yes.
 20 Q If I asked you the same questions for 2020, would your
 21 answers remain the same?
 22 A I believe they would, yes.
 23 Q And in 2021, if I asked you those same questions for
 24 work you performed on supporting data spreadsheet for the 2021
 25 Statement of Financial Condition, would your answer still be the

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1 same?
 2 A I believe so.
 3 MS. FAHERTY: Your Honor, I'm going to show to the
 4 witness a document that I don't know has formally been moved
 5 into evidence, but may have been and not recorded. It is
 6 Plaintiff's Exhibit P X-754. We've discussed it before. I
 7 believe Tommy has it, but in case it has not been formally
 8 moved into evidence, I would so move.
 9 THE COURT: Granted. It is in evidence.
 10 (Whereupon, the Document was marked in evidence as
 11 Plaintiff's Exhibit 754.)
 12 MS. FAHERTY: Thank you, your Honor.
 13 Q And Mr. Trump, I'll turn your attention to the third
 14 page of this document. You recognize that is your signature,
 15 correct?
 16 A I do.
 17 Q You recognize this as the 2017 representation letter to
 18 Mazars?
 19 A Yes, it would appear so.
 20 Q Dated October 30, 2017?
 21 A Yes.
 22 Q And before, I asked you a series of questions on the
 23 2016 representation letter to Mazars.
 24 Do you recall those questions that I asked you?
 25 A Yes.

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1 Q And you gave me answers as to the assurances that the
 2 Trump Organization made to Mazars contained in this
 3 representation letter.
 4 Do you recall that testimony you provided?
 5 A I do, yes.
 6 Q And we went over a series of the representations
 7 contained in the representation letter and the numbered
 8 paragraphs contained within the rep letter.
 9 Do you recall those questions about those numbered
 10 paragraphs?
 11 A I do.
 12 Q And if I went through a similar exercise to ask you
 13 those same questions about those same representations, would you
 14 still give me the same answer?
 15 A I can't think of anything off the top of my head that
 16 would change that, so yes.
 17 (Continued on the next page.)
 18
 19
 20
 21
 22
 23
 24
 25

D. Trump, Jr. - Plaintiff - direct (Faherty) Page 3247

1 Q So no specific testimony you could provide that would
 2 distinguish the assurances you made for yourself to sign the
 3 2017 representation letter to Mazars; correct?
 4 A Correct. Not that I can recall anything different,
 5 yes.
 6 MS. FAHERTY: Your Honor, I'm going to put up a
 7 document that's already been admitted into evidence. It is
 8 a big document, PX 1386. It's a family that Mr. Solomon
 9 moved in earlier in the trial.
 10 A This may take me a few weeks to read.
 11 Q Mr. Trump, I've handed you a document. It's a family
 12 compilation document. I'll draw your attention on the screen,
 13 which may be easier, but the first page I'll draw your attention
 14 to is at -- you'll see at the very bottom there is a page two of
 15 number, so page 2 of 230. It's also on the screen. You'll see
 16 that --
 17 A Page one.
 18 Q Page two?
 19 A Yes, okay.
 20 Q See at the very bottom?
 21 A Yes, exactly.
 22 Q Okay. This is another certification to Deutsche Bank;
 23 correct?
 24 A It would appear so, yes.
 25 Q On behalf of the borrower Trump Old Post Office LLC?

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D. Trump, Jr. - Plaintiff - direct (Faherty)

1 A Yes.
 2 Q Dated October 31, 2017?
 3 A Correct.
 4 Q And, again, this has similar language to what we saw
 5 earlier in the prior certification that "the undersigned
 6 guarantor certifies to the lender as of the date hereof that as
 7 of June 30, 2017 the reporting date, point one, that you are
 8 providing certain financial information;" right?
 9 A Correct.
 10 Q And attached there is a guarantor's Statement of
 11 Financial Condition as of June 30, 2017. You see that there?
 12 A I do.
 13 Q And the certification states "the foregoing presents
 14 fairly in all material respects the financial condition of
 15 guarantor at the period presented;" correct?
 16 A Correct.
 17 Q And if we turn to page three of 230.
 18 On this document you recognize that as your signature;
 19 right?
 20 A I do.
 21 Q And if I asked you the same questions I asked you about
 22 the earlier certification about what steps you took to assure
 23 yourself of this certification your answer would remain the same
 24 as it relates to this specific document; correct?
 25 A It would.

D. Trump, Jr. - Plaintiff - direct (Faherty) Page 3249

1 Q Okay. If you turn to page five of 230.
 2 A Yes.
 3 Q Dated October 31, 2017, another certification to
 4 Deutsche Bank on behalf of Trump Endeavor 12 LLC. You see that
 5 there?
 6 A I do.
 7 Q Again, another certification for the financial
 8 information; right?
 9 A Yes, ma'am.
 10 Q Attaching the Statement of Financial Condition;
 11 correct?
 12 A Yes.
 13 Q If you turn to the following page.
 14 Again, that is your certification -- your signature for
 15 this certification; correct?
 16 A Correct.
 17 Q If I asked you those same questions your answer would
 18 still be the same specifically as it relates to this document?
 19 A I believe so, yes.
 20 Q Correct that you signed this certification with the
 21 intent that the bank would rely on it?
 22 A I don't know that they rely on it. I don't -- I know a
 23 lot of bankers and they do their own due diligence, but I was
 24 fine signing this based on everything I had been told as per
 25 everything we've discussed today, yes.

D. Trump, Jr. - Plaintiff - direct (Faherty) Page 3250

1 Q I'll re-ask my question.
 2 You signed this certification intending that the bank
 3 would rely on it; correct?
 4 A I'm fine with the bank relying on it, yes.
 5 Q And the prior certification I did not ask that
 6 question, but same question. You signed that prior
 7 certification with the intent that the bank would rely on it?
 8 A Again, I would be fine with them relying on it. I
 9 don't know what their intent is.
 10 Q Did you intend for the bank to rely on that
 11 certification that you signed?
 12 A I don't know. Again, I think -- I know -- like I said,
 13 I know a lot of bankers that do their own due diligence. If
 14 they looked at it and that was their -- and if they relied on
 15 it, I would be fine with all of the material information that's
 16 in those documents.
 17 THE COURT: That doesn't answer the question and
 18 the intent isn't the banker's. It's your intent that she is
 19 asking about; correct?
 20 MS. FAHERTY: Correct.
 21 A Then I'm not sure I understand. I'm fine with the bank
 22 relying on that information.
 23 Q So is that a question you intended for the bank to rely
 24 on your certification?
 25 A I don't know that I intended for them to do anything.

D. Trump, Jr. - Plaintiff - direct (Faherty) Page 3251

1 I'm fine signing off on it. It's not as simple as yes or no to
 2 me.
 3 THE COURT: I'm not going to insist on a yes-or-no
 4 answer.
 5 MS. FAHERTY: I think that's as best as he's going
 6 to give.
 7 All right. Your Honor, I'm going to put on the
 8 screen a document that's already in evidence. It is
 9 identified as PX 3285.
 10 Q Mr. Trump, keep that exhibit near you. I'm going to
 11 ask questions about it again.
 12 A Sure.
 13 Q Okay. I'll turn your attention to the second page, but
 14 I'll just draw your attention to the first page.
 15 The subject of this e-mail, which has an attachment, is
 16 "Ferry Point 2018 No MAC change letter."
 17 You're familiar with Ferry Point; right?
 18 A I am.
 19 Q And the attachment is a 2017 No MAC letter.
 20 Do you know what a No MAC letter is?
 21 A I don't.
 22 Q Let's turn to the second page and see if we can figure
 23 that out. Do you see the date on this document, April 22, 2017?
 24 A I do.
 25 Q Addressed to the City of New York Department of Parks

D. Trump, Jr. - Plaintiff - direct (Faherty) Page 3252

1 and Recreation; yes?
 2 A Yes.
 3 Q When the "re:" lines says "President Donald J. Trump?"
 4 A Yes.
 5 Q Turning to the bottom of this letter do you recognize
 6 your name included as the cc?
 7 A I do.
 8 Q And this letter was sent by Mazars; correct?
 9 A It would appear so.
 10 Q Okay. Drawing your attention to the second paragraph,
 11 it states: "While we have not reviewed computations of value
 12 since the aforementioned June 30, 2016 financial statement,
 13 based on discussions with trustees of Donald J. Trump Revocable
 14 Trust dated April 7, 2014, as amended and their advisors, we are
 15 not aware of any matters that would indicate a significant
 16 change in Mr. Trump's net worth as of this date."
 17 You see that language there?
 18 A I do.
 19 Q What discussions did you have regarding the substance
 20 of this paragraph?
 21 A I don't recall any.
 22 MS. FAHERTY: Your Honor, I'm going to move faster.
 23 I'm going to hand up to the witness a document identified --
 24 marked for identification as PX 393.
 25 Q This is another bank certification on Trump

D. Trump, Jr. - Plaintiff - direct (Faherty) Page 3253

1 Organization letterhead for Donald J. Trump; yes?
 2 A Correct.
 3 Q Turning to the second page of this document, do you
 4 recognize that as your signature?
 5 A I do.
 6 Q And then if you turn to the fourth page of this
 7 document, do you recognize your signature again on another
 8 certification?
 9 A I do.
 10 Q And then if you turn to the sixth page of this
 11 document, do you recognize your signature again?
 12 A I do.
 13 MS. FAHERTY: Your Honor, I move to admit this
 14 packet of certifications into evidence.
 15 THE COURT: Granted. It's in or they're in.
 16 (Whereupon, the item previously referred to is
 17 received and marked Plaintiff's Exhibit Number 393 in
 18 evidence.)
 19 Q And Mr. Trump, you see that this packet is a very
 20 similar packet of certifications sent to Deutsche Bank. The
 21 first is on behalf of Trump Old Post that's on page one of six.
 22 Do you see that there?
 23 A Yes, ma'am.
 24 Q And it -- this document contains similar language about
 25 the certification that we've seen in the prior bank

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D. Trump, Jr. - Plaintiff - direct (Faherty) Page 3254

1 certifications; right?

2 A Correct.

3 Q And the second certification, that certification was

4 signed by you in 2018 on behalf of you, Trump Endeavor 12 LLC,

5 to Deutsche Bank; yes?

6 A Correct.

7 Q And the third certification we saw signed on

8 October 25, 2018 was certifying to Deutsche Bank on behalf of

9 401 North Wabash? Is it Wabash or Wabash?

10 A Wabash.

11 Q Thank you.

12 401 North Wabash Venture LLC; correct?

13 A Correct.

14 Q And if I asked you the same questions that I asked you

15 about the prior bank certifications would your answers remain

16 the same?

17 A Yes, ma'am.

18 Q Again, you intended for the bank to rely on the

19 certifications when you signed them?

20 A I'm fine with them relying on it, yes.

21 Q Thank you.

22 MS. FAHERTY: Your Honor, I would just like to show

23 another Mazars rep letter, which I'm not sure has formally

24 been moved into evidence. So I believe Tommy has it. It's

25 PX 841.

D. Trump, Jr. - Plaintiff - direct (Faherty) Page 3255

1 Q All right. You see that this is another representation

2 letter drafted by the Trump Organization issued to Mazars dated

3 October 31, 2019; correct?

4 A Correct.

5 Q And on page three of this document that is your

6 signature; right?

7 A Yes.

8 MS. FAHERTY: Your Honor, I move to admit this

9 formally into evidence if it was not previously admitted.

10 THE COURT: Granted.

11 MS. FAHERTY: Thank you.

12 (Whereupon, the item previously referred to is

13 received and marked Plaintiff's Exhibit Number 841 in

14 evidence.)

15 Q If I asked you the same questions you have provided --

16 you would provide me the same answers as we discussed earlier

17 with regards to the representation letters, Mr. Trump?

18 A I believe so, yes. I can't think of anything off the

19 top of my head that changed.

20 Q Thank you. You can put that down.

21 Just so that we could turn back to it, I had you hold

22 near you PX 1386, and I'll draw your attention to page 100 of

23 230. I told you it's voluminous.

24 A It's a big one.

25 Q It's a big one.

D. Trump, Jr. - Plaintiff - direct (Faherty) Page 3256

1 And it's on the screen, Mr. Trump, if that helps.

2 A Yes.

3 Q Okay. Do you recognize that signature when Ashley

4 scrolls up to it?

5 A I do.

6 Q That's your signature?

7 A Yes.

8 Q And if you turn to the page prior this is a

9 certification issued to Deutsche Bank on behalf of the guarantor

10 Donald J. Trump and the borrower is 401 North Wabash Venture LLC

11 dated October 31, 2019; right?

12 A I believe so, yes.

13 Q Another certification that you signed; yes?

14 A Yes.

15 Q And then if we turn to page 101 of 230, still

16 October 31, 2019, another certification. This one on behalf of

17 Trump Endeavor 12 LLC; correct?

18 A Yes.

19 Q The following page, that is in fact your signature;

20 right?

21 A Yes.

22 Q And then the following page this is the third

23 certification again dated October 31, 2019, this time on behalf

24 of Trump Old Post Office LLC; right?

25 A Yes.

D. Trump, Jr. - Plaintiff - direct (Faherty) Page 3257

1 Q Same certifications as the prior certifications

2 attaching the Statement of Financial Condition of the respective

3 year; correct?

4 A I believe so, yes.

5 Q And the following page that is in fact your signature

6 certifying; correct?

7 A Yes.

8 Q And if I asked you the same questions that I had

9 previously asked you as to those bank certifications any

10 specific difference as it pertains to these particular

11 certifications in 2019?

12 A None that I can recall, no.

13 Q One second, Mr. Trump. I apologize.

14 A No problem.

15 MS. FAHERTY: I'm just going to show the witness PX

16 1354 and confirm it was already admitted into evidence.

17 This is the 2021 Statement of Financial Condition for

18 Mr. Donald J. Trump. If we could turn to the second page.

19 Q In this particular year, correct that the Statement of

20 Financial Condition was compiled by the Whitley Penn accounting

21 firm; yes?

22 A I believe that's correct, yes.

23 Q If we turn to the next page of the Independent

24 Accountants' Compilation Report. It is dated October 29, 2021;

25 correct?

D. Trump, Jr. - Plaintiff - direct (Faherty) Page 3258

1 A Yes.

2 Q You were still trustee at this time; yes?

3 A Correct.

4 Q If we turn back to the first line -- first --

5 MS. FAHERTY: Yes, that page, Ashley. Thank you.

6 Q Says "the trustee of the Donald J. Trump Revocable

7 Trust?"

8 A Yes.

9 Q "Are responsible for the accompanying personal

10 financial statement;" yes?

11 A Yes.

12 Q Okay. And again, the rest of the questions that I

13 asked as to statements of financial condition as it pertains to

14 this particular Statement of Financial Condition, no specific

15 response that is different than any of your other responses

16 related to the statements of financial condition?

17 A This was Whitley Penn, but no. Other than that, I

18 can't think of anything different.

19 Q Thank you.

20 THE COURT: "Thank you" is okay. It's polite. Not

21 "great," not, you know, "terrific." "Okay" I rather you

22 left it out, probably easier on the reporter. It might show

23 some sort of confirmation.

24 MS. FAHERTY: I'm confirming for myself, Judge. I

25 got it. Thank you, Your Honor.

D. Trump, Jr. - Plaintiff - direct (Faherty) Page 3259

1 THE COURT: Thank you is okay.

2 Q All right. I'm going to put up the JSD, Plaintiff's

3 Exhibit 1501. It is a spreadsheet in support of the 2021

4 Statement of Financial Condition.

5 No specific recollection of this particular document;

6 right, Mr. Trump?

7 A Not that I recall, correct.

8 Q And if I asked you the same questions that I asked you

9 about the other prior supporting data spreadsheets for the

10 Statement of Financial Condition as it specifically pertains to

11 the 2021 supporting data spreadsheet, same response?

12 A I believe so, yes.

13 MS. FAHERTY: Tommy, if we could get PX 1502.

14 Q Turn your attention to the third page of this document.

15 You recognize that signature as your signature?

16 A Yes, ma'am.

17 Q As the trustee of the Donald J. Trump Revocable Trust?

18 A Correct.

19 Q Dated October 29, 2021?

20 A Correct.

21 Q Turning to the first page, this is a representation

22 letter this time addressed to Whitley Penn LLP; correct?

23 A Correct.

24 Q Dated October 29, 2021?

25 A Correct.

D. Trump, Jr. - Plaintiff - direct (Faherty) Page 3260

1 Q You'll see that similar to the Mazars representation

2 letter there are certain assurances contained within this

3 representation letter; yes?

4 A Yes.

5 Q And, again, similar to the Mazars letter you'll see

6 that there are assurances in numbered paragraphs. You'll see

7 that there is number one at the top of your screen and it

8 numbers two through five fill out the bottom of this first page.

9 Do you see those assurances?

10 A I do.

11 Q And then it continues on to page two. There are a

12 total of 22 numbered paragraphs of assurances provided to

13 Whitley Penn; correct?

14 A Yes.

15 Q And if I asked you the same questions I did -- as I

16 previously did as to the assurances you made to be able to sign

17 this representation letter to Whitley Penn would your answer

18 remain the same as it specifically relates to Whitley Penn, this

19 document in front of you?

20 A I believe so. I can't think of anything that changed

21 off the top of my head.

22 Q Okay. Mr. Trump, I'm going to put a document on the

23 screen already in evidence. It is identified as PX 134, and I

24 will draw your attention to page six of eight.

25 A Yes.

D. Trump, Jr. - Plaintiff - direct (Faherty) Page 3261

1 Q It says, "Agreed client Trump Briarcliff Manor

2 Development LLC" and then there is a signature. Do you

3 recognize that signature as yours?

4 A I do.

5 Q Are you familiar with this particular representation

6 letter -- engagement letter with Cushman & Wakefield?

7 A No, not to my recollection.

8 Q Are you familiar with Cushman & Wakefield, though;

9 right?

10 A I am, yes.

11 Q Are you aware of the purpose of the appraisal

12 identified in this engagement letter?

13 A I'd have to read it, but I don't recall seeing this one

14 before, so not off the top of my head, no.

15 Q I'll draw your attention to the first page. It is

16 dated June 3, 2015 addressed to Mr. Eric Trump, your brother;

17 correct?

18 A Correct.

19 Q At Trump Briarcliff Manor Development LLC; right?

20 A Correct.

21 Q Are you familiar with Trump Briarcliff Manor

22 Development LLC?

23 A Generally speaking, yes.

24 Q And it says, "re: conservation easement on parcel owned

25 by Trump Briarcliff Manor Development LLC." Do you see that?

D. Trump, Jr. - Plaintiff - direct (Faherty) Page 3262

1 A I do.

2 Q Does that refresh your recollection as to the purpose

3 of this particular engagement?

4 A It was made out to my brother. I think you'd have to

5 ask him.

6 Q You signed it; correct?

7 A Correct.

8 Q Are you aware that there was a potential conservation

9 easement being appraised for the Briarcliff property?

10 A I recall it vaguely now, but I don't remember the

11 specifics.

12 Q Then why are you signing this document?

13 A Because I signed it as an EVP of the organization. I

14 imagine my brother could have signed it as well if it came to

15 me, but it was his project. He would work on it and he would

16 know the details.

17 MS. FAHERTY: This is a big one. It is not yet in

18 evidence, Your Honor.

19 Your Honor, I've handed to the witness a document

20 that's been marked for identification as PX-3306.

21 Q Mr. Trump, I'm not going to ask you to go through the

22 whole thing.

23 A I appreciate that greatly. Thank you.

24 Q Plenty of reading for the week.

25 I'll just draw your attention to page 34 of 381, so

D. Trump, Jr. - Plaintiff - direct (Faherty) Page 3263

1 look at the bottom. It says 34 of 381. And tell me if you

2 recognize that signature there?

3 A That's my signature.

4 Q Okay. On behalf of Trump Ferry Point LLC; correct?

5 A Correct.

6 Q Your title is the president?

7 A Correct.

8 Q And this is the agreement of purchase and sale and

9 escrow instructions with regards to the Trump Golf Links at

10 Ferry Point Park?

11 A Correct.

12 Q There was a transaction to sell this to Bally's;

13 correct?

14 A Correct.

15 Q This transaction did in fact close; right?

16 A Yes.

17 MS. FAHERTY: Your Honor, I move to admit PX 3306

18 into evidence.

19 MR. ROBERT: Objection.

20 THE COURT: Ground.

21 MR. ROBERT: Relevance of a 2023 transaction.

22 There is no allegation of anything improper about a 2023

23 transaction. It's not part of their case.

24 THE COURT: And what would the relevance be, if

25 any?

D. Trump, Jr. - Plaintiff - direct (Faherty) Page 3264

1 MS. FAHERTY: I believe Ferry Point is relevant to

2 the disgorgement allegations we have here, Your Honor. That

3 sale is available for disgorgement.

4 MR. ROBERT: The procurement of this contract was

5 well before the statute of limitations even started and now

6 we have a transaction that closed a few months ago. It's

7 completely and utterly irrelevant, Your Honor.

8 THE COURT: How would that fit into the

9 disgorgement claim?

10 MS. FAHERTY: The sale -- as we've already seen and

11 as this witness in particular testified, there were No MAC

12 letters relying upon the statements of financial condition

13 sent into the Ferry Point -- to the Parks Department. That

14 information was --

15 THE COURT: Hold it. The objection overruled and

16 there is no jury, so no prejudice. Even if it becomes

17 irrelevant, even if it turns out it's irrelevant. It's in

18 evidence.

19 MS. FAHERTY: Thank you, Your Honor.

20 (Whereupon, the item previously referred to is

21 received and marked Plaintiff's Exhibit Number 3306 in

22 evidence.)

23 Q Did I hand up to you the next exhibit, PX 3304, sir?

24 A Yes.

25 Q So this is a document on Trump Ferry Point LLC

D. Trump, Jr. - Plaintiff - direct (Faherty) Page 3265

1 letterhead; yes?

2 A Yes.

3 Q Dated June 26, 2023?

4 A Correct.

5 Q This is the "re:" line says: "Agreement of purchase

6 and sale and escrow instructions dated as of the date hereof,

7 the PSA, by and between Trump Ferry Point LLC or (Trump) and

8 Bally's Corporation or (Bally's) in connection with the property

9 known as Trump Golf Links at Ferry Point Park." Do you see that

10 there?

11 A I do.

12 Q And turning to page three of four, do you recognize

13 that as your signature, sir?

14 A I do.

15 MS. FAHERTY: Your Honor, I move to admit this

16 document into evidence.

17 MR. ROBERT: Same objection, Your Honor, and a

18 continuing objection to this line of questioning.

19 MR. KISE: Your Honor, let me just see if I

20 understand. I'm little lost as to how this relates to

21 disgorgement. Based on what Mr. Robert said it predates the

22 statute of limitations, the close of the contract and then

23 the -- this transaction postdates the allegations in the

24 complaint. Is it the government's intention to assert that

25 a property that was a landfill that the Trump family took

D. Trump, Jr. - Plaintiff - direct (Faherty) Page 3266

1 and pumped tens of millions of dollars into and converted
 2 into a world class facility is now subject to disgorgement?
 3 THE COURT: Well, I think that No MAC letters those
 4 were during the -- within the statute of limitations period.
 5 MR. KISE: No MAC letters were within the statute
 6 of limitations period, but the evidence has already
 7 established that was after they already spent tens of
 8 millions of dollars to renovate the facility.
 9 THE COURT: Objection overruled. Let's move along.
 10 MS. FAHERTY: Thank you, Your Honor.
 11 Q How much have you made in this transaction, Mr. Trump?
 12 MR. ROBERT: Objection to "who."
 13 THE COURT: Okay. How much did you make, I think?
 14 MS. FAHERTY: Well, he did sign this as president
 15 of Trump Ferry Point LLC. I think it's a fair question to
 16 ask this witness who has signed these executed documents how
 17 much --
 18 THE COURT: I think it's fair to assume that he was
 19 acting on behalf of the corporation, but --
 20 A I didn't make anything.
 21 THE COURT: Different question, perhaps?
 22 Q How much did Trump Ferry Point LLC make from this
 23 transaction?
 24 A Well, the sales price is \$16 million, but we obviously
 25 have, you know, lots of costs and other things, you know, in the

D. Trump, Jr. - Plaintiff - direct (Faherty) Page 3267

1 deal that we have been funding and working on for years, so I
 2 don't know the exact net number for profit.
 3 MS. FAHERTY: Your Honor, I'm handing up to the
 4 witness one additional document identified as PX-3305 not
 5 yet in evidence.
 6 Q Mr. Trump, would you agree with me that the license
 7 agreement is consistent with the transaction papers that we just
 8 reviewed and it was -- that license agreement was in fact
 9 assigned to the Bally's Corporation?
 10 A I'd have to -- let me read the letter because I don't
 11 know this -- I don't have any recollection of this letter.
 12 MS. FAHERTY: And, Your Honor, I just want to
 13 correct something. I think the transcription may have
 14 stated "16 million" with regards to the sales price of Trump
 15 Ferry Point.
 16 Q Mr. Trump, did you say 16 or 60, 6-0?
 17 A 60, 60.
 18 Q Thank you, Mr. Trump.
 19 THE COURT: All right. That's what I heard, so
 20 make sure the record indicates 60, however you do that.
 21 A I'm sorry, what was the question again, ma'am?
 22 Q I asked you if you'd agree with me that the license
 23 agreement was in fact assigned to Bally's Corporation?
 24 A I believe so, yes.
 25 Q Okay. And that's Ron Leiberman. He works for the

D. Trump, Jr. - Plaintiff - direct (Faherty) Page 3268

1 Trump Organization; correct?
 2 A Correct.
 3 MS. FAHERTY: Your Honor, I move to admit.
 4 MR. ROBERT: Same objection, Your Honor.
 5 THE COURT: Same ruling. It's in.
 6 (Whereupon, the item previously referred to is
 7 received and marked Plaintiff's Exhibit Number 3305 in
 8 evidence.)
 9 Q You could put that down, Mr. Trump. Thank you.
 10 MS. FAHERTY: One second, Your Honor.
 11 THE COURT: Sure.
 12 MS. FAHERTY: Thank you.
 13 Q Mr. Trump, can you hear me?
 14 THE COURT: Can you hear me? I think now.
 15 MS. FAHERTY: Thank you.
 16 THE COURT: Yes.
 17 Q Mr. Trump, what, if any, role did you have with regards
 18 to the insurance program for the Trump Organization?
 19 A Not much of a role.
 20 Q Do you recall in January of 2017 signing an indemnity
 21 agreement to Zurich for purposes of the surety program as a
 22 result of Donald J. Trump's departure to work in Washington?
 23 A No, I don't.
 24 Q No specific recollection of that?
 25 A No.

D. Trump, Jr. - Plaintiff - direct (Faherty) Page 3269

1 MS. FAHERTY: Your Honor, I'm handing to the
 2 witness a document I've marked for identification as
 3 PX-1534.
 4 Q And I'll draw your attention to page three of six,
 5 Mr. Trump.
 6 A Yes.
 7 Q Do you recognize that signature on the top line under
 8 DJT Holdings LLC?
 9 A Yes.
 10 Q You recognize that as your signature?
 11 A I do.
 12 Q And that's as Donald Trump, Jr., President?
 13 A Yes.
 14 Transcript continues on the following page....
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 25

D. TRUMP, JR. - PLAINTIFF - DIRECT(MS. FAHERTY) Page 3270

1 Q Just turning to the first page, can you confirm for me
 2 that this is a rider dated as of January 17, 2017, correct?
 3 A Yes.
 4 MS. FAHERTY: Your Honor, I move to admit this
 5 document in evidence.
 6 THE COURT: Granted. It is in.
 7 MS. FAHERTY: Thank you.
 8 (Whereupon, the Document was marked in evidence as
 9 Plaintiffs Exhibit 1386.)
 10 MS. FAHERTY: We can take that down. Thank you,
 11 Ashley.
 12 Q Mr. Trump, is it a fair statement that throughout your
 13 time working at the Trump Organization between 2011 to present,
 14 you have been kept generally apprised of the operating
 15 financials of the organization?
 16 A I would think so, yes.
 17 MS. FAHERTY: Your Honor, I'm handing to the
 18 witness a document I've marked for identification as PX
 19 1454.
 20 Q This is a memo to you and Eric Trump, right?
 21 A Yes.
 22 Q From Allen Weisselberg?
 23 A Yes.
 24 Q Do you recall you previously testified that this was a
 25 document you were provided by Mr. Weisselberg on a regular

D. TRUMP, JR. - PLAINTIFF - DIRECT(MS. FAHERTY) Page 3271

1 basis?
 2 A I don't recall that, but if I said it, I imagine that's
 3 accurate.
 4 Q Okay. And do you recall that this information you
 5 previously testified or a similar memo to, it was provided also
 6 while Ivanka was still employed at the organization?
 7 A I believe so, yes.
 8 Q You don't have any specific recollection as to when you
 9 began receiving this information, correct?
 10 A No.
 11 Q Am I reading this correctly? The subject of this memo
 12 is "re: 2017 corporate modified cash flow projection versus
 13 actual."
 14 A Yes.
 15 Q And contained in this document are a few categories,
 16 for example, there is a box in the middle of the screen or if
 17 you're just looking at the page, it is at the top third of the
 18 page. That first box says, "business entities"?
 19 A Yes.
 20 Q And there's information related to that box "business
 21 entities," correct.
 22 A Correct.
 23 Q And then if you scroll a little further down, there's
 24 another box, this one is a white box, and it says, "non-business
 25 entities," right?

D. TRUMP, JR. - PLAINTIFF - DIRECT(MS. FAHERTY) Page 3272

1 A Yes.
 2 Q There's information related to that box under the
 3 non-business entities, yes?
 4 A Correct.
 5 Q And the memo is dated February 14, 2018. However, am I
 6 reading it correctly? This is a reflection of the 2017 year,
 7 yes?
 8 A It would appear so.
 9 Q And again am I reading it correctly? As of the 2017
 10 actuals, the adjusted net cash flow/operating profit for 2017
 11 was \$2,211,038, so roughly 2.2 million?
 12 A Yes.
 13 Q And that's despite the projected six million
 14 figure -- 60 million figure?
 15 A It appears so, yes.
 16 Q And this memo, it states at the very top, "As per your
 17 request."
 18 Do you recall why you requested this?
 19 A I don't believe I did. I recall, you know, probably
 20 years prior to that I think we had asked for it. One of the
 21 three of us, meaning myself, my brother and my sister, had asked
 22 and then it sort of became, whether it is an annual or a
 23 semi-annual thing from Allen Weisselberg, but no, I don't recall
 24 a specific request as it relates to this document at this time.
 25 MS. FAHERTY: Your Honor, I move to admit this

D. TRUMP, JR. - PLAINTIFF - DIRECT(MS. FAHERTY) Page 3273

1 document into evidence.
 2 THE COURT: Your microphone is not working.
 3 MS. FAHERTY: Your Honor, it is dead.
 4 THE COURT: Bring it back to life. All right.
 5 Let's -- we'll take our break now because it may take a
 6 while to fix.
 7 MS. FAHERTY: I move to admit it.
 8 THE COURT: Granted. I could hear that.
 9 MS. FAHERTY: Thank you.
 10 THE COURT: It is in.
 11 (Whereupon, the Document was marked in evidence as
 12 Plaintiff's Exhibit 1454.)
 13 THE COURT: Let's all come back in 15 minutes.
 14 MS. FAHERTY: Thank you.
 15 (Witness exits the stand.)
 16 (Whereupon, a recess was taken.)
 17 THE COURT OFFICER: All rise. Part 37 is back in
 18 session. Please be seated and come to order.
 19 THE COURT: For an administrative reason, we are
 20 going to break at 12:45. Let's continue with the direct
 21 examination.
 22 MS. FAHERTY: Thank you, Your Honor.
 23 Q Mr. Trump, when did you learn about the Attorney
 24 General's investigation in the accuracy of the Statements of
 25 Financial Condition?

D. TRUMP, JR. - PLAINTIFF - DIRECT(MS. FAHERTY) Page 3274

1 A I don't specifically recall.

2 Q You did at some point learn about the investigation?

3 A I imagine so, yes.

4 Q When you learned about the investigation, did you in

5 particular undertake any internal inquiry into the accuracy of

6 the Statements of Financial Condition?

7 MR. ROBERT: Objection, Your Honor. To the extent

8 that this would call upon the witness to discuss anything

9 that was discussed with myself or any other counsel for him

10 individually, a co-defendant or the Trump Organization, I'm

11 going to instruct him not to answer that.

12 THE COURT: All right. We'll see what the

13 individual questions are.

14 MR. ROBERT: Thank you, Your Honor.

15 MS. FAHERTY: There is still a question pending,

16 Your Honor.

17 THE COURT: Oh.

18 A I imagine I would have spoken with counsel, correct.

19 THE COURT: Did you speak with any non-counsel?

20 Q Other than speaking with counsel, did you speak with

21 anyone?

22 A I don't even recall necessarily speaking with counsel.

23 Though, I'm sure I would have.

24 Q Did you direct others at the company to

25 undertake -- do not tell me about any specific discussions with

D. TRUMP, JR. - PLAINTIFF - DIRECT(MS. FAHERTY) Page 3275

1 counsel. I'll give you that as my preface.

2 Did you direct others at the company to undertake any

3 inquiry into the accuracy of the Statements of Financial

4 Condition?

5 A Again, anything would have been done through counsel.

6 Q Is that a no?

7 A I don't recall specifically, but anything would have

8 been done through counsel, therefore, privileged.

9 Q Did anyone, to your knowledge, review the work

10 performed by Allen Weisselberg on the Statements of Financial

11 Condition?

12 MR. ROBERT: At what point in time?

13 Q After you learned about the New York Attorney General's

14 investigation.

15 MR. ROBERT: Outside of any involvement with

16 counsel, I presume.

17 THE COURT: Yes. Yes, but at any point in time.

18 A I don't specifically recall.

19 Q Still focusing on the same time frame, did anyone

20 review the work performed by Jeffrey McConney on the Statements

21 of Financial Condition?

22 A Same answer.

23 Q Have you, Mr. Trump, formed any view about whether Mr.

24 Weisselberg or Mr. McConney performed their work on the

25 Statements of Financial Condition in an appropriate manner from

D. TRUMP, JR. - PLAINTIFF - DIRECT(MS. FAHERTY) Page 3276

1 2014 through 2021?

2 A I actually think the things are materially correct.

3 Q So is it fair to say that they performed their work as

4 you expected and the "they" I'm referring to are Mr.'s McConney

5 and Weisselberg?

6 A What's the timeframe?

7 Q Same timeframe.

8 A Can you give me the dates again?

9 Q 2014 to 2021.

10 A Yes, I believe so. And, you know, again, they worked

11 in conjunction with Donald Bender who candidly during that

12 period of time since I was doing a lot of international deals

13 probably spent more time in our offices than I did and so

14 between them, I do believe that's still, again, materially

15 accurate.

16 Q Are you aware of any instances between 2014 and 2021

17 where either Mr. Weisselberg or Mr. McConney failed to follow

18 any instructions from you in their work on the Statements of

19 Financial Condition?

20 MR. ROBERT: Objection. The witness said he was

21 not involved in the Statement of Financial Condition, so he

22 wouldn't have been giving them instructions on the Statement

23 of Financial Condition.

24 THE COURT: Can I get a readback of the question?

25 (Whereupon, the requested portion of the record was

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1 read back.)

2 THE COURT: And the objection is what, that he

3 testified he had nothing to do with the Statements of

4 Financial Condition?

5 MR. ROBERT: Yes, Your Honor.

6 THE COURT: Mr. Trump, did you have anything to do

7 with the Statements of Financial Condition?

8 THE WITNESS: No, I did not, Your Honor.

9 THE COURT: Okay. Thank you.

10 Q Have you undertaken any changes to the policies and

11 procedures of the Trump Organization as a result of the Attorney

12 General's investigation? And please do not provide me any

13 discussions with counsel.

14 MR. KISE: Objection. It would also go to, in

15 addition to attorney-client privilege, which I know she's

16 not asking, to the subsequent remedial measures discussion

17 we had previously. I don't remember with which witness.

18 THE COURT: We're familiar with the subsequent

19 remedial measures point. Is there a way around that or not?

20 THE WITNESS: I think I can thread the needle.

21 There have been policy changes that have been made. Those

22 have been done through counsel, so I can't get into the

23 details of that. But yes, there are, you know, prior

24 policies and methodologies have certainly been bolstered.

25 Q Sorry. Which specific policies?

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1 A Again, I don't want to get into the details because
2 these things and structures were done with counsel, but Mark
3 Hawthorn who is now in the similar CFO position is an actual
4 CPA, et cetera, et cetera. So there are things I just -- I got
5 to be careful where I go without getting into things that have
6 been structured by legal counsel.

7 MR. WALLACE: I think to the extent there are
8 changes in how they perform, that is not advice of counsel.
9 You cannot change from a CPA to -- from a non-CPA to a
10 CPA/CFO and claim "I can't talk about that because this is
11 privileged." So if there are changes to policies, he's free
12 to talk about that, not about conversations he had with
13 counsel that led to the changes.

14 MR. ROBERT: That would still go to a subsequent
15 remedial measure taken in light of a governmental
16 investigation. It would be something the witness would not
17 be required to have to testify about.

18 MR. WALLACE: I would just make two points on the
19 subsequent remedial measures. A subsequent remedial measure
20 undertaken as an obligation of law is actually admissible as
21 to liability. The second point is that this inquiry can go
22 to something more than just liability. It is still relevant
23 to any injunctive relief the Court may choose to fashion in
24 order to if there are policies or procedures at the Trump
25 Organization that need to be changed as a result of this

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1 case. So even if it doesn't go to liability, it is still
2 relevant to any relief --

3 THE COURT: Remedy.

4 MR. ROBERT: I would respectfully disagree with
5 that. The concept of a subsequent remedial measure is to
6 encourage parties to change their practices in light of when
7 something comes to light without fear that the changing of
8 those processes are then going to be used in any way and the
9 witness be required to testify about it.

10 To Mr. Wallace's second point, that's why there is
11 a monitor there right now. So this is something I would
12 respectfully suggest to the Court the witness not be
13 required to have to answer. Certainly, we can all agree the
14 issues that we dealt with with counsel are off limits. Now,
15 we are talking to the second bucket which may be what, if
16 any, subsequent remedial measures were taken without the
17 assistance of counsel, but my objection still stands.

18 MR. KISE: One other thing I just want to recite.
19 The Dominos case which was the case that involved this very
20 circumstance and what the court said there about actions
21 taken in response to a government investigation. That's the
22 only case we could find. I believe I cited that case to
23 Your Honor the last time we had this issue arise on
24 subsequent remedial measures.

25 So actions taken in response to an investigation by

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1 the Attorney General or response to an investigation by law
2 enforcement would fall squarely within the subsequent
3 remedial measures category even though most of the time it
4 comes up as -- I believe we had this colloquy before. It
5 comes up in the context of personal injury actions and
6 medical/malpractice actions and things like that, but the
7 rule would, nonetheless, apply here.

8 MR. WALLACE: I would add it is not a privilege.
9 It merely prohibits the changes in procedures and being used
10 as evidence of negligence or liability, but it is a fact
11 that the Court can consider as it is fashioning a remedy as
12 to what might happen in the future and who needs to be
13 responsible for those changes.

14 MR. KISE: If the inquiry -- two things on that.
15 First of all, there are no Statements of Financial Condition
16 being prepared anymore. So that dispenses with a large
17 measure of the issue about subsequent remedial measures
18 because it is not happening.

19 But separately from that, what Mr. Wallace is
20 talking about is if in response to the inquiry we take a
21 specific action, that's one thing. If the government
22 intends to ask questions about what exactly it is we're
23 doing now, just not in response to any particular inquiry,
24 but they had Mark Hawthorn on the stand. Mr. Hawthorn is a
25 CPA. If they ask, "How do you do X, Y, Z accounting? "How

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1 do you that?" That's a matter entirely different than
2 something done in response to the government's
3 investigation, something done subsequent as a remedial
4 measure.

5 If they're going to inquire of witnesses, maybe not
6 this witness, because I don't know that he would know they
7 can ask, but if they're going to inquire about what
8 practices are taking place today, so that the Court can
9 ensure itself that going forward, for example, there aren't
10 going to be any Statements of Financial Condition, or there
11 won't be any issues associated with Statements of Financial
12 Condition, then that's a different line of questioning
13 altogether and that doesn't relate to the question that was
14 asked.

15 MR. WALLACE: I'll just say if they want to call in
16 Mr. Hawthorn on their case and explain how the processes are
17 working there, they are free to do that. This is the
18 executive vice-president of the company. He and his brother
19 run the company. It is perfectly appropriate for us to ask
20 the persons running the company what they are doing to
21 oversee the financial function of this firm and what they
22 did when they found out that there were allegations of fraud
23 from a government agency.

24 I don't think what weight Your Honor decides to
25 afford it and how Your Honor decides to use it is not a

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1 privilege that cannot be discussed in court.
 2 THE COURT: Well, maybe we can compromise. I love
 3 compromise. Instead of "What are you doing in response to
 4 the Attorney General's investigation," et cetera, how about
 5 just "How is the company being run"? But more
 6 specifically --
 7 MR. KISE: That's a more appropriate question.
 8 That's the heart of exactly what I'm saying.
 9 THE COURT: And Mr. Kise, I have to give you credit
 10 for that idea.
 11 MR. KISE: I've got one. Let's mark this down.
 12 Wow. Okay.
 13 THE COURT: Not the first time.
 14 Can we just do that, so there's no taint about
 15 subsequent remedial measure? Just you want to know what's
 16 going on there now. Ask him now what's going on.
 17 Q Since 2020, Mr. Trump, how, if at all, has the Trump
 18 Organization changed the operations with regards to the
 19 financial practices of the Trump Organization?
 20 MR. KISE: Same objection, Your Honor. It is the
 21 same thing.
 22 THE COURT: I was hoping you wouldn't ask how have
 23 things changed, but ask specific questions. "Who makes sure
 24 this"? "How does this work"?
 25 Q You testified a few moments ago about an individual

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1 named Mark Hawthorn.
 2 A Yes.
 3 Q What is Mr. Hawthorn's title?
 4 A Now CFO of the Trump Organization.
 5 Q When did that occur?
 6 A I don't remember the exact date.
 7 Q Since 2021?
 8 A I imagine so, yes.
 9 Q Why is 2021 the date that you would recall --
 10 A It's not. You asked me since 2021. I believe that's
 11 the case.
 12 Q Was it before 2021?
 13 A Not that I recall.
 14 Q Is there a specific event that you recall occurred in
 15 connection with the change of title from Mark Hawthorn to
 16 becoming the CFO of the Trump Organization?
 17 A I guess Allen Weisselberg not being in that position
 18 anymore.
 19 MS. FAHERTY: Nothing further, Your Honor.
 20 THE COURT: Will there be any cross-examination at
 21 this time?
 22 MR. ROBERT: Not at this time, Your Honor.
 23 THE COURT: Okay. Witness is excused.
 24 THE WITNESS: Thank you.
 25 MS. FAHERTY: Thank you, Mr. Trump.

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1 THE WITNESS: Thank you.
 2 (Witness excused.)
 3 MR. ROBERT: For logistical reasons, a
 4 couple-minutes break while we bring in the next witness.
 5 THE COURT: Sure. Approximately how long are you
 6 thinking?
 7 MR. ROBERT: Two or three minutes. I didn't want
 8 you to wait in silence.
 9 THE COURT: You get five.
 10 MR. ROBERT: Thank you, Judge. We'll take five
 11 then.
 12 (Whereupon, a recess was taken.)
 13 THE COURT: Plaintiff, would you like it call your
 14 next witness?
 15 MR. AMER: Yes, Your Honor. The People call Eric
 16 Trump. If I could make a quick request as the witness is
 17 taking the stand.
 18 THE COURT: Sure. Go ahead.
 19 MR. AMER: This is for Mr. Kise. Given the
 20 witness, if we are going to have a lengthy evidentiary
 21 objection, and I know the Court is prepared to allow that, I
 22 would ask that we excuse the witness if that happens.
 23 THE COURT: Okay. I'll keep that in mind.
 24 E R I C T R U M P, a witness called by the Plaintiff, after
 25 having been first duly sworn by the Clerk of the Court, took the

E. TRUMP - PLAINTIFF - DIRECT(MR. AMER) Page 3285

1 witness stand and testified as follows:
 2 THE COURT OFFICER: State your name and either home
 3 or business address for the record.
 4 THE WITNESS: Eric Trump, 115 Eagle Terrace Lane,
 5 Jupiter, Florida.
 6 THE COURT: Okay. Please proceed.
 7 MR. AMER: Thank you.
 8 DIRECT EXAMINATION
 9 BY MR. AMER:
 10 Q Good morning, Mr. Trump. Am I correct that you
 11 graduated from Georgetown University with a degree in business
 12 finance in 2006?
 13 A Yes.
 14 Q And you started to work for your family business a
 15 couple of months after graduating from college, right?
 16 A I did.
 17 Q And are you fine to refer to the family business in a
 18 very general sense as the Trump Organization?
 19 A Yes, I am.
 20 Q And the Trump Organization is used as a kind of general
 21 high level idea as to what the collection of the Trump-related
 22 entities are called; is that right?
 23 A That's correct.
 24 Q And that collection of companies likely consists of
 25 hundreds of entities, right?

E. TRUMP - PLAINTIFF - DIRECT(MR. AMER) Page 3286

1 A That's right.

2 Q When you began at the Trump Organization, am I correct

3 that your job title was something along the lines of project

4 manager?

5 A That's correct.

6 Q And at some later point in time you became the

7 executive vice-president or EVP, right?

8 A Yes, that's correct.

9 Q Do you recall that's sometime before 2014?

10 A That sounds correct.

11 Q And during the period of time from when you became an

12 executive vice-president until January of 2017 just prior to

13 your father's inauguration, is it fair to view the Trump

14 Organization hierarchy as a pyramid that had your father at the

15 top?

16 A My father was the owner of the business, yes.

17 THE COURT: I'll ask the witness to speak very

18 close to the microphone. They're very temperamental. Speak

19 close, directly and loudly.

20 Q I know you just said your father is the owner of the

21 business, yes. That wasn't my question. My question was is it

22 fair to say that we could view the Trump Organization during

23 that period, the hierarchy at the company as a pyramid with your

24 father on the top?

25 A Yes.

E. TRUMP - PLAINTIFF - DIRECT(MR. AMER) Page 3287

1 Q And during this period that you were EVP up through

2 January 2017, did you report to your father?

3 A Yes.

4 Q Did you report to anyone else during that period of

5 time other than your father?

6 A I worked with many people, but ultimately reported to

7 my father.

8 Q And just again, did you report to anyone else other

9 than your father? I'm not asking whether you worked with them,

10 but just whether you reported to them.

11 A My father would have been my direct report.

12 Q And your only direct report, correct?

13 A Yes, that sounds right.

14 Q And during this period up again through January 2017,

15 were Donald Trump, Jr. and Ivanka Trump also vice-presidents?

16 A Yes.

17 Q Were they at the same level in the company hierarchy as

18 you during that period?

19 A Yes.

20 Q During this period, again, up through January 2017,

21 where in the hierarchy was Allen Weisselberg?

22 A He was executive vice-president.

23 Q So he would have been at the same level as you and your

24 brother and sister, correct?

25 A Yes.

E. TRUMP - PLAINTIFF - DIRECT(MR. AMER) Page 3288

1 Q And where in the hierarchy during this period was

2 Jeffrey McConney?

3 A Jeffrey McConney would have been directly under Allen

4 Weisselberg.

5 Q I know you mentioned Mr. Weisselberg was an executive

6 vice-president. He also had the title of chief financial

7 officer, correct?

8 A That's correct.

9 Q And Mr. McConney had the title of controller, right?

10 A That sounds correct, yes.

11 Q Now, moving to the period from January 2017 to

12 January -- the period between January 2017 and January 2021,

13 during that period when your father had assumed the office of

14 the presidency, is it correct that he no longer sat at the top

15 of the pyramid?

16 A That is correct.

17 Q And during the same time period, is it fair to say that

18 you ran the day-to-day operations of the Trump Organization

19 along with Donald J. Trump, Jr. and Allen Weisselberg, correct?

20 A Yes, I ran the operations of the Trump Organization.

21 Q With those two individuals, correct?

22 A That's correct.

23 Q And those two individuals, Donald Trump, Jr. and Allen

24 Weisselberg, were both trustees of your father's revocable trust

25 during that time period?

E. TRUMP - PLAINTIFF - DIRECT(MR. AMER) Page 3289

1 A They were the two trustees, yes.

2 Q During this period, did you have anyone who you

3 reported to?

4 A I did not, no.

5 Q Subsequent to your father's term ending in

6 January 2021, is it fair to say that he largely relies on you

7 and your brother Donald Trump, Jr. and the other executives of

8 the company to run the business?

9 A Yes, my father relied on me.

10 Q My question is a little differently.

11 A Let me repeat. My father relied on me and the two

12 trustees to run the business, yes.

13 Q And during this post-January 2021 period, is it fair to

14 say that if your father directed you to take some course of

15 action with respect to the Trump Organization, you would follow

16 his directive, right?

17 A I wouldn't sell Mar-A-Lago without asking my father,

18 no.

19 Q I would like my question to be broader if you wouldn't

20 mind.

21 A If my father directed me to take an action post him

22 leaving the presidency, he's the owner of the company, yes, I'd

23 follow his directive.

24 Q Thank you.

25 You're familiar with the Seven Springs Estate in

E. TRUMP - PLAINTIFF - DIRECT(MR. AMER) Page 3290

1 Westchester, correct?
 2 A Yes, I am.
 3 Q And in fact, you lived there during the summers in high
 4 school working on the property and learning a lot about life
 5 during that time, right?
 6 A Some of the best years of my life.
 7 Q Yes.
 8 A Yes.
 9 Q And you had certain responsibilities for the property,
 10 correct?
 11 A Many years later, yes.
 12 Q Fair to say that starting in 2012, you had some
 13 involvement with the property from an operational standpoint?
 14 A Starting in 2012, I started to be involved in the
 15 property, yes.
 16 MR. AMER: Let's go ahead and put up the 2013 Jeff
 17 Supporting Data, which is Plaintiff's Exhibit 708 in
 18 evidence.
 19 Q We're going to go to Row 633. You'll see that that is
 20 the row in this supporting data spreadsheet where Seven Springs
 21 starts. Do you see that?
 22 A I do. Can you be clear as to what the spreadsheet is?
 23 Q Sure. We've had testimony from Mr. McConney that this
 24 is his supporting data spreadsheet that he used to compute
 25 values for the Statement of Financial Condition.

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1 A Okay.
 2 Q And Mr. McConney notes in Row 638, you'll see, he says,
 3 "6/30/2012, per telephone conversation with Eric Trump September
 4 24, 2012."
 5 Mr. Trump, do you have any recollection of that phone
 6 call?
 7 A No, I don't.
 8 Q Do you have any reason to believe that Mr. McConney
 9 would reference a conversation with you if it didn't happen?
 10 A Absolutely not.
 11 Q In fact, people in the company have conversations with
 12 you all the time about projects that you're working on and you
 13 provide them with answers when you can, correct?
 14 A Almost every single day.
 15 (Continued on the next page.)
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E. Trump - Plaintiff - direct (Amer) Page 3292

1 Q Now, Row 640, Mr. McConney notes a second telephone
 2 conversation with you on August 20th of 2013.
 3 Do you have any recollection of having a call with him
 4 on that date about Seven Springs?
 5 A I don't have specific recollection as to a telephone
 6 conversation on that date, no.
 7 Q And again, do you have any reason to believe that
 8 Mr. McConney would reference a conversation with you as noted
 9 here if it didn't happen?
 10 A I do not.
 11 Q Is it the case, Mr. Trump, that as of the dates of
 12 these two telephone calls with Mr. McConney that he indicates he
 13 had with you, you understood in this time frame that he needed
 14 from you information to assist him in valuing Seven Springs for
 15 your father's Statement of Financial Condition?
 16 A That's incorrect. I never had anything to do with the
 17 Statement of Financial Condition.
 18 Q Just to be clear then, is it your testimony that in the
 19 time frame of the two calls he notes he had with you you had no
 20 knowledge of your father's Statement of Financial Condition. Is
 21 that your testimony?
 22 A People ask me questions all the time, but I never
 23 worked on the Statement of Financial Condition, correct.
 24 Q Well, let's be clear because my question was different
 25 than the one you answered.

E. Trump - Plaintiff - direct (Amer) Page 3293

1 MR. AMER: Can I have a read back?
 2 THE COURT: We can have a read back, but I'll
 3 direct the witness like I very often do, if there is a
 4 yes-or-no question and you can answer it yes or no, please
 5 do so. If you need to explain an answer, then you can and
 6 we can go from there.
 7 And a read back now.
 8 (Whereupon, the requested portion of the
 9 proceedings was read back by the court reporter.)
 10 A I don't believe I ever saw or worked on a Statement of
 11 Financial Condition. I don't believe I would have had knowledge
 12 of it.
 13 Q Is it your testimony then that you had no knowledge in
 14 this time frame, that is by September 2012, that your father had
 15 a Statement of Financial Condition valuing his assets and
 16 showing his net worth?
 17 A It's not what I did do for the company, so --
 18 THE COURT: That was classic yes or no and you're
 19 not answering yes or no.
 20 You want a read back?
 21 MR. AMER: I'd like a read back, please.
 22 THE COURT: Read back, please.
 23 (Whereupon, the requested portion of the
 24 proceedings was read back by the court reporter.)
 25 A Not to the best of my understanding.

E. Trump - Plaintiff - direct (Amer) Page 3294

1 Q And I just want to nail this down because I appreciate
 2 memories fade. Could this be a situation where you were in fact
 3 aware back in this time frame that your father had a Statement
 4 of Financial Condition and just now don't recall or are you
 5 telling us with certainty that in this time frame you were not
 6 aware that your father had a Statement of Financial Condition?
 7 A I think I was 26 years old at the time. I don't recall
 8 what I knew at the time, but as I said, I am unaware of the
 9 Statement of Financial Condition. I never worked on it at the
 10 time and I didn't know anything about it really until this case
 11 came into fruition.
 12 Q And are you telling us then that in the time frame of
 13 these two calls with Mr. McConney in September of 2012 and
 14 August of 2013 that you had no understanding that Mr. McConney
 15 needed information to assist him in valuing Seven Springs for
 16 the purpose of your father's Statement of Financial Condition?
 17 A I believe that would be correct, yes.
 18 Q Mr. Trump, you're familiar with the golf club owned by
 19 the trust in Charlotte, North Carolina; right?
 20 A Yes, I am.
 21 Q And do you recall that the club was purchased in the
 22 first half of 2012 by the Trump Organization?
 23 A Yes, very familiar.
 24 Q I'm going to hand to you what we're marking as
 25 Plaintiff's Exhibit 3329.

E. Trump - Plaintiff - direct (Amer) Page 3295

1 Mr. Trump, you'll see that this is an e-mail exchange
 2 between you and someone named Dick Grove. Do you see that?
 3 A I do.
 4 Q Do you recall who Mr. Grove is?
 5 A Very vaguely, possibly a board member at the club at
 6 the time.
 7 Q If you look at the second page of the exhibit you'll
 8 see at the very bottom it says "board of directors" and
 9 Mr. Grove is listed as one of them, so your recollection is
 10 correct. He was a board member, right?
 11 A That appears to be correct, yes.
 12 Q And he's a board member of the Point Lake and Golf Club
 13 if you look at the first page which is the memo that's in this
 14 e-mail. Do you see that?
 15 A Yes, I do.
 16 Q And do you recall that the Point Lake and Golf Club was
 17 the name of the Charlotte club prior to being purchased by the
 18 Trump Organization?
 19 A I believe that's correct, yes.
 20 Q And he's forwarding to you an e-mail that he says was
 21 sent to members the prior day; right?
 22 A I presume that's correct.
 23 Q Well, that's what it says. He says, "Eric, I wanted to
 24 confirm that the following e-mail was sent to our members
 25 yesterday. Dick;" right?

E. Trump - Plaintiff - direct (Amer) Page 3296

1 A That sounds correct, yes.
 2 Q And he's forwarding you this memo that is entitled
 3 "Information on Options and Straw Vote." Do you see that?
 4 A Yes, I do.
 5 Q And just to get the dates if we go to the top this
 6 e-mail is being forward to you by Mr. Grove on January 7, 2012;
 7 right?
 8 A Yes.
 9 MR. AMER: Your Honor, I move this be admitted into
 10 evidence.
 11 MR. ROBERT: Objection statute of limitations.
 12 THE COURT: Overruled. It's in.
 13 (Whereupon, the item previously referred to is
 14 received and marked Plaintiff's Exhibit Number 3329 in
 15 evidence.)
 16 Q Do you remember receiving this e-mail in early
 17 January 2012 in connection with the potential purchase by the
 18 Trump Organization of the Charlotte club?
 19 A I do not.
 20 Q Do you recall that to purchase the club it was
 21 necessary to obtain approval through a vote of the club members?
 22 A Yes, I do.
 23 Q And if we look at the second paragraph of the memo he's
 24 forwarding to you do you see that the second paragraph describes
 25 future ownership options where one of the options is being a

E. Trump - Plaintiff - direct (Amer) Page 3297

1 member-owned club as referenced in the first indented point?
 2 A Yes, I do.
 3 Q And the second option is the sale of the club assets to
 4 the Trump Organization. Do you see that?
 5 A Yes, I do.
 6 Q And do you remember that those were the two options?
 7 A Yes.
 8 Q And the last sentence in the paragraph says Trump
 9 drafted a few and approved all statements relating to their
 10 offer. Do you see that? You can see it on the screen. I've
 11 highlighted it.
 12 A Yes, I do.
 13 Q You were involved in putting together that offer, isn't
 14 that right?
 15 A I was involved in negotiation of this deal, yes.
 16 Q Just to be precise because my question asked about
 17 putting together the offer. You were involved in putting
 18 together the offer that's being referenced here; right?
 19 A I don't remember. I was involved in the negotiating of
 20 several business points of the deal and some of this vote, but I
 21 don't remember if it I was the one that put together the
 22 materials for our offer.
 23 Q Would you have been one of the people to have approved
 24 all of the statements relating to the offer that was provided by
 25 the company to the members of the club?

E. Trump - Plaintiff - direct (Amer) Page 3298

1 A It's possible that I would have been one of the people
 2 who would have seen them, sure.
 3 Q I didn't say "see." I said "approved."
 4 A I guess it depends on what the actual item in the offer
 5 was. I imagine there could have been hundreds of developments
 6 that went into that, but I mean, if you could be a little more
 7 specific I think it would be easier for me to answer the
 8 question.
 9 Q Were you one of the key people negotiating this deal on
 10 behalf of the Trump Organization?
 11 A Yes, I was.
 12 Q Okay. Let's go to the second page of the exhibit and
 13 the paragraph beginning in bold, "the straw vote." Do you see
 14 that?
 15 A I do.
 16 Q Okay. It says that "if the members vote in favor of
 17 the Trump plans, the fully negotiated final terms and conditions
 18 will be brought back to the members for consideration and a
 19 binding vote in February and March. If members vote for a
 20 member-owned club, negotiations with Trump will end."
 21 Do you see that?
 22 A I do.
 23 Q And that was your understanding at the time; right?
 24 A Yes, we had to get a vote of the members.
 25 Q And the negotiations did in fact move forward based on

E. Trump - Plaintiff - direct (Amer) Page 3299

1 how the straw poll vote turned out; right?
 2 A It was overwhelmingly positive for us, yes.
 3 Q So the negotiations went forward based on how the straw
 4 poll vote turned out; correct?
 5 A Yes.
 6 Q And one of the other board members is Philip Delk. Do
 7 you see his name in the bottom?
 8 A Yes, I do.
 9 Q Do you recall communicating with Mr. Delk about moving
 10 forward with the member vote after the straw poll?
 11 A I don't, but it's very possible.
 12 Q Do you recall that he was the board member tasked with
 13 conducting due diligence on the Trump Organization for purposes
 14 of reporting to the club members in advance of the members'
 15 vote?
 16 A Yes, I believe he was that person.
 17 MR. AMER: Let's go ahead and mark as exhibit
 18 Plaintiff's 3333.
 19 MR. ROBERT: Your Honor, just for the record I
 20 object to the whole line of questioning and have a
 21 continuing objection on the statute of limitations and
 22 relevance.
 23 THE COURT: I understand that, yes.
 24 Q Mr. Trump, do you see that this is an e-mail to Allen
 25 Weisselberg cc'd to you and others from Mr. Delk?

E. Trump - Plaintiff - direct (Amer) Page 3300

1 A Yes, I do.
 2 Q And it attaches financial due diligence of the Trump
 3 Organization. Do you see that?
 4 A I do.
 5 MR. AMER: Your Honor, I move to admit this
 6 document into evidence.
 7 MR. ROBERT: Objection. Statute of limitations.
 8 THE COURT: Overruled. It's in.
 9 (Whereupon, the item previously referred to is
 10 received and marked Plaintiff's Exhibit Number 3333 in
 11 evidence.)
 12 Q If you turn to the second page which is the attachment,
 13 it's entitled, "Financial Due Diligence of the Trump
 14 Organization." Do you see that?
 15 A Yes, I do.
 16 Q And you received this e-mail from Mr. Delk and the
 17 attachment; right?
 18 A If you tell me I do, yes, I have no reason to not
 19 believe that I did.
 20 Q Well, do you have a specific recollection of receiving
 21 and reviewing the financial due diligence summary that Mr. Delk
 22 attaches to his e-mail?
 23 A I have no recollection.
 24 Q If you look at the financial due diligence summary
 25 that's attached to his e-mail just going to read to you the

E. Trump - Plaintiff - direct (Amer) Page 3301

1 first paragraph of this. Says, "On February 13, 2012, Phil Delk
 2 reviewed a financial statement prepared by a CPA firm reflecting
 3 Donald Trump's net worth. Can we agree that's a reference to
 4 your father's Statement of Financial Condition?
 5 A I really don't want to speculate. I could assume,
 6 because I don't -- I prefer not to speculate.
 7 Q Well, you were one of the principal people involved in
 8 the negotiation of the purchase of this club; right?
 9 A Yes.
 10 Q And you recall Mr. Delk was the board member who was
 11 doing the due diligence on the deal; right?
 12 A Yes.
 13 Q And this says he reviewed a financial statement
 14 prepared by a CPA firm reflecting Donald Trump's net worth.
 15 Are you telling us that you are not in a position to
 16 understand that this was your father's Statement of Financial
 17 Condition?
 18 A I'm just saying I don't want to speculate there is a
 19 lot of financial statements that are prepared by CPAs. It's
 20 addressed to clearly not me. It's addressed to somebody else
 21 and clearly this is Phil Delk's recollection. I just -- I don't
 22 want to confirm or deny either way. I just don't want to
 23 speculate.
 24 Q And I don't want you to speculate either. So that's
 25 why my question is very simple.

E. Trump - Plaintiff - direct (Amer) Page 3302

1 Are you telling us you are not in a position to
 2 recognize the document described here as your father's Statement
 3 of Financial Condition? Is that your --
 4 A I am not in that position. This is 12 years ago. I
 5 have no idea.
 6 Q It continues on. It says the statement was not signed
 7 by the CPA firm giving an opinion that it accurately reflected
 8 Donald Trump's net worth, but that it showed the assets,
 9 liabilities for Donald Trump and noted any material omissions.
 10 The financial statement reflected that the Trump Organization
 11 has eliminated significant amounts of debt over the past years.
 12 Having looked at that paragraph, are you still telling
 13 us that you are not in a position to recognize that the document
 14 referred to here is your father's Statement of Financial
 15 Condition?
 16 A It's possible, sir. I just don't want to speculate.
 17 Q I am going to ask you to answer my question yes or no
 18 because I think --
 19 MS. HABBA: Objection. Asked and answered.
 20 MR. AMER: I think it was a yes-or-no question
 21 asked. Can I have a read back?
 22 THE COURT: Well, let's compromise. Let's try one
 23 more time. I believe it was asked and answered, but just
 24 ask -- a read back or a rephrasing or repetition, whatever
 25 you want, Mr. Amer.

E. Trump - Plaintiff - direct (Amer) Page 3303

1 MR. AMER: Sure.
 2 Q I've just now read that first paragraph. Is it your
 3 testimony, sir, that you are not able to confirm in your own
 4 mind that what's being referred to here is your father's
 5 Statement of Financial Condition?
 6 A I cannot confirm because it doesn't sound like I was
 7 physically there and I don't want to speculate.
 8 Q The next paragraph indicates "the cash and cash
 9 equivalents were in the hundreds of millions, the assets in the
 10 billions -- billion of dollars were more than ten times the
 11 liabilities on the financial statement." You see that?
 12 A I do.
 13 Q Okay. And you're still unclear about whether this is
 14 referring to your father's financial statement?
 15 MS. HABBA: Your Honor, I'm going to object.
 16 THE COURT: Overruled. He did introduce further --
 17 MS. HABBA: Okay, but he's testified that he
 18 doesn't -- this letter wasn't to him. He doesn't know.
 19 He's going to try and get him to obviously authenticate it,
 20 but I think his testimony still stands. I'm just stating my
 21 objection for the record.
 22 MR. AMER: It's already in evidence, Your Honor.
 23 MS. HABBA: Then I'm not really sure what we're
 24 doing.
 25 MR. AMER: It will become clear very soon.

E. Trump - Plaintiff - direct (Amer) Page 3304

1 THE COURT: Objection overruled.
 2 A It is very possible that it was the statement. I just
 3 don't know because this wasn't directed at me.
 4 Q You, in fact, worked with Mr. Weisselberg to arrange to
 5 have Mr. Delk review your father's Statement of Financial
 6 Condition as part of his due diligence efforts for the sale of
 7 the club, isn't that right?
 8 A I absolutely probably would have been the person who
 9 made the introduction to Allen Weisselberg, yes.
 10 Q Not my question.
 11 A I think it was.
 12 MR. AMER: Can I have a read back, Your Honor?
 13 Because that wasn't my question.
 14 THE COURT: It didn't answer the question.
 15 Let's just read it back.
 16 (Whereupon, the requested portion of the
 17 proceedings was read back by the court reporter.)
 18 A I have no recollection at this time.
 19 MR. AMER: Let's go ahead and mark Plaintiff's
 20 Exhibit 1092.
 21 Q Mr. Trump, you'll see this is an e-mail chain where
 22 Mr. Delk e-mails Mr. Weisselberg copied to you on February 13,
 23 2012 and Mr. Weisselberg asks you a question that you then
 24 respond to in the top e-mail. Do you see that?
 25 A Yes, I do.

E. Trump - Plaintiff - direct (Amer) Page 3305

1 MR. AMER: Your Honor, I move that this be admitted
 2 into evidence.
 3 MR. ROBERT: Objection. Statute of limitations,
 4 Your Honor.
 5 THE COURT: Overruled. It's in.
 6 (Whereupon, the item previously referred to is
 7 received and marked Plaintiff's Exhibit Number 1092 in
 8 evidence.)
 9 Q Now, the bottom e-mail from Mr. Delk to Mr. Weisselberg
 10 that you're copied on, the first paragraph says, "thank you
 11 again for taking the time to meet with me today and answer my
 12 questions. I was on the way to LaGuardia, two additional
 13 questions occurred to me," and then he asks those questions.
 14 Do you recall that Mr. Delk in doing his due diligence
 15 traveled to the Trump Organization offices to review information
 16 for that effort?
 17 A I do not.
 18 Q Mr. Weisselberg -- well, before I get there. You would
 19 agree with me that based on his e-mail to you and
 20 Mr. Weisselberg that is in fact the case?
 21 A Yes, it looks like that.
 22 Q And Mr. Weisselberg writes to you "before I respond I
 23 want to make sure you and your dad are still going forward with
 24 this deal. Your dad did not sound very upbeat about the deal.
 25 He spoke about how little we would make and that he did not see

E. Trump - Plaintiff - direct (Amer) Page 3306

1 himself going to NC, etc."
 2 You see that e-mail from Mr. Weisselberg to you; right?
 3 A Yes, I do.
 4 Q And then you respond confirming that in fact the deal
 5 is going to go forward; right?
 6 A Yes, that's what I responded.
 7 Q And is it fair to say as you indicate in your response
 8 to Mr. Weisselberg that you consider the deal to purchase the
 9 club to be close at hand and that you wanted to get it done?
 10 A Well, my exact words "because we had bigger fish to
 11 fry, but we have it on the one yard line."
 12 Q And I wasn't trying to use your exact words. I was
 13 just asking you if you would agree that what you're saying here
 14 is that the deal is close at hand and you wanted to get it done;
 15 right?
 16 A Yes.
 17 Q Just going back, we had looked at the draft, due
 18 diligence summary that was attached to the prior exhibit. You
 19 recall that?
 20 A Yes, I do.
 21 MR. AMER: Let's go ahead and mark Exhibit 1091.
 22 Q You'll see these are a series of e-mail exchanges among
 23 you, Mr. Delk and Mr. Weisselberg; right?
 24 A Yes, I do.
 25 MR. AMER: Your Honor, I move to admit this into

E. Trump - Plaintiff - direct (Amer) Page 3307

1 evidence.
 2 MR. ROBERT: Same objection, Your Honor.
 3 THE COURT: Overruled. It's in.
 4 (Whereupon, the item previously referred to is
 5 received and marked Plaintiff's Exhibit Number 1091 in
 6 evidence.)
 7 Q If you'll look at page two of this document, the bottom
 8 e-mail, this is the same e-mail we had just looked at before
 9 that attached the due diligence summary; correct?
 10 A That's correct.
 11 Q Then you actually on the bottom of page one respond to
 12 that e-mail directly to Mr. Delk; right?
 13 A Yes, I did.
 14 Q And you did at the time review Mr. Delk's due diligence
 15 summary as indicated in your response to him about it; right?
 16 A It sounds like it if it was attached to that e-mail.
 17 Q Not my question.
 18 Based on your response to him at the bottom of this
 19 page?
 20 A Yes, it looks like that.
 21 Q You received and read Mr. Delk's due diligence summary
 22 that he attached to his e-mail; right?
 23 A Yes, it appears that way.
 24 Q The one that referenced the Statement of Financial
 25 Condition; right?

E. Trump - Plaintiff - direct (Amer) Page 3308

1 MR. ROBERT: Objection. It did not reference a
 2 Statement of Financial Condition.
 3 A The one that reference the financials, yes.
 4 THE COURT: Well, he seems to think it did.
 5 MR. ROBERT: I want to make sure it is a
 6 distinction. It doesn't talk about a Statement of Financial
 7 Condition. Fair enough.
 8 Q And here's what you write to Mr. Delk:
 9 "Phil, sorry to be brash, but it was not the intent
 10 that a summary would be circulated to the members. The point of
 11 the exercise and the intent of our conversation was to give you
 12 and the board comfort that our personal financials have been
 13 reviewed on behalf of the members. This exercise was bound by
 14 confidentiality which is why we did it in person and was
 15 intended for you to be able to convey that you have reviewed our
 16 financials and mention that without question we have the
 17 financial wherewithal to purchase, renovate and operate this
 18 asset. I trust you understand and would appreciate you giving
 19 me your assurance that this will not be distributed."
 20 That was your response to Mr. Delk after reviewing his
 21 draft due diligence report for the members; right?
 22 A Yes.
 23 Q And Mr. Delk responds in the e-mail above telling you
 24 you do not come across as being brash. He understands your
 25 concerns and he will not distribute the summary; that he will

E. Trump - Plaintiff - direct (Amer) Page 3309

1 limit any communication to the fact that you do not -- that you
 2 do have the financial wherewithal to purchase, renovate and
 3 operate the club; right?
 4 A Yes.
 5 Q And you thank him in the e-mail above; right?
 6 A Yes, I do.
 7 Q Can we agree that the due diligence exercise involved
 8 Mr. Delk coming to New York to review personal financials in
 9 person?
 10 A It sounds like he came to New York to review
 11 financials, yes.
 12 Q And you say the exercise was bound by confidentiality.
 13 Does this mean you required Mr. Delk to sign a non-disclosure
 14 agreement before he reviewed the personal financials?
 15 A I wouldn't know.
 16 Q Well, it's your words in the response to him to say the
 17 exercise was bound by confidentiality. Are you telling us you
 18 don't know what you meant by that?
 19 A I don't know if confidentiality was signed. Oftentimes
 20 when you get into a deal transaction at the beginning of the
 21 deal, both sides sign confidentiality agreements. It's very
 22 possible that one was executed. I just don't remember 12 years
 23 later.
 24 Q At any rate it was your intent that he be bound by
 25 confidentiality with respect to his review of personal

E. Trump - Plaintiff - direct (Amer) Page 3310

1 financials during this due diligence exercise; right?

2 A Yes, I think we would want to keep financials

3 confidential. No different than any other private company in

4 the world.

5 Q You were concerned about the personal financials that

6 he was going to be reviewing being distributed to club members;

7 correct?

8 A Possibly. I think you wouldn't want 1,200 people to

9 see personal financials. Yes, I think that would be accurate.

10 Q Having looked at this document, including your reply to

11 Mr. Delk, can we agree that by February 2012 you were aware that

12 your father had a personal financial statement that was being

13 used by the Trump Organization to demonstrate to a third party

14 the company's financial wherewithal?

15 MR. ROBERT: Objection. He keeps referencing a

16 personal financial statement. All we're seeing in these

17 e-mails are personal financials being provided. That's a

18 huge distinction.

19 MR. AMER: Your Honor.

20 THE COURT: It's definitely a distinction. I don't

21 know how huge or small it is. Mr. Amer, go ahead.

22 MR. AMER: I think the witness can answer the

23 question yes or no. If he doesn't agree with the way I

24 phrased the question he can answer no.

25 THE COURT: Overruled. Do you need a read back or

Page 3312

1 (Whereupon, the requested portion of the

2 proceedings was read back by the court reporter.)

3 A Correct.

4 Q Are you telling us that when you sent your response to

5 Mr. Delk telling him he -- telling him he was bound by

6 confidentiality and he shouldn't release the summary to his

7 members that you had no idea what personal financials he was

8 looking at as part of his due diligence exercise? Is that your

9 testimony?

10 A It would be my testimony that he was looking at

11 financials. As to what financials he was looking at, I do not

12 know.

13 Transcript continues on the following page....

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E. Trump - Plaintiff - direct (Amer) Page 3311

1 a restatement?

2 THE WITNESS: Can I have a read back. Thank you.

3 THE COURT: Read back, please.

4 (Whereupon, the requested portion of the

5 proceedings was read back by the court reporter.)

6 A I don't want to nitpick this. Clearly the board member

7 came in to review financials and he did so with Allen

8 Weisselberg and not with me. Do I have an understanding that

9 financials were reviewed, yes. Do I have any understanding or

10 had I ever seen my father's Statement of Financial Condition,

11 no. It's just not what I did for the company, sir.

12 Q You read the due diligence summary that we put up on

13 the screen?

14 A Yes, I did.

15 Q At the time; correct?

16 A It appears so.

17 Q And in response to seeing that you then told Mr. Delk

18 that you were concerned about releasing that summary to the

19 members; correct?

20 A I wouldn't want financial information to be released to

21 1,200 people no matter who they were.

22 Q That wasn't my question.

23 MR. AMER: Can I get a read back, Your Honor?

24 THE COURT: Sure. And I agree that did not answer

25 the question.

E. TRUMP - PLAINTIFF - DIRECT(MR. AMER) Page 3313

1 Q So that's your testimony? You had no idea what the

2 financials were that Mr. Delk was looking at as part of his due

3 diligence exercise when you wrote this e-mail to him, right?

4 A That's correct.

5 Q Can we agree that your involvement in this due

6 diligence exercise with Mr. Delk was to allow him to determine

7 if the Trump Organization had the financial wherewithal to

8 purchase, renovate, and operate the club?

9 A Absolutely.

10 Q And can we agree that your involvement in this due

11 diligence exercise was just seven months before Mr. McConney

12 indicated that he had his first call with you about Seven

13 Springs which just to remind you was in September of 2012?

14 A Sounds correct from a date standpoint, yes.

15 Q Can we at least agree that by 2012 you were aware that

16 the company had personal financials available to share with

17 third parties for them to understand whether the company had

18 financial wherewithal?

19 THE COURT: Hold on. You said "personal

20 financials." Can you be more specific?

21 MR. AMER: I think that's the phrase from the due

22 diligence summary, Your Honor, so I think it's a fair

23 question.

24 THE WITNESS: Your Honor, that's the same thing I'm

25 battling as well.

E. TRUMP - PLAINTIFF - DIRECT(MR. AMER) Page 3314

1 THE COURT: I'm not saying it is a fair question.
 2 I'm just not sure that's what you really want to know.
 3 THE WITNESS: I understood we had financials as a
 4 company and we had an accounting department that would often
 5 refer or would sometimes work with outside entities such as
 6 this. They go through them. I was not personally aware of
 7 the Statement of Financial Condition. I didn't work on the
 8 Statement of Financial Condition. I've been very, very
 9 clear about that.
 10 MR. AMER: Let's go to the 2013 Jeff Supporting
 11 Data. It is native 708.
 12 Q Let's go to Row 640 and you'll see this references a
 13 call with you on August 20, 2013, right?
 14 A Yes, it does.
 15 Q Isn't it a fact, sir, that in connection with that
 16 call, Mr. McConney told you that he needed information from you
 17 to value Seven Springs expressly for your father's Statement of
 18 Financial Condition?
 19 A Not to the best of my recollection.
 20 MR. AMER: Why don't we split the screen and put up
 21 along with this Plaintiff's 1075.
 22 Q This is an easement from Mr. McConney to you dated
 23 August 20, 2013, the same date as the call Mr. McConney
 24 references in his supporting spreadsheet, right?
 25 A Yes.

E. TRUMP - PLAINTIFF - DIRECT(MR. AMER) Page 3315

1 MR. AMER: Your Honor, I move this into evidence.
 2 Move to admit it into evidence.
 3 MR. ROBERT: Objection; statute of limitations.
 4 THE COURT: Overruled. It is in.
 5 (Whereupon, the Document was marked in evidence as
 6 Plaintiff's Exhibit 1075.)
 7 Q Mr. McConney writes to you, sir, "Hi, Eric. I'm
 8 working on your dad's annual financial statement. I need to
 9 value Seven Springs. Attached, please find how we valued it
 10 last year. Can you let me know when you have time to talk about
 11 this year's valuation." Do you see that?
 12 A I do.
 13 Q So you were told by Mr. McConney expressly in
 14 connection with this call that he notes in the supporting data
 15 spreadsheet that he's working on your dad's annual financial
 16 statement, right?
 17 A Okay.
 18 Q Well, not okay. Right?
 19 A Yes. People come to me all the time to ask me
 20 questions about various projects I'm involved with, absolutely.
 21 Q And on this date, August 20, 2013, in an e-mail, he
 22 told you that he was working on your dad's annual financial
 23 statement, correct?
 24 A It's absolutely what it says, yes.
 25 Q So you did know about your father's annual financial

E. TRUMP - PLAINTIFF - DIRECT(MR. AMER) Page 3316

1 statement as of August 20, 2013, didn't you?
 2 A It appears that way, yes.
 3 Q And he told you that he needed to value Seven Springs
 4 for that annual financial statement, right?
 5 A That's what it says, yes.
 6 Q And he attached to this e-mail on the second page an
 7 excerpt from his supporting data spreadsheet, didn't he?
 8 A Yes, he did.
 9 Q So you've actually seen portions of Mr. McConney's
 10 spreadsheet at the time that he was working on it, right?
 11 A Yes. I see some blank cells and some cells that were
 12 already filled out before this e-mail on Excel spreadsheet, yes.
 13 Q If we go back to his cover e-mail, he says, "Attached,
 14 please find how we valued it last year."
 15 So he's showing you how it was valued in 2012 and he's
 16 asking for your assistance in valuing it for 2013, right?
 17 A Yes. It appears that it was already valued in 2012 and
 18 he is asking for my assistance in valuing it for 2013, yes.
 19 Q And that's the topic of his telephone conversation with
 20 you on August 20, 2013, the same date as this e-mail --
 21 A Well, I want to --
 22 Q -- Exhibit 1075, right?
 23 A I just want to clarify. If I'm looking at the
 24 footnote, it says, "Per telephone conversation with Eric Trump,
 25 New Castle land to be donated, North Castle to be used as part

E. TRUMP - PLAINTIFF - DIRECT(MR. AMER) Page 3317

1 of the main mansion." Those are absolutely facts that I could
 2 have given Jeffrey McConney. That's definitely something he
 3 could have come to me to ask. It seems like the values had
 4 already been established in the spreadsheet from the year
 5 before, meaning prior to my involvement in the project.
 6 Q Do you now have some recollection of this call that you
 7 didn't have before?
 8 A No, I don't. I think I'm pointing out the footnote
 9 that you say references numbers and it seems like the
 10 footnote -- it seems like the footnote is referencing New Castle
 11 land to be donated which was our intent at the time and North
 12 Castle land to be used as the part of the main mansion.
 13 Q Just to be clear, when you say "footnote," this is Row
 14 640. It is a note, right? It is not a footnote. It is not a
 15 footnote noted anywhere on this page. It is just a note on Row
 16 640, right?
 17 A I'm referencing the two notes directly below that
 18 mention of my name which would have been consistent with
 19 something I would have given Jeffrey McConney, the current
 20 status of an active development project, yes.
 21 Q Okay. And what you received, which was the second page
 22 of the e-mail, was an excerpt from the supporting data
 23 spreadsheet that had information on Bedford seven Mansions
 24 approved with a selling price, a cost, a profit, number of
 25 homes, and a value, right?

E. TRUMP - PLAINTIFF - DIRECT(MR. AMER) Page 3318

1 A That's correct and it looks accurate, yes.

2 Q That's also information you knew at the time, right?

3 A That we were going to develop at the time seven homes

4 on that property?

5 Q Yes.

6 A Yes, I would have known that.

7 Q You would have had information relating to the selling

8 price, the cost, the profit, the number of homes, right?

9 A No. I think it is established that this pre-dated me.

10 He's asking this in 2013. It seems like he's updating numbers

11 that were already there pre my involvement. At least that's how

12 I'm reading this.

13 Q I'm not asking you to read this. I'm simply asking you

14 to confirm that that information, the details about the seven

15 mansions would have been information that you would have known

16 about at the time of this call, right?

17 A Yes, I was working on the zoning at that time.

18 Q So just to confirm where we are, on the same day as the

19 call Mr. McConney references he had with you in his supporting

20 data spreadsheet, he tells you in an e-mail that he needs to

21 value Seven Springs for your father's annual financial statement

22 and needs to speak to you about the 2013 valuation, correct?

23 A Yes.

24 Q And he shares with you the basis for the prior year's

25 valuation lifted from his spreadsheet, right?

E. TRUMP - PLAINTIFF - DIRECT(MR. AMER) Page 3319

1 A Yes, it looks to be correct.

2 Q Mr. Trump, it is an undeniable fact, is it not, that as

3 of September 24, 2012, the date McConney noted he had his call

4 with you about Seven Springs, you did know that your father had

5 an annual financial statement?

6 You knew it was shared with third parties to

7 demonstrate the company's financial wherewithal and you knew Mr.

8 McConney was going to use the information that you provided to

9 him to value Seven Springs for your father's statement; isn't

10 that right?

11 MR. ROBERT: Objection.

12 A It's just incorrect.

13 THE COURT: Compound question.

14 MR. ROBERT: Compound and stating facts the witness

15 didn't testify to, but the witness just answered.

16 A It is just incorrect.

17 THE COURT: Okay.

18 Q Isn't it a fact, sir, that you were aware that your

19 father's Statement of Financial Condition was being provided to

20 a bank for review in connection with a banking transaction even

21 before February 2012?

22 A Not to the best of my knowledge sitting here right now.

23 MR. AMER: Why don't we go ahead and mark

24 Exhibit 1265.

25 Q You see, Mr. Trump, that there's a bottom e-mail from a

E. TRUMP - PLAINTIFF - DIRECT(MR. AMER) Page 3320

1 woman named Elena Sita at FNBLI, which I represent to you is

2 First National Bank of Long Island, to Mr. Weisselberg that he

3 then forwards to you and others at the Trump Organization. Do

4 you see that?

5 A Yes, I see that.

6 Q And you'll see there is an attachment which is a

7 confidentiality agreement which is the second -- starts on the

8 second page of this exhibit?

9 A Yes, I do.

10 MR. AMER: Your Honor, I move that this be admitted

11 into evidence.

12 MR. ROBERT: Objection; statute of limitations and

13 relevance.

14 THE COURT: Overruled.

15 (Whereupon, the Document was marked in evidence as

16 Plaintiff's Exhibit 1265.)

17 THE COURT: Overruled on statute of limitations.

18 Relevance, we will see where we are going with it.

19 Q You will see that the attachment is a document

20 entitled, "Confidentiality between the First National Bank of

21 Long Island and Trump Acquisition, LLC," right?

22 A Yes.

23 Q And you'll see from the last page of the document that

24 it is executed by someone from the bank, right?

25 A I don't know what this document is, but that appears

E. TRUMP - PLAINTIFF - DIRECT(MR. AMER) Page 3321

1 that it is executed by somebody from the bank.

2 Q It is a document that was forwarded to you by Mr.

3 Weisselberg, right?

4 A Apparently, yes. It's 2010. I think I was 26 at the

5 time, 24.

6 Q And if you look at the confidentiality agreement that's

7 attached, the second paragraph says, "Whereas before on and/or

8 after the date hereof disclosing party may furnish

9 recipient" -- the disclosing party is the Trump entity, right?

10 If you look at the top paragraph, you see that?

11 A Yes.

12 Q And the recipient is the First National Bank of Long

13 Island, right?

14 A That looks to be correct, yes.

15 Q "Whereas before on and/or after the date hereof,

16 disclosing party may furnish recipient with or cause recipient

17 to be furnished with certain documents and information prepared

18 by or for or belonging to disclosing party including without

19 limitation a Statement of Financial Condition of Donald J. Trump

20 as of June 30, 2010 and/or other financial documents and

21 information." Do you see that?

22 A I do.

23 Q Can we agree that is clearly a reference to your

24 father's Statement of Financial Condition?

25 A The chances of me reading a confidentiality agreement

E. TRUMP - PLAINTIFF - DIRECT(MR. AMER) Page 3322

1 that I didn't execute I would say is zero percent, but yes, we
 2 can agree that it says it in that paragraph.
 3 Q And Mr. Weisselberg and in his cover e-mail says,
 4 "CONFI received, F/S going to bank overnight." Do you see that?
 5 A I do.
 6 THE COURT: Five-minute warning.
 7 Q We can agree that F/S is an abbreviation for financial
 8 statement, right?
 9 A Yes, I would assume that's what our CFO would send to a
 10 third party.
 11 Q So in 2010, you received from Mr. Weisselberg an e-mail
 12 forwarding a confidentiality agreement that clearly references
 13 your father's Statement of Financial Condition, right?
 14 A That clearly references a financial statement, yes.
 15 Q Not a financial statement. Your father's Statement of
 16 Financial Condition. Do we need to go back to it? It says
 17 Donald J. Trump, right?
 18 A As I said, the chances that I read a confidentiality
 19 that I didn't sign would be very small, but yes, it certainly
 20 referenced that at that time.
 21 Q And he not only attaches it, but he says in the cover
 22 e-mail "financial statement going to bank overnight," right?
 23 A That's correct.
 24 MR. AMER: Let's go ahead and mark as the next
 25 exhibit Plaintiff's Exhibit 3332.

E. TRUMP - PLAINTIFF - DIRECT(MR. AMER) Page 3323

1 Q This is an e-mail from Mr. McConney to you dated
 2 August 23, 2013, correct?
 3 A That's correct.
 4 MR. AMER: Your Honor, I move to admit this into
 5 evidence.
 6 MR. ROBERT: Objection. Statute of limitations.
 7 THE COURT: Overruled.
 8 (Whereupon, the Document was marked in evidence as
 9 Plaintiff's Exhibit 3332.)
 10 Q The subject of this e-mail in August of 2013 is "DJT
 11 F/S," right?
 12 A Yes.
 13 Q You understood at the time that you received this
 14 e-mail that DJT was Donald J. Trump and F/S was financial
 15 statement, right?
 16 A Yes.
 17 Q And Mr. McConney says to you, "I'm working on the notes
 18 to Mr. Trump's annual financial statement and I'd like to
 19 include any major construction work that was started, completed,
 20 calculated at our golf courses during the last year (i.e.,
 21 July 2012-now)." He says, "Example, Doral, we're doing a
 22 corporate overhaul of the Blue Monster at a cost of X million of
 23 dollars. Something short and sweet is all I need. Thanks in
 24 advance for your help, Jeff."
 25 Mr. Trump, isn't it a fact that Mr. McConney is

E. TRUMP - PLAINTIFF - DIRECT(MR. AMER) Page 3324

1 reaching out to you for information specifically to assist him
 2 in working on the notes to your father's annual financial
 3 statement?
 4 A That's the exact kind of information I would give Mr.
 5 McConney, yes.
 6 Q In his e-mail, he is specifically identifying the fact
 7 that he needs the information to work on your father's financial
 8 statement, right?
 9 A Yes, he's absolutely asking what we're doing on the
 10 ground at various projects, what's underway, and that's the kind
 11 of information I would -- I'm asked about every single day, but
 12 certainly I would have given Mr. McConney.
 13 Q To be specific, though, when he asks you for the
 14 information, he tells you exactly why he needs it and he tells
 15 you that he needs it for your father's annual financial
 16 statement, right?
 17 A Yes. I know Jeffrey McConney does financial statements
 18 for my father. There's no hiding that.
 19 Q So you would have understood at the time that you
 20 received this e-mail in August of 2013 that your father had an
 21 annual financial statement, right?
 22 A We're a major organization, a massive real estate
 23 organization. Yes, I'm fairly certain I understand that we have
 24 financial statements, absolutely.
 25 Q Not my question. You've testified here quite adamantly

E. TRUMP - PLAINTIFF - DIRECT(MR. AMER) Page 3325

1 that you had no idea that there was something called your
 2 father's annual financial statement. So I'm being very specific
 3 in my questions, sir.
 4 MS. HABBA: Objection. You're mischaracterizing
 5 the witness' testimony. He didn't say he didn't know
 6 there's something called it. He didn't testify to that.
 7 A I said I had no involvement nor ever worked on my
 8 father's personal Statement of Financial Condition.
 9 MR. AMER: I'm not going to go back. We know what
 10 the testimony was, Your Honor. I'm just going to go forward
 11 and ask my question again. And I ask that if the witness
 12 can answer yes or no, that he, please, do so.
 13 THE COURT: I'll direct him to do that.
 14 Q It is correct that when you received this e-mail in
 15 August of 2013, you understood that your father had an annual
 16 financial statement and you understood that Mr. McConney was
 17 asking you for information specifically to assist him in working
 18 on the notes to that annual financial statement; isn't that
 19 correct?
 20 A Yes.
 21 THE COURT: Okay. Let's take a break. I'll direct
 22 the witness, as I always do, not to discuss this case or
 23 your testimony or anything related during the break or until
 24 you're no longer a witness.
 25 THE WITNESS: Okay. (Witness exits the stand.)

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1 THE COURT: See everybody at 2:15.
 2 (Whereupon, a luncheon recess was taken.)
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Page 3328

E. Trump - Plaintiff - direct (Amer)

1 MR. AMER: Your Honor, I move to admit this into
 2 evidence.
 3 MR. ROBERT: Statute of limitations.
 4 THE COURT: Overruled. It's in.
 5 (Whereupon, the item previously referred to is
 6 received and marked Plaintiff's Exhibit Number 1071 in
 7 evidence.)
 8 Q So, based on this document you will agree that you
 9 received Mr. McConney's e-mail, you read it and you responded to
 10 it by providing information about construction work at Doral;
 11 right?
 12 A Yes.
 13 Q And when you provided that information you understood
 14 it was expressly for the purpose of assisting Mr. McConney in
 15 preparing the notes to your father's Statement of Financial
 16 Condition; correct?
 17 A That's incorrect.
 18 Q You did respond to an e-mail that expressly referenced
 19 your father's annual financial statement; correct?
 20 A I think where we're getting tripped up is I clearly
 21 understood that I sent notes to Jeff McConney. I worked with
 22 him almost every single day. What's maybe not registering is
 23 the difference between sending him things that were used for
 24 financials and things that were used for a Statement of
 25 Financial Condition. Somebody from accounting would ask me

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E. Trump - Plaintiff - direct (Amer)

1 THE COURT OFFICER: All rise. Part 37 is back in
 2 session. The Honorable Judge Arthur Engoron presiding.
 3 Please be seated and come to order.
 4 MR. KISE: You're back to bounding. That's a good
 5 sign.
 6 THE COURT: I know. I'm anxious to keep moving
 7 things along, and I've got the energy.
 8 Okay. Let's continue with the examination of Eric
 9 Trump.
 10 MR. AMER: Thank you, Your Honor.
 11 CONTINUED DIRECT EXAMINATION
 12 BY MR. AMER:
 13 Q Mr. Trump, when we broke for lunch we were looking at
 14 Plaintiff's Exhibit 3332. If we can just put it up to remind
 15 ourselves where we were.
 16 This was an e-mail you received from Mr. McConney where
 17 he was telling you he was working on the notes to your father's
 18 annual financial statement and was asking you for information.
 19 Do you recall that?
 20 A Yes, I do.
 21 MR. AMER: Let's go ahead and put up Plaintiff's
 22 Exhibit 1071 that we'll mark for identification.
 23 Q Mr. Trump, this is your reply to the e-mail we were
 24 just looking at; correct?
 25 A Yes.

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E. Trump - Plaintiff - direct (Amer)

1 something, they'd ask me details of a project and I would
 2 respond. I don't think it ever registered that it was for a
 3 personal Statement of Financial Condition. It was just a detail
 4 that was irrelevant to me.
 5 Q Mr. Trump, did you speak to anybody about the substance
 6 of your testimony during lunch?
 7 A I did not.
 8 Q Okay.
 9 MR. AMER: Your Honor, can I get a yes-or-no answer
 10 to my question? Because I think it was a yes-or-no
 11 question.
 12 MR. KISE: Which question is that?
 13 MR. AMER: The one before.
 14 THE COURT: Let's just get a read back.
 15 (Whereupon, the requested portion of the
 16 proceedings was read back by the court reporter.)
 17 MR. AMER: I'm not the one about speaking to --
 18 MR. KISE: Right, the one before that.
 19 THE COURT: That's a simple yes or no.
 20 A It appears I did.
 21 MR. AMER: Let's go ahead and mark Plaintiff's
 22 Exhibit -- well, actually, it's already in evidence.
 23 1112. The court officer will hand you a copy
 24 because it's already in evidence.
 25 Q You'll see that this is an e-mail to you from

E. Trump - Plaintiff - direct (Amer) Page 3330

1 Mr. Weisselberg dated April of 2015; yes?
 2 A Yes.
 3 Q And the subject is Seven Springs; right?
 4 A Yes.
 5 Q And you understood at the time of this e-mail that
 6 there was an outstanding mortgage on the property; right?
 7 A Yes, I think I would have known that.
 8 Q And the borrower on the mortgage was Seven Springs LLC;
 9 correct?
 10 A It appears that way, yes.
 11 Q Were you president of Seven Springs LLC at this point
 12 in time?
 13 A I do not know.
 14 Q At some point you did become president of that entity;
 15 right?
 16 A Yes, I did.
 17 Q And the first sentence of the e-mail says "if we have
 18 to pay off the loan I would like to do it post June 30th as that
 19 is the date of your dad's annual financial statement and where I
 20 to keep his cash balance as high as possible."
 21 There is a grammatical error in that, but do we agree
 22 that what Mr. Weisselberg is telling you is that he wants to
 23 hold off paying off the loan if it's going to be paid off until
 24 after June 30th because that way he can keep the cash balance on
 25 your dad's annual financial statement as high as possible?

E. Trump - Plaintiff - direct (Amer) Page 3331

1 A Yes. Mr. Weisselberg would make decisions like that,
 2 absolutely.
 3 Q Well, that's what he's saying in this e-mail?
 4 A I agree with you. Absolutely.
 5 Q So as of the date of this e-mail you understood that
 6 your dad's annual financial statement was as of June 30th;
 7 right?
 8 A One of my father's financial statements was June 30th,
 9 yes.
 10 Q And that it had a cash balance figure in the statement;
 11 right?
 12 A I think any financial statement would have a cash
 13 balance figure, but yes.
 14 Q And the second sentence says, "I realize this will only
 15 have an effect on his liquidity and not on net worth." Do you
 16 see that?
 17 A I do.
 18 Q So you understood as of this date that your father had
 19 an annual financial statement that was as of June 30th that
 20 reflected his liquidity and his net worth; right?
 21 A I see the words on the piece of paper. I'm not sure if
 22 I would have paid a whole lot of attention to that, but yes, I
 23 absolutely see the words on the paper.
 24 Q But you got this e-mail, so as of this date you
 25 understood those things; right?

E. Trump - Plaintiff - direct (Amer) Page 3332

1 A I understand that there is plenty of financial
 2 statements in our company, absolutely, and I also understand the
 3 fact that if you pay off debt with cash you're still in the same
 4 net neutral space. That's just basic finance 101. Absolutely.
 5 Q Okay. My question is very specific about your
 6 knowledge based on this e-mail.
 7 When you got this e-mail and read it, you understood
 8 that your father had a financial statement as of June 30th that
 9 included both liquidity and his net worth; right?
 10 A Yes.
 11 Q And you knew that as of April 2015; correct?
 12 A Yes. This e-mail was sent to me as of April of 2015.
 13 MR. AMER: Let's go ahead and mark Plaintiff's
 14 Exhibit 1113.
 15 Q Mr. Trump, this is an e-mail exchange between you and
 16 Mr. Weisselberg concerning a line of credit for the Las Vegas
 17 property; right?
 18 A If you don't mind, just give me a second to read it.
 19 I'm not familiar with this.
 20 Q Sure.
 21 A Yes, I understand this now.
 22 Q This is an e-mail exchange between you and
 23 Mr. Weisselberg concerning a line of credit for Las Vegas;
 24 right?
 25 A Yes.

E. Trump - Plaintiff - direct (Amer) Page 3333

1 MR. AMER: Your Honor, I move to admit this into
 2 evidence.
 3 MR. ROBERT: Objection. Statute of limitations.
 4 THE COURT: Overruled.
 5 (Whereupon, the item previously referred to is
 6 received and marked Plaintiff's Exhibit Number 1113 in
 7 evidence.)
 8 Q Now, Mr. Weisselberg's e-mail, which is the bottom
 9 e-mail says "I was speaking with Bender this morning and he
 10 happened to mention to me that Drew needed you" -- should be
 11 "your dad's financial statement as well as Phil's in order to
 12 secure a line of credit with B of A." Do you see that?
 13 A I do.
 14 Q So you understood Mr. Weisselberg was looking to use
 15 your dad's financial statement to secure a line of credit from
 16 the bank; correct?
 17 A Presumably. I don't think I would have focused that
 18 much on that, but yes, according to this e-mail, yes.
 19 Q Well, you read this e-mail because you responded to it
 20 in the e-mail above it; right?
 21 A Yes, I told him we didn't need to take out a line of
 22 credit and the renovations were to be very small.
 23 Q But the fact that you responded to it confirms that you
 24 read it; right?
 25 A Yes, I clearly read it at the time.

E. Trump - Plaintiff - direct (Amer) Page 3334

1 Q So you were aware from this e-mail that as of July 2015

2 your father had a financial statement that the company was

3 intending to use to secure a line of credit with the bank;

4 right?

5 A Yes, as I've testified to I know our company has plenty

6 of sets of financial statements.

7 Q The answer to my question is yes?

8 A Yes.

9 MR. AMER: Okay. Let's go ahead and mark as

10 Exhibit 1079 another exhibit.

11 Q Mr. Trump, this is an e-mail from Mr. McConney to you

12 dated February 23, 2017; correct?

13 A Yes.

14 MR. AMER: Your Honor, I move to admit this exhibit

15 into evidence.

16 THE COURT: Granted. It's in.

17 (Whereupon, the item previously referred to is

18 received and marked Plaintiff's Exhibit Number 1079 in

19 evidence.)

20 Q And you'll see there is a subject, it says "footnotes."

21 Do you see that?

22 A I do.

23 Q And it has a PDF attachment. That's the second and

24 third pages of this exhibit?

25 A Yes.

E. Trump - Plaintiff - direct (Amer) Page 3335

1 Q And Mr. McConney writes to you, "Eric, we're working on

2 your dad's financial statement. I've attached the footnotes

3 relating to the three European clubs with all of the renovations

4 that were done since the last statement in June 2015. I wanted

5 to ask you if there is anything you wanted to add to or expand

6 on in the footnotes. Thanks, Jeff." See that?

7 A Absolutely. That would definitely be consistent with

8 my job in the company.

9 Q And if you look at the attachment, it's the footnotes

10 from the Statement of Financial Condition for your father;

11 right?

12 A Yes, I would have focused on two of these three

13 projects because I was actively building them at the time.

14 Q So Mr. McConney is asking for your input on footnotes

15 that are part of your father's annual financial statement;

16 correct?

17 A These are property descriptions, but yes, that sounds

18 right. I was building Turnberry at the time and I was building

19 Trump Doondeg.

20 Q And Mr. McConney is sharing with you a draft excerpt

21 from the Statement of Financial Statement asking for your input

22 on those -- that draft; correct?

23 A Yes, he would have been asking for my input on the

24 property descriptions.

25 Q And he tells you in his e-mail that what he's attaching

E. Trump - Plaintiff - direct (Amer) Page 3336

1 are footnotes to your dad's financial statement; correct?

2 A I think we can agree and with your -- Judge, Your

3 Honor, I know my father has financial statements. Again, I

4 think I've testified to this pretty extensively. Yes, my father

5 has financial statements. These are property descriptions that

6 Jeff asked me to confirm. Absolutely.

7 Q So the answer to my question is yes?

8 A Yes, I confirm property descriptions that Jeff sent or

9 at least received the property descriptions that Jeff sent.

10 Q Well, but my question was different. My question was

11 based on the e-mail you understood that what Mr. McConney was

12 sending you was -- were -- was a draft of a portion of your

13 dad's financial statement. You understood that at the time you

14 got this e-mail in 2017?

15 A I understood it as somebody from accounting was asking

16 me for descriptions of property that I was actively working on

17 building at the time.

18 Q He says "we're working on your dad's financial

19 statement" and he's attaching footnotes. Do you see that?

20 A I do.

21 Q Okay. So you understood when you got this that what he

22 was attaching was a draft portion of your dad's financial

23 statement; yes or no?

24 A Yes.

25 Q Do you recall giving a deposition in this case at the

E. Trump - Plaintiff - direct (Amer) Page 3337

1 Attorney General's offices earlier this year; yes?

2 A I do.

3 Q And your testimony during that deposition was under

4 oath, just like your testimony is here today; correct?

5 A It is.

6 Q I'm going to play video excerpt -- actually, a few

7 excerpts from your deposition and in between each excerpt I'm

8 going to ask you some questions. The first clip is page 259,

9 line 10 to page 262, line 17.

10 (Whereupon, there is a pause in the proceedings.)

11 Q That was your sworn testimony at your deposition;

12 correct?

13 A Yes, and I think it's very accurate with what I'm

14 saying right now.

15 MR. AMER: Can we put up 1075, please?

16 Q Having reviewed the e-mails we've been discussing

17 during the course of the past couple hour -- couple of hours,

18 including this e-mail, will you now concede that in fact you

19 were very familiar with your father's Statement of Financial

20 Condition at least since 2013; yes or no?

21 A Saying your dad's annual financial statement that reads

22 to me very differently than the personal Statement of Financial

23 Condition. Irrespective, I just don't think it would have

24 registered if somebody from accounting is asking me a question

25 about a property description or how many lots could be built on

E. Trump - Plaintiff - direct (Amer) Page 3338

1 a property, I don't really care where it's being used. I care
 2 about providing them the information from the department that
 3 I'm running.
 4 MR. AMER: Your Honor, I'll move to strike the
 5 answer and ask that the witness be instructed to answer my
 6 question yes or no.
 7 MR. ROBERT: Your Honor, I submit the question was
 8 a little bit of a loaded question because it started out
 9 with "very aware." I mean, he was trying to make a point
 10 and Mr. Trump answered it appropriately.
 11 THE COURT: Why don't we do this, another
 12 compromise. You can call it -- I won't strike what he said.
 13 He said what he said and I think it wasn't totally divorced
 14 from your question, but why don't we get a read back or ask
 15 him the question as simply as you can and if it's a yes or
 16 no, I'll direct him to answer yes or no.
 17 MR. AMER: That's fine. I will say other witnesses
 18 have been directed not to give speeches after the yes or no
 19 and that's what I'm asking that you direct him not to do.
 20 THE COURT: Yes. If it's a yes-or-no question and
 21 you answer yes or no, unless you absolutely need -- well,
 22 no. No exception. No speech. You can be cross examined,
 23 but if it's yes or no and you can answer yes or no, then we
 24 don't want a speech.
 25 THE WITNESS: I'm just trying to be very clear for

E. Trump - Plaintiff - direct (Amer) Page 3339

1 everybody, Your Honor. Absolutely.
 2 THE COURT: But there is a system going on here,
 3 question, answer. Yes or no, answer yes or no. No speech.
 4 Do we need a read back or can you just restate or
 5 reformulate the question or just -- I can't remember did he
 6 answer it yes and then give his speech or no and then give
 7 his speech?
 8 Q I'll repeat my question and ask you to please answer it
 9 yes or no.
 10 Having reviewed the e-mails we've been discussing
 11 during the course of the past couple of hours, will you now
 12 concede that in fact you were very familiar with your father's
 13 Statement of Financial Condition at least since 2013; yes or no?
 14 A No, I was not very familiar with my father's financial
 15 statement, no.
 16 Q Will you concede that in fact -- that you did in fact
 17 know as of August 20, 2013 that Mr. McConney was intending to
 18 use the information you provided to him to value the property
 19 for the Statement of Financial Condition; yes or no?
 20 A Yes, it appears that way from the e-mails.
 21 Q Let's play another clip. It's page 273, lines nine to
 22 20.
 23 (Whereupon, there is a pause in the proceedings.)
 24 Q That was your sworn testimony at your deposition; yes?
 25 A Yes.

E. Trump - Plaintiff - direct (Amer) Page 3340

1 Q And will you now agree that you did in fact know about
 2 the backup for the Statement of the Financial Condition because
 3 Mr. McConney had forwarded you an excerpt from his supporting
 4 spreadsheet when requesting information from you for that
 5 property; yes?
 6 A I will agree that it didn't register. I certainly
 7 provided Jeff material for whatever exercise he was undertaking,
 8 but yes, I would agree.
 9 Q Let's play another clip. This one is page 274, lines
 10 15 to 25.
 11 (Whereupon, there is a pause in the proceedings.)
 12 Q Will you now concede that you did in fact have an
 13 understanding when speaking to Mr. McConney about Seven Springs
 14 that he was seeking the information from you for the expressed
 15 purpose of valuing the properties for your father's Statement of
 16 Financial Condition; yes or no?
 17 A Same answer as before. It just didn't register, so yes
 18 -- does it appear he ultimately was, yes. It didn't register to
 19 me and I provide him the exact same information as I provided
 20 him at the time all over again absolutely.
 21 MR. AMER: I think we may need a reminder about no
 22 speeches after answering yes or no, Your Honor, please.
 23 MR. ROBERT: I think it was an appropriate answer.
 24 THE COURT: I think it was a speech. These are
 25 yes-or-no questions.

E. Trump - Plaintiff - direct (Amer) Page 3341

1 Q I'll take the yes, but please if I ask you a yes-or-no
 2 question, then just --
 3 A Just trying to be very clear.
 4 Q Your lawyers will have an opportunity to question you.
 5 A I understand.
 6 Q They may not take it, but they have it.
 7 MR. AMER: Last clip and then we'll move on. This
 8 is page 276, line 18 to 277, line 13.
 9 Q Mr. Trump, will you now concede that despite being
 10 confident at your deposition that you didn't know the
 11 conversations you had with Mr. McConney were ever used as part
 12 of the work product for the Statement of Financial Condition you
 13 did in fact understand at the time of your conversations with
 14 him that the very purpose of his requests to you for Seven
 15 Springs information was to use that information for the
 16 Statement of Financial Condition; yes or no?
 17 MR. ROBERT: Objection.
 18 A No.
 19 THE COURT: I'm sorry, what was the answer?
 20 (Whereupon, the requested portion of the
 21 proceedings was read back by the court reporter.)
 22 Q I'd like to ask you some questions about the
 23 conservation easement donation for Seven Springs.
 24 A Absolutely.
 25 Q You were aware that there was a conservation easement

E. Trump - Plaintiff - direct (Amer) Page 3342

1 donation made on the Seven Springs property; correct?
 2 A Yes.
 3 Q And that donation was made by Seven Springs LLC based
 4 on a final appraisal by Cushman & Wakefield; correct?
 5 A That's correct.
 6 Q Do you recall that the easement donation was made for
 7 the tax year ending 2015?
 8 A That sounds correct.
 9 Q Do you recall that the process of exploring a
 10 conservation easement on the Seven Springs property began a few
 11 years earlier in 2012?
 12 A I have a vague recollection of that now, yes.
 13 Q Let's go ahead and have you look at Exhibit 908, which
 14 is already in evidence.
 15 Mr. Trump, you'll see this exhibit is an engagement
 16 letter between Robert F. Heffernan & Associates and Bingham
 17 McCutchen LLP and that this engagement is to provide consulting
 18 services to the law firm in connection with services the law
 19 firm is providing to its client Donald J. Trump. Do you see
 20 that?
 21 A I do see that, yes.
 22 Q And the second paragraph says that the scope of the
 23 assignment is to provide a written appraisal estimating the fair
 24 market value of a conservation easement placed on the Seven
 25 Springs estate. Do you see that?

Page 3344

1 estimate and you wanted some details on his assumptions?
 2 A I don't remember much about this engagement, no.
 3 Transcript continues on the following page....
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E. Trump - Plaintiff - direct (Amer) Page 3343

1 A I do.
 2 Q And on page four you will see -- you recognize
 3 Ms. Dillon's signature; correct?
 4 A Yes.
 5 Q And can we agree that Ms. Dillon would have required
 6 the Trump Organization's approval to enter into this engagement
 7 on behalf of her client?
 8 A Yes.
 9 Q Let's go ahead and look at Exhibit 3296 for
 10 identification.
 11 Now, see the bottom e-mail is from Mr. Heffernan to Bob
 12 Leonard and he is with -- if you turn to the next page you'll
 13 see he's with Bingham McCutchen, which is Ms. Dillon's firm and
 14 is counsel to the Trump Organization in connection with this
 15 engagement; correct?
 16 A Yes.
 17 Q And in the very bottom e-mail from Mr. Leonard he --
 18 this is on December 18, 2012, he writes to Mr. Heffernan and
 19 says -- and asks if he's available for a call around two. Then
 20 he says "I understand Eric contacted you and wanted to get some
 21 details on your assumptions that led to your initial estimate."
 22 Do you see that?
 23 A I do.
 24 Q Do you recall in this time frame that you had been in
 25 touch with Mr. Heffernan and you understood he had an initial

E. TRUMP - PLAINTIFF - DIRECT(MR. AMER) Page 3345

1 Q Well, I'm just asking very specifically if you
 2 remembered that. Did you?
 3 A I don't remember that.
 4 Q Do you have any reason to believe that Mr. Leonard's
 5 understanding as reflected here in this e-mail was incorrect?
 6 A I would have nothing to base that on, no.
 7 Q So you have no reason to believe it's incorrect, yes?
 8 A Yes.
 9 Q And if you look at Mr. Heffernan's e-mail in response,
 10 which is the next e-mail up, the very end, he references his
 11 value would have been 775,000 per raw lot for Seven Springs,
 12 correct, raw lot?
 13 A I see that, yes.
 14 Q And so if you had contacted Mr. Heffernan, you would
 15 have learned about his initial estimate of 775,000 per raw lot,
 16 right?
 17 A I would not make that assumption at all, no.
 18 Q You did understand according to Mr. Leonard that Mr.
 19 Heffernan had an initial estimate, right?
 20 A It's very possible. I just -- again, I remember very
 21 little about this engagement at this point. This is a very long
 22 time ago.
 23 MR. AMER: I'm going to ask to move this e-mail
 24 chain and I want to be very specific about which portion
 25 gets admitted for which purpose. Mr. Leonard's e-mails come

E. TRUMP - PLAINTIFF - DIRECT(MR. AMER) Page 3346

1 in for all purposes based on an exception to hearsay under
 2 CPLR 4549, which was just recently enacted a couple of years
 3 ago to create a hearsay exception for parties' agents
 4 statements made within the scope of the agency.
 5 And here, we have Mr. Leonard is the agent as
 6 counsel speaking within the scope of his agency role and I'm
 7 going to ask that Mr. Heffernan's e-mail comes in only for
 8 purposes of notice of what he told Mr. Leonard who was the
 9 Trump Organization's agent.
 10 MR. ROBERT: I disagree as to the hearsay
 11 exception. They had Ms. Dillon here who they could have
 12 shown the e-mail to authenticate who I believe is the
 13 partner we are talking about, Mr. Leonard, if I'm not
 14 mistaken. And on that basis alone, I don't think this is
 15 admissible that portion is hearsay in addition to my usual
 16 statute of limitations objection, Your Honor.
 17 THE COURT: Well, the fact that they could have
 18 asked Ms. Dillon doesn't mean they can't try to introduce
 19 evidence some other way.
 20 MR. ROBERT: Even if you bring in as an agent, it
 21 would be an agent of whoever the retained party was who did
 22 this. So if you're bringing it in as a statement, we'd have
 23 to check the engagement letter, but it was Seven Springs,
 24 LLC or whatever entity it is who Mr. Leonard and Ms. Dillon
 25 was representing. Then that's, I guess, fair game, but to

E. TRUMP - PLAINTIFF - DIRECT(MR. AMER) Page 3347

1 say it comes in as an admission for Mr. Trump or any other
 2 individual other than who she was the agent for, I would say
 3 is improper, so tell us who it is you say they are the agent
 4 for.
 5 THE COURT: Mr. Amer, you want to answer that?
 6 MR. AMER: Sure. Exhibit 908, the engagement
 7 letter indicates that the client is Donald J. Trump. I'll
 8 take that.
 9 MR. ROBERT: Can I see the exhibit, please?
 10 MR. AMER: It's 908.
 11 MR. ROBERT: Fair enough.
 12 THE COURT: Objection overruled.
 13 (Whereupon, the Document was marked in evidence as
 14 Plaintiff's Exhibit 908.)
 15 Q We saw that Mr. Leonard's e-mail indicated his
 16 understanding that you had contacted Mr. Heffernan by mid
 17 December of 2012, correct?
 18 A I appear so.
 19 Q If we put up 2013 Jeff Supporting Data PX 708 in
 20 evidence, and if we go to Row 638 and 640, we can agree that the
 21 contact that Mr. Leonard indicated you had with Mr. Heffernan is
 22 about six or seven months prior -- actually would be about
 23 eight months prior to the August 20, 2013 call that you had with
 24 Mr. McConney, right?
 25 A It appears that way, yes.

E. TRUMP - PLAINTIFF - DIRECT(MR. AMER) Page 3348

1 Q Can we agree that there's nothing in this spreadsheet
 2 that reflects information from Mr. Heffernan; yes or no?
 3 A I wouldn't know. I know nothing about this spreadsheet
 4 and I didn't create this spreadsheet, so that's a question for
 5 somebody else. I wouldn't be able to accurately tell you not
 6 knowing the document.
 7 Q Well, you're the one who purportedly had contact with
 8 Mr. Heffernan, so do you recognize any of the figures on this
 9 spreadsheet as being figures that you might have obtained
 10 through conversations with Mr. Heffernan?
 11 MR. ROBERT: I think the disconnect, Your Honor, is
 12 Mr. Amer may be referring to this one entry on the
 13 spreadsheet, not the entire spreadsheet, which is much
 14 greater in detail. That may be where the confusion is here
 15 because he's asking him is it anywhere in the spreadsheet.
 16 The spreadsheet, as my understanding, is pretty thick.
 17 MR. AMER: I'll limit my question to the document
 18 that's up on the screen. That's the excerpt from the
 19 spreadsheet.
 20 THE COURT: All right. So we are just talking
 21 about the excerpt?
 22 MR. AMER: Yes.
 23 MR. ROBERT: That's fine.
 24 A You have to repeat the question because there's many
 25 disconnects here, but, please, go ahead and --

E. TRUMP - PLAINTIFF - DIRECT(MR. AMER) Page 3349

1 Q Do you recognize any of the information on this page,
 2 the excerpt from the spreadsheet as being information based on a
 3 contact with Mr. Heffernan?
 4 A I don't, but I think they are two distinctly different
 5 exercises.
 6 Q So the answer is no?
 7 A No.
 8 THE COURT: See.
 9 Q You would agree with me that your answer is no,
 10 correct?
 11 A It couldn't be because they are two totally different
 12 subject matters and --
 13 THE COURT: The document speaks -- it doesn't
 14 speak for itself. It doesn't say Heffernan. Do you want
 15 to --
 16 Q The question is whether you recognize any of these
 17 figures as figures that would have come from Mr. Heffernan? Do
 18 you, yes or no?
 19 A I don't recognize those figures to begin with, so I
 20 would not be able to answer that question.
 21 THE COURT: We'll take that to be a no.
 22 MR. AMER: Yes.
 23 Q Do you recall that about a year and-a-half later, so in
 24 mid 2014, you reached out to David McArdle of Cushman &
 25 Wakefield to start the ball rolling on getting a preliminary

E. TRUMP - PLAINTIFF - DIRECT(MR. AMER) Page 3350

1 value from him for an easement donation on Seven Springs?
 2 A I do. I remember David McArdle slightly better. It is
 3 a vague recollection, but I remember that David was with
 4 Cushman, yes.
 5 MR. AMER: Let's look at Plaintiff's Exhibit 3330
 6 for identification.
 7 Q This is your e-mail to Mr. McArdle in June of 2014.
 8 The subject is "Seven Springs" and you indicate it was great
 9 speaking to him earlier. So you had a conversation with Mr.
 10 McArdle?
 11 A It appears so, yes.
 12 Q And you're making arrangements in this e-mail to have
 13 him come and inspect the property; is that right?
 14 A Yes. I was setting him up with your general manager to
 15 inspect the property. I believe Sheri retained him just prior
 16 to this.
 17 Q And the reason for setting up an inspection of the
 18 property was for him to move forward with an appraisal for an
 19 easement donation, correct?
 20 A That's my understanding, yes.
 21 MR. AMER: I move to admit this document.
 22 MR. ROBERT: Objection. Statute of limitations.
 23 THE COURT: Overruled. It is in.
 24 (Whereupon, the Document was marked in evidence as
 25 Plaintiff's Exhibit 3330.)

E. TRUMP - PLAINTIFF - DIRECT(MR. AMER) Page 3351

1 Q And you did, in fact, arrange for your general
 2 manager -- is her name pronounced Deb?
 3 A Debbie, yes. I passed Mr. McArdle off to Debbie who
 4 I'm sure gave him a property tour.
 5 Q This was for the purpose of having him come up with a
 6 preliminary value; is that right?
 7 A You would have to ask Sheri Dillon. She's definitely
 8 closer to the details of this than me, but that would be my
 9 assumption, yes.
 10 Q I realize we could ask questions to a lot of people,
 11 but I'm asking them to you. I just want your best recollection.
 12 A It would be my best recollection, yes.
 13 Q Thank you.
 14 MR. AMER: Let's go ahead and mark Exhibit 3331 for
 15 identification.
 16 Q And this is a series of e-mail exchanges beginning with
 17 the one we looked at before between you and Mr. McArdle, right?
 18 A Yes.
 19 MR. AMER: I move to admit this into evidence, Your
 20 Honor.
 21 MR. ROBERT: Statute of limitations.
 22 THE COURT: Overruled. It is in.
 23 (Whereupon, the Document was marked in evidence as
 24 Plaintiff's Exhibit 3331.)
 25 Q Mr. McArdle, in the middle e-mail responds by asking if

E. TRUMP - PLAINTIFF - DIRECT(MR. AMER) Page 3352

1 we could target -- if you could target June 17th for his
 2 inspection and you in the top e-mail forward that on to Debbie
 3 and you say -- you ask her if this would work for an hour or so
 4 and then you say, "I'll call to give you the details." Let me
 5 just stop right there.
 6 Can we agree, then, that you had details with respect
 7 to what needed to happen with the inspection?
 8 A Yes. I would have had to tell the person who is
 9 running our property generally the purpose for the visit.
 10 Q And you knew the details as of this point in time,
 11 correct?
 12 A This was probably very preliminary at the point, but
 13 yes, I would have said that he's an appraiser coming up to the
 14 property, please tour the person around.
 15 Q You go on to say that you'll do your best to make it to
 16 the inspection as well, correct?
 17 A That's correct.
 18 Q So we can agree that you deemed it sufficiently
 19 important for you to take time out of your schedule to do your
 20 best to attend the inspection that Mr. McArdle was going to
 21 conduct, right?
 22 A If it was extremely important, I would have said I will
 23 make it as opposed to do my best to make it; but yes, if I was
 24 free and was able to attend, I would have. I would have joined.
 25 Q Well, not if you were free, but you'll do your best to

E. TRUMP - PLAINTIFF - DIRECT(MR. AMER) Page 3353

1 try and make yourself free to attend the inspection, right?
 2 A We'll agree. If I was free, I would have done my best
 3 to make it.
 4 Q Let's go ahead and look at Plaintiff's Exhibit 169 in
 5 evidence. This document is an -- we had testimony from Mr.
 6 McArdle, this was an internal e-mail and he says -- this is
 7 September 8, 2014 -- in the second sentence, "I have completed
 8 the research and all verbal consulting."
 9 Do you see that?
 10 A Yes, I see that.
 11 THE WITNESS: Your Honor, I don't mean -- if
 12 they're struggling, I can see it right there.
 13 THE COURT: Tommy and Mike, I have it on the
 14 screen. It is already in evidence.
 15 THE WITNESS: Guys, don't worry about it.
 16 THE COURT: Thanks. The screen version is better
 17 because you get all the highlights sometimes. By the way,
 18 my favorite words in this trial are "already in evidence,"
 19 so we don't have to fight about whether something is
 20 admissible or not.
 21 MR. ROBERT: I think mine, too.
 22 Q So we can agree that by September 8, 2014, Mr. McArdle
 23 had completed his consulting on this engagement, right?
 24 A I have no reason to doubt Mr. McArdle.
 25 Q And so by that date, you would have received verbally

E. TRUMP - PLAINTIFF - DIRECT(MR. AMER) Page 3354

1 from Mr. McArdle his preliminary value for the potential
 2 easement donation, right?
 3 A I don't remember.
 4 Q Well, if he completed his consulting, you would have
 5 received verbally his assessment by that date because that was
 6 part of the consulting engagement, wasn't it?
 7 A I don't know if it would have been done with me at the
 8 end -- Sheri really ran the engagement with Mr. McArdle, so I
 9 couldn't tell you.
 10 Q So either you or your agent Ms. Dillon had received
 11 verbally from Mr. McArdle his preliminary value as of
 12 September 8, 2014 according to this e-mail, yes?
 13 A Yes.
 14 Q And am I correct that shortly after September 8, 2014,
 15 you decided to have Mr. McArdle proceed with a formal written
 16 appraisal for the potential easement donation; is that right?
 17 A I truthfully don't remember.
 18 Q Let's go ahead and look at Exhibit 3188 in evidence.
 19 You'll see that this is a series of e-mails among you, Mr.
 20 McArdle and Ms. Dillon. I'm just going to walk you through some
 21 of them.
 22 The first e-mail in the chain, which is on the bottom
 23 of page two, is from you to Mr. McArdle and Ms. Dillon asking
 24 about their schedule to set up a call and this is on August 11,
 25 2014. Do you see that?

E. TRUMP - PLAINTIFF - DIRECT(MR. AMER) Page 3355

1 A I do.
 2 Q And then the top of the page is Ms. Dillon's e-mail
 3 back to you and Mr. McArdle with her date preference, right?
 4 A Yes.
 5 Q And on the first page of the exhibit, the bottom e-mail
 6 is from Mr. McArdle with his date preference. Do you see that?
 7 A I do.
 8 Q And then finally, the top e-mail is from you setting a
 9 meeting for the following Monday which based on the fact that
 10 you're sending this Monday, August 11th, would be August 18th,
 11 right?
 12 A Presumably.
 13 Q I think the Court can take judicial notice that --
 14 A I'll take your word for it.
 15 Q -- the next Monday --
 16 A I'll take your word for it. It sounds right.
 17 Q -- is August 18th. You indicate you will -- "I will
 18 send around a calendar invite"?
 19 A Yes.
 20 Q In the second sentence of your e-mail, "Sheri, by that
 21 point, ideally, you will have seen the draft appraisal."
 22 Do you see that?
 23 A I do.
 24 Q So your expectation was that sometime between
 25 August 11th and August 18th, Ms. Dillon would have received the

E. TRUMP - PLAINTIFF - DIRECT(MR. AMER) Page 3356

1 draft appraisal report from Mr. McArdle, correct?
 2 A That sounds correct, yes.
 3 Q And we can agree, then, that after the verbal
 4 consulting, you had decided to move forward with having Mr.
 5 McArdle actually draft a formal appraisal, right?
 6 A I believe that's the case, yes.
 7 MR. AMER: Let's go ahead and mark for
 8 identification Exhibit 3327. We just need to get the right
 9 exhibit up.
 10 Q So this is a calendar invite that you send back in July
 11 setting a date for the Seven Springs appraisal being due of
 12 8/15/2014, correct?
 13 A It is very consistent with my OCD personality, yes.
 14 Q So that's why you expected that Sheri Dillon would have
 15 received the report by the 18th because you had already
 16 calendared it for the 15th of August, correct?
 17 A I would assume that's a milestone that she set out and
 18 we calendared the date, yes.
 19 Q Then if you look at the second page of this exhibit,
 20 this is Mr. McArdle accepting that calendar invite, right?
 21 A It appears to be, yes.
 22 Q And so that's why you had an expectation that by the
 23 time of your call on August 18th, the appraisal would be in
 24 hand, the draft appraisal, right?
 25 A Presumably, yes.

E. TRUMP - PLAINTIFF - DIRECT(MR. AMER) Page 3357

1 MR. AMER: Let's go ahead and put up Plaintiff's
 2 Exhibit 3206 in evidence.
 3 Q This is the calendar invite for the call on the 18th
 4 that we previously saw had been scheduled the week before,
 5 right?
 6 A I don't remember much about this, but it looks to be
 7 correct.
 8 Q That's a calendar invite you sent, yes?
 9 A It looks to be, yes.
 10 Q Okay. And you titled the subject "Seven Springs
 11 valuation call," right?
 12 A I did.
 13 Q So we can agree that the purpose of the call was to
 14 discuss the Seven Springs valuation that Mr. McArdle was coming
 15 up with, right?
 16 A That seems to make sense. I don't remember much about
 17 any of these details, but I presume that's correct, yes.
 18 MR. AMER: Your Honor, I'm not sure if I moved in
 19 evidence 3327, so I'll do that now. That was the prior
 20 document.
 21 MR. ROBERT: Statute of limitations.
 22 THE COURT: Overruled. It is in.
 23 (Whereupon, the Document was marked in evidence as
 24 Plaintiff's Exhibit 3327.)
 25 Q And do you recall that in this time frame, you signed a

E. TRUMP - PLAINTIFF - DIRECT(MR. AMER) Page 3358

1 formal engagement letter with Cushman for Mr. McArdle to provide
 2 a written appraisal for the potential conservation easement over
 3 Seven Springs?
 4 A It sounds like that's something that we would have
 5 done, yes.
 6 MR. AMER: Let's go ahead and look at Plaintiff's
 7 Exhibit 133 in evidence.
 8 Q You will see that this is an engagement letter
 9 addressed to you dated September 15, 2014 and you -- if you
 10 turn to page 6 of 8, is that your signature agreeing to this
 11 engagement letter?
 12 A Yes, it is.
 13 Q And you sign it on September 18, 2014, correct?
 14 A That's correct, yes.
 15 Q And on page one of the engagement letter, the type of
 16 opinion and rights appraised says "fair market value of a
 17 conservation easement," correct?
 18 A Yes, that was the exercise at hand.
 19 Q Let's go ahead and mark for identification Plaintiff's
 20 Exhibit 3189. You'll see these are e-mail exchanges between
 21 you, Mr. McArdle and Ms. Dillon, and I'll represent to you that
 22 all of the exchanges are ones we've seen before in the prior
 23 exhibits except for the one at the very top, which is from you
 24 to Mr. McArdle dated August 18, 2014, the date of the valuation
 25 call.

E. TRUMP - PLAINTIFF - DIRECT(MR. AMER) Page 3359

1 Do you see that?
 2 A Yes, I do.
 3 Q And you can just look, the prior e-mails have just the
 4 back and forth setting up the date preference for the call.
 5 Do you recognize those?
 6 A Yes.
 7 Q And in the top e-mail from you to Mr. McArdle is
 8 forwarding along a Zillow listing; is that right?
 9 A Yes, that appears to be a Zillow listing.
 10 Q And you're sending Mr. McArdle a comp for him to
 11 consider in connection with the appraisal engagement; is that
 12 right?
 13 A I don't have this at this point, but it was some data
 14 point that I thought was maybe relevant to whatever the exercise
 15 at hand ultimately was.
 16 Q Well, let me just make sure we're on the same page. Do
 17 you agree that what you're forwarding is a comp for Mr. McArdle
 18 to consider in connection with his appraisal engagement on Seven
 19 Springs, yes or no?
 20 A Yes.
 21 MR. AMER: I move to admit this, Your Honor.
 22 MR. ROBERT: Statute of limitations.
 23 THE COURT: Overruled. It is in.
 24 (Whereupon, the Document was marked in evidence as
 25 Plaintiff's Exhibit 3189.)

E. TRUMP - PLAINTIFF - DIRECT(MR. AMER) Page 3360

1 Q The comp is 168 Hook Road, Bedford, New York. Let's
 2 ahead and put up Exhibit 3190 for identification.
 3 3190, same e-mail string except for a different e-mail
 4 at the very top. You're forwarding to Mr. McArdle now a Zillow
 5 listing for a 72 Guard Hill Road, Bedford Corners, New York.
 6 Do you see that?
 7 A I do.
 8 Q Same day, a second comp that you're forwarding to Mr.
 9 McArdle for his consideration, correct?
 10 A Clearly, I was trying to show them some data point that
 11 I thought they would think was relevant, yes.
 12 MR. AMER: Your Honor, I move to admit this into
 13 evidence.
 14 MR. ROBERT: Statute of limitations.
 15 THE COURT: Overruled. It is in, and five-minute
 16 warning.
 17 (Whereupon, the Plaintiff was marked in evidence as
 18 Plaintiff's Exhibit 3190.)
 19 MR. AMER: Let's go ahead and put up Exhibit 3207
 20 for identification.
 21 Q Mr. Trump, this is another calendar invite you send to
 22 Ms. Dillon and Mr. McArdle with the subject "call Seven
 23 Springs."
 24 Do you see that?
 25 A I do.

E. TRUMP - PLAINTIFF - DIRECT(MR. AMER) Page 3361

1 Q And this was a call that you scheduled for August 25,
 2 2014?
 3 A Yes.
 4 Q Do you recall a few weeks after the scheduled date of
 5 this call you decided to terminate the engagement with Mr.
 6 McArdle without getting a final appraisal report?
 7 A That could be accurate. I, again, have very little
 8 recollection of all of this maybe because it was terminated, but
 9 I'll take your word for it.
 10 Q Well, let's confirm the date. So let's go ahead and
 11 look at Plaintiff's Exhibit 185 in evidence, and this is an
 12 e-mail from Ms. Dillon to Mr. McArdle dated Monday, October 6,
 13 2014.
 14 Do you see that?
 15 A I do.
 16 Q And Ms. Dillon confirms that there's been a mutual
 17 agreement to terminate the engagement as of that date, right?
 18 A That's what this says, yes.
 19 Q That would have been something that you would have
 20 authorized her to do, right?
 21 A I see no reason to believe that Sheri and I wouldn't
 22 have had a conversation about that.
 23 Q Well, more than that you had a conversation, but that
 24 you actually authorized her as your attorney to terminate the
 25 engagement as of this date?

E. TRUMP - PLAINTIFF - DIRECT(MR. AMER) Page 3362

1 A Presumably she was much closer to this than me. I just
2 don't have a recollection of this sitting here today.
3 Q Well, would you agree with me that Ms. Dillon would not
4 have the authority to terminate the engagement without the
5 approval to do so from her client?
6 A I imagine she told somebody. Again, I just don't have
7 a recollection.
8 Q Okay. Let me try again because that wasn't my
9 question. I'm just trying to confirm that Ms. Dillon would not
10 have had the authority to terminate the engagement without
11 getting authority to do so from her client; is that right?
12 A Yes. If she made a recommendation, we would follow it;
13 but yes, I think that's right.
14 Q Well, she's the one who has to follow your direction,
15 not the other way around, because she's the lawyer and you're
16 the client, right?
17 A She was the one running this process, but yes, fair
18 enough. I think you and I are --
19 THE COURT: By the --
20 A -- in agreement.
21 THE COURT: By the way, that was another speech.
22 The question was very simple. Would Sheri Dillon have
23 terminated the engagement without authority from the client,
24 yes or no? You said she would not have. Of course, we all
25 know she would not have. You don't have to give a speech

Page 3364

1 A Yes.
2 Q So does this refresh your recollection that sometime in
3 2015, you re-engaged Mr. McArdle to -- or Cushman & Wakefield
4 to finalize the appraisal report for the easement donation?
5 A Yes, it does.
6 MR. AMER: I move to admit this exhibit in
7 evidence.
8 MR. ROBERT: Statute of limitations.
9 THE COURT: Overruled. If you want another five
10 minutes, okay, or you want to break right now?
11 MR. AMER: I think I have a little more on this,
12 but let's take our break.
13 THE COURT: Back at 3:35, everyone.
14 (Witness exits the stand.)
15 (Whereupon, a recess was taken.)
16 (Continued on the next page.)
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E. TRUMP - PLAINTIFF - DIRECT(MR. AMER) Page 3363

1 after that.
2 Q Mr. Trump, just to close the loop, based on your
3 testimony earlier that a donation was made in 2015, do you
4 recall that Cushman was re-engaged to complete the appraisal
5 report the following year?
6 A Yes, I believe that's the case.
7 MR. AMER: I'm going to try and see if I can get
8 one more document in before we have to go. Actually, let me
9 move to admit Exhibit 3207, Your Honor.
10 MR. ROBERT: Statute of limitations.
11 THE COURT: Overruled. It is in evidence.
12 (Whereupon, the Document was marked in evidence as
13 Plaintiff's Exhibit 3207.)
14 Q Let's quickly look at Exhibit 3328. Mr. Trump, you'll
15 see that this is an e-mail -- the top e-mail is from you to a
16 number of people within the Trump Organization as well as Ms.
17 Dillon, right?
18 A That's correct.
19 Q And this is dated May 29, 2015, yes?
20 A Yes, it is.
21 Q And you have some follow-up items that you list in your
22 e-mail to this team, correct?
23 A Yes.
24 Q The item you list for Ms. Dillon is finalized Seven
25 Springs appraisal, correct?

E. Trump - Plaintiff - direct (Amer) Page 3365

1 THE COURT OFFICER: All rise. Part 37 is back in
2 session. Please be seated and come to order.
3 THE COURT: Right on time. I like to run a tight
4 ship. Okay. Let's continue with the questions.
5 MR. AMER: Thank you, Your Honor.
6 Q Let's go ahead and put up Plaintiff's Exhibit 719 which
7 is the supporting data spreadsheet and I'd like to focus you on
8 Row 660 and this is just to close the loop on the Seven Springs
9 easement donation time frame in relation to the calls that
10 Mr. McConney was discussing was indicating in his note.
11 If you look at 660, that's the note that refers to his
12 conversation with you on September 12, 2014. Do you see that?
13 A I do, yes.
14 Q And we can agree that that is in the time frame of when
15 you were working with Ms. Dillon and Mr. McArdle to get a
16 valuation for Seven Springs for the easement donation; correct?
17 A It appears to be, yes.
18 Q And this -- and it's after your August 18th valuation
19 call; correct?
20 A I've already told you I didn't provide values. I see
21 nothing wrong with the values, but I didn't provide values.
22 I've testified pretty extensive to that.
23 Q That was not my question at all. My question was the
24 note about Mr. McConney's conversation with you in September of
25 2014, that was after the August 18, 2014 valuation call that we

E. Trump - Plaintiff - direct (Amer) Page 3366

1 looked at you had scheduled; correct?

2 A It appears the dates were kept that way, yes.

3 Q Can we agree that Mr. McArdle's valuation was

4 disregarded for purposes of valuing the Seven Springs property

5 in 2014; yes or no?

6 A I'm very confused to that question. I think you need

7 to be much more specific. Is this the 2014 valuation that was

8 never concluded? Is this the valuation that was concluded?

9 Q The Statement of Financial Condition valuation in 2014

10 that comes to a value of \$291 million, can we agree that

11 Mr. McArdle's valuation in connection with the easement donation

12 engagement that he was doing was disregarded for purposes of

13 coming up with that \$291 million; yes or no?

14 A No. The exercises are apples and oranges. They have

15 nothing to do with one another.

16 Q That seems to be a yes to me because the question was

17 whether Mr. McArdle's work was being disregarded for purposes of

18 this value. You're telling me that it was apples and oranges.

19 Is that your testimony?

20 MR. ROBERT: Objection, Your Honor. He's asking

21 whether it was disregarded which presupposes it should have

22 been regarded. If he wants to say is that the same number,

23 that's a simple question that can be answered yes or no, but

24 to suggest it's discarded meant it should have been used.

25 THE COURT: Disregarded, not discarded.

E. Trump - Plaintiff - direct (Amer) Page 3367

1 MR. ROBERT: Disregarded.

2 MR. AMER: Either they took it into account or they

3 disregarded it. Those seem to me to be the two obvious

4 choices, so my question is whether he agrees that the

5 McArdle valuation was disregarded for purposes of coming up

6 with the \$291 million figure in the Statement of Financial

7 Condition. That's the question I'd like answered.

8 THE COURT: Objection sustained.

9 Q Mr. Trump, to your knowledge, did you ever forward to

10 Mr. McConney or tell Mr. McConney anything about Mr. McArdle's

11 valuation?

12 A I would have never have thought to, no.

13 Q So the answer is you did not?

14 A I didn't -- no, I did not. I would have never thought

15 to because I didn't work on this document.

16 THE COURT: The short answer is no, you didn't do

17 it. You don't have to explain why.

18 Q I'd like to turn now to Briarcliff. You're familiar

19 with Trump National Golf Club in Briarcliff Manor, yes?

20 A Yes.

21 Q Can we refer to that for short as Briarcliff?

22 A Absolutely.

23 Q Let's go ahead and keep up 719, which is the 2014 Jeff

24 Supporting Data spreadsheet and look at Row 267.

25 And this begins the section on Briarcliff. Do you see

E. Trump - Plaintiff - direct (Amer) Page 3368

1 that?

2 A Yes.

3 Q And do you see that Rows 277 to 281 show a profit

4 calculation for the sale of 71 mid rise units approved but put

5 on hold?

6 A I do, yes.

7 Q And you're familiar with the plan to develop the 71 mid

8 rise units on the property?

9 A I am.

10 Q And you had some involvement in developing those plans;

11 is that right?

12 A No. Those plans predated me, but I am aware of them.

13 Q Well, did you have involvement in working on the

14 project to develop the 71 mid rise units?

15 A They were zoned before I came into the company.

16 Q And as of 2014 it was put on hold; right?

17 A Yes. We retained the zoning, but it was put on hold.

18 Q Let's look at Plaintiff's Exhibit 157, which is in

19 evidence already. If you look at page three of this exhibit

20 you'll see there is an e-mail from Mr. McArdle to you on

21 August 6, 2013. See that?

22 A Yes, I do.

23 Q And he's referencing a revised appraisal proposal and

24 says "hope this works for you and we can move forward." Do you

25 see that?

E. Trump - Plaintiff - direct (Amer) Page 3369

1 A I do.

2 Q And this was to move forward with an appraisal to

3 estimate the value of the 71 units we were just talking about;

4 right?

5 A It appears so, yes.

6 Q And the bottom of page two of this exhibit is your

7 response to him; right?

8 A Yes.

9 Q And you write, "good morning, David. Attached please

10 find the assigned proposal. I'm in the process of sending you

11 the retainer of 6,250 by separate cover. I will send you all

12 the information on 71 units."

13 So you had -- you were gathering whatever information

14 he needed for his engagement to value the 71 units; right?

15 A It appears to be, yes.

16 Q And you are calendaring two dates that you are hoping

17 Mr. McArdle can actually beat which is Phase 1 date of

18 September 6th and a Phase 2 date of September 27th, the final

19 report; right?

20 A Yes, sir.

21 Q Let's go ahead and look at Exhibit 3195 in evidence. I

22 think we spoke already about Bob Leonard, he's an attorney, at

23 Bingham. Do you recall that?

24 A Very vaguely.

25 Q And he writes to Mr. McArdle -- well, let me backup.

PEOPLE OF THE STATE OF NEW YORK v. DONALD J. TRUMP, et al.

DONALD TRUMP, JR., ERIC TRUMP November 2, 2023

E. Trump - Plaintiff - direct (Amer) Page 3370

1 Bingham was again acting as counsel for the Trump
 2 Organization in connection with engaging Mr. McArdle to do the
 3 valuation for the 71 units; is that right?
 4 A Yes, Sheri Dillon at Bingham was counsel.
 5 Q And he writes to Mr. McArdle in August -- I'm sorry,
 6 September of 2013 -- I'm sorry. This is the other way around.
 7 It's from Mr. McArdle to Mr. Leonard and he says, "Bob, I spoke
 8 with Eric yesterday and agreed to perform a discounted cash flow
 9 analysis reflecting a build-out scenario."
 10 Do you recall discussing with Mr. McArdle the need to
 11 perform a discounted flow -- discounted cash flow analysis
 12 reflecting a build-out/sellout scenario for the 71 units?
 13 A Not off the top of my head, no.
 14 Q Do you have any reason to believe that Mr. McArdle is
 15 inaccurately describing his discussion with you the day before
 16 he sends this e-mail?
 17 A Absolutely not.
 18 Q Do you agree that estimating the current value for the
 19 profit to be realized from selling the 71 units requires
 20 performing a discounted cash flow analysis?
 21 A I wouldn't be familiar with the methodology.
 22 Q Wasn't my question.
 23 A Meaning so I think the answer is no to your question.
 24 I wouldn't be familiar with the methodology, so not necessarily.
 25 Q Well, do you have an understanding -- well, you had an

E. Trump - Plaintiff - direct (Amer) Page 3371

1 understanding at the time that Mr. McArdle was going to do a
 2 discounted cash flow analysis reflecting the build-out/sellout
 3 scenario; right?
 4 A Yes.
 5 Q And is it your testimony sitting here today that you
 6 don't know one way or the other whether it was necessary to do
 7 such an analysis for this project that was currently on hold and
 8 would generate cash flow in the future?
 9 A I would not know, no.
 10 Q Would you agree at least that you understood that that
 11 was something that Mr. McArdle thought was necessary at the
 12 time?
 13 A I would have left that to Mr. McArdle. He's from
 14 Cushman and clearly knows that field very well.
 15 Q Okay. But you understood based on your conversation
 16 with him that that was something that he was going to do;
 17 correct?
 18 A It looks like it from the e-mail, yes.
 19 Q Okay. Let's go ahead and look at Exhibit 3204 in
 20 evidence. This is an e-mail dated September 13, 2013 from
 21 Mr. McArdle to you relating to the Briarcliff 71 units; right?
 22 A Yes, it appears that way.
 23 Q And he writes: "This is a follow up to confirm that
 24 you will be providing support from your brokers for the
 25 potential pricing of the 71 residential units."

E. Trump - Plaintiff - direct (Amer) Page 3372

1 Do you recall that you were going to get comps to pass
 2 along to Mr. McArdle to help with the pricing of the 71
 3 residential units?
 4 A I don't. Cushman & Wakefield would certainly have more
 5 brokers than we do.
 6 Q Well, when you -- when he indicates that you will be
 7 providing support from your brokers, meaning you --
 8 A Support. That's possible, yes.
 9 Q Okay. He's talking about your brokers, not his
 10 brokers; right?
 11 A Yes. We didn't have any brokers on the project at that
 12 point, so I'm a little bit confused by what he's saying there,
 13 but --
 14 Q Well, you had an in-house realty group called Trump
 15 International Realty, didn't you?
 16 A We did with main presence here in New York, but fair
 17 enough. I'm not discounting your point.
 18 Q Do you recall that you had that group look for comps in
 19 the area to provide to Mr. McArdle?
 20 A I do not off the top of my head.
 21 Q And in the next sentence he says that -- actually, two
 22 sentences down, he says he's going to move forward with the
 23 discounted cash flow analysis and looks forward to the pricing
 24 and cost estimates from your team. Do you see that?
 25 A Yes.

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1 Q Let's go ahead and look at Exhibit 3202, which is
 2 already in evidence.
 3 Now, the bottom e-mail is from Kathy Kaye to you dated
 4 September 24, 2013. Ms. Kaye was in the Trump International
 5 Realty Group; correct?
 6 A That's correct.
 7 Q And she says "please see the attached for your review
 8 and comments." And then if you flip the page you'll see she is
 9 attaching some listings from West -- from Westchester closings.
 10 Do you see that?
 11 A I do.
 12 Q Does it appear then that you had Ms. Kaye from the
 13 Trump International Realty Group pull together some comps for
 14 you to then pass along to Mr. McArdle?
 15 A Yes, it does.
 16 Q And you do, in fact, forward the comps to Mr. McArdle
 17 in the e-mail above; right?
 18 A Yes.
 19 Q Let's look at Exhibit 3201 already in evidence.
 20 You'll see the bottom of page one is an e-mail from
 21 Mr. McArdle to you dated September 30, 2013, yes?
 22 A Yes.
 23 Q And he says to you "I'm prepared to share my valuation
 24 and conclusions with you. Are you available to talk this
 25 afternoon or tomorrow morning." And then you can respond you

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1 can do 3:30. He says "perfect, I will call you."
 2 And so do you recall that you had a conversation in
 3 this time frame with Mr. McArdle where he shared with you his
 4 valuation conclusions for the 71 units at Briarcliff?
 5 A I do not recall.
 6 Q Do you have any reason to doubt that that call happened
 7 as indicated in the e-mail exchange?
 8 A I don't want to speculate. It very well could have --
 9 I just don't know sitting here ten years later.
 10 Q Well, do you have any recollection of anything that
 11 happened that to your knowledge would have prevented that call
 12 from going forward?
 13 A I have very little recollection on this whole subject,
 14 so no.
 15 Q Then the top e-mail is from Mr. McArdle to you on
 16 October 16, 2013 confirming his conversations with Ms. Dillon to
 17 finish but hold off sending the appraisal until further notice;
 18 right?
 19 A Yes.
 20 Q Okay. Let's go ahead and look at Exhibit 1465, which
 21 is already in evidence. Page two of this e-mail, the top is an
 22 e-mail from Ms. Dillon to you -- to Mr. McArdle. Sorry.
 23 Do you see that?
 24 A Yes, I do.
 25 Q And she says in her e-mail to Mr. McArdle, "I spoke to

E. Trump - Plaintiff - direct (Amer) Page 3375

1 Eric and he is aware that the more supportable value at this
 2 point is around 45 million." Do you see that?
 3 A I do.
 4 Q And then at the very end of that paragraph she says
 5 "Eric was pleased with the number." Do you see that?
 6 A I see that, yes.
 7 Q Do you recall learning by October 16, 2013 of
 8 Mr. McArdle's value of 45 million understanding that that was
 9 the more supportable value in being pleased with that number;
 10 yes or no?
 11 A I don't recall.
 12 Q Do you have any reason to doubt that what Ms. Dillon
 13 reports in this e-mail is accurate?
 14 A No, I don't. I don't Ms. Dillon.
 15 Q Okay. The decision in mid October to have Mr. McArdle
 16 hold off on sending the appraisal, was that your decision?
 17 A It could have been.
 18 Q Let's put up 719, the Jeff Supporting Data spreadsheet
 19 for 2014 and let's look at Row 284.
 20 Mr. McConney notes here, 9/25/2013 per telephone
 21 conversation with Eric Trump "sellout is based on comps in the
 22 area." Do you see that?
 23 A I do.
 24 MR. AMER: And if we could split the screen with
 25 Plaintiff's Exhibit 3202? And you'll see -- that's the

E. Trump - Plaintiff - direct (Amer) Page 3376

1 bottom e-mail is the one from Ms. Kaye sending the comps.
 2 Do you see that?
 3 A Yes, I do.
 4 Q And her e-mail to you is dated September 24, 2013. So
 5 that's the day before the call noted by Mr. McConney with you
 6 about the sellout being based on comps in the area. Do you see
 7 that?
 8 A Yes.
 9 Q So can we agree that that information was information
 10 that you provided to Mr. McConney based on what you had received
 11 from Ms. Kate and passed along to Mr. McArdle?
 12 A Not necessarily the dates.
 13 Q The dates do line up, though, that the day before you
 14 had this call with Mr. McConney, you got the comps from Ms.
 15 Kaye; right?
 16 A Yes, it seems like these are again totally --
 17 THE WITNESS: I want to respect Your Honor. I
 18 think this one needs just --
 19 THE COURT: Go ahead.
 20 THE WITNESS: I'll respect --
 21 A These are two totally different exercises, one of which
 22 I wasn't involved in clearly. It says asterisk 9/25/2013 per
 23 telephone conversation with Eric Trump sale of 71 mid rise units
 24 with that asterisk. And yes I think those numbers are very well
 25 supportable, but this is totally different exercise. This has

E. Trump - Plaintiff - direct (Amer) Page 3377

1 to do with a conservation easement and that has to do with
 2 saleable square footage in incredibly luxurious units that would
 3 be built on a golf course. I'm trying to draw a parallel for
 4 you because I think you're conflating two very different topics
 5 and --
 6 Q Are you done? I just don't want to interrupt you.
 7 THE COURT: He meant that seriously. It wasn't a
 8 dig at all.
 9 A I'm just trying to be as transparent as I possibly can
 10 that two completely different things, but yes.
 11 Q Okay. The note by Mr. McConney involved the
 12 conversation with you, yes?
 13 A The asterisk is next to the asterisk, but yes, I'll
 14 concede.
 15 Q And that same note says "sellout is based on comps in
 16 the area." Yes?
 17 A It says "sellout is based on comps in the area."
 18 Q And the day before you received an e-mail from Ms. Kaye
 19 of the Trump International Realty Group providing comps which
 20 you then forwarded on to Mr. McArdle in connection with the 71
 21 unit easement donation engagement; yes or no?
 22 A Yes.
 23 Q And we just looked at the fact that you -- that there
 24 was a decision to have Mr. McArdle hold off on sending the
 25 appraisal and that was as of October 19th or 16th of 2013.

E. Trump - Plaintiff - direct (Amer) Page 3378

1 MR. AMER: We could put up 3201 just to confirm the
 2 date and let's keep up -- sorry -- the spreadsheet. Right.
 3 Q So October of 2013 there is a decision to have
 4 Mr. McArdle hold off sending the appraisal; right?
 5 A Yes.
 6 Q Was the decision to have Mr. McArdle hold off on
 7 sending the appraisal an effort to delay the creation of that
 8 document until after the 2013 statement was issued?
 9 A No.
 10 MR. AMER: Let's go ahead and pull up the 2017 Jeff
 11 Supporting Data spreadsheet, which is Plaintiff's
 12 Exhibit 742 in evidence and let's go to note 295.
 13 Q And this note says "November 17, 2015. Per telephone
 14 conversation with Eric Trump, leave value as is." Do you see
 15 that?
 16 A I do.
 17 Q Do you have any reason to doubt the accuracy of
 18 Mr. McConney's note about this telephone conversation with you?
 19 A Not at all.
 20 Q So you instructed Mr. McConney to leave the value as is
 21 in this call; correct?
 22 A Very likely nothing had changed on the project between
 23 those two years.
 24 Q And you gave this instruction to leave the value as is
 25 at a point in time where you were already made aware of

E. Trump - Plaintiff - direct (Amer) Page 3379

1 Mr. McArdle's \$45 million valuation for his appraisal
 2 engagement; yes or no?
 3 A No.
 4 Q So are you saying that as of November 17, 2015 -- well,
 5 we've established that as of November 17, 2015 you did know that
 6 Mr. McArdle had come up with a value of 45 million; right? Yes?
 7 A Yes.
 8 Q Okay. And that was knowledge you had when you told
 9 Mr. McConney in this call to leave the value as is; yes or no?
 10 A No.
 11 Q Well, you had the knowledge then you had the call.
 12 Isn't that right?
 13 A I've testified pretty extensively to the fact that I've
 14 never seen this document. And second of all, they're totally
 15 different exercises.
 16 Q It's really not my question, Mr. Trump. I'm trying
 17 just to establish that you had a particular piece of knowledge
 18 prior to the date of this call. I think we've agreed that prior
 19 to November 17, 2015 you were aware of Mr. McArdle's \$45 million
 20 value; yes?
 21 A Yes.
 22 Q Let's leave it at that because I think the dates are
 23 things that the Court can take judicial notice of.
 24 THE COURT: The dates will speak for themselves.
 25 Q Now, Mr. Trump, based on all the e-mails we've been

E. Trump - Plaintiff - direct (Amer) Page 3380

1 reviewing, would you agree that you conferred on multiple
 2 occasions with Mr. McArdle in connection with appraisal
 3 engagements for Seven Springs and Briarcliff; yes or no?
 4 A Yes.
 5 Q I'm going to play you some testimony from your
 6 deposition and then ask you some questions about it. It's
 7 page 198, line 10 to 199, line 20.
 8 (Whereupon, there is a pause in the proceedings.)
 9 MR. AMER: Can we put up the text of that video
 10 clip, please? Let's go to page 199.
 11 Q So this is from what we just played and I want to focus
 12 on your testimony starting at line six on this page that you
 13 really hadn't been involved in appraisal work on the Seven
 14 Springs property.
 15 Mr. Trump, will you concede that your testimony was
 16 incorrect; yes or no?
 17 A I really hadn't been involved in the appraisal work on
 18 that property. No. I think that's an accurate statement.
 19 Sheri Dillon handled the vast majority of the appraisal work.
 20 Clearly, I made an introduction to our property manager.
 21 Clearly, I was on a few phone calls, but that was a six-month
 22 long process and you've pointed out four interactions that I
 23 had. I would stand by the statement that I don't remember
 24 McArdle well and certainly I was aware of it, but I don't think
 25 I was the main person involved or even considered very involved.

E. Trump - Plaintiff - direct (Amer) Page 3381

1 MR. KISE: So, Your Honor --
 2 Q I didn't ask about main person.
 3 MR. AMER: What's your objection because I --
 4 MR. KISE: Can I say it first?
 5 MR. AMER: No because I think we may need to excuse
 6 the witness and we can hash it out.
 7 MR. KISE: Are you running the courtroom or is the
 8 judge? I don't know why you're talking to me. I think the
 9 judge is running the courtroom.
 10 MR. AMER: I'm asking the judge to excuse the
 11 witness if we're going to have an objection.
 12 MR. KISE: Or any objection standing objection.
 13 THE COURT: Or a standing objection.
 14 MR. KISE: All I'm going to ask --
 15 THE COURT: Are you going to ask? It's not going
 16 to influence --
 17 MR. KISE: I don't see how it could influence the
 18 witness. I don't see how any of this could influence the
 19 witness. And they make speeches all the time, but at all
 20 events we've now -- Mr. Amer's concerned about disruptions.
 21 We've now wasted a minute or two and I haven't even said
 22 what I'm objecting about.
 23 THE COURT: Well, I think it's fair -- it's always
 24 fair to make sure what is about to be spoken or asked won't
 25 influence the witness because we can always take the witness

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1 out, but I'll accept your representation that what you're
 2 about to say or ask will not influence the witness.
 3 MR. KISE: I don't see how it could. All I'm going
 4 to say is you're constantly on this side of the table about
 5 time. I'm not sure what the purpose of all this back and
 6 forth is. The witness has testified -- he's testified about
 7 what he remembers right now today. Whether he remembered it
 8 in his deposition or not seems immaterial to the process at
 9 this point because Mr. Amer's already gotten the answers
 10 that he wants and so now he's going to go back and play this
 11 again and go over the same answer. So it's a waste of time.
 12 It's asked and answered and asked and answered and asked and
 13 answered and we've been doing this all afternoon, so at some
 14 point it just needs to end. I don't see how that influences
 15 the witness. It should just influence the proceeding.
 16 Transcript continues on the following page....
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 18
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 25

E. TRUMP - PLAINTIFF - DIRECT(MR. AMER) Page 3383

1 THE COURT: Okay. Thank you for sharing that.
 2 Let's continue.
 3 MR. AMER: Thank you, your Honor.
 4 Q I wasn't asking about whether I had -- whether
 5 principal or main person involved. I'm asking a very simple
 6 question based on all of the e-mails that we've been looking at,
 7 the calendar invites, the contacts you've had with Mr. McArdle,
 8 the comps you were sending him, will you concede that your
 9 testimony on line six and seven, that you really haven't been
 10 involved in appraisal work on this property was incorrect, yes
 11 or no?
 12 A No.
 13 Q So you stand by your testimony at your deposition that
 14 you really haven't been involved in appraisal work on the Seven
 15 Springs property, yes?
 16 A To a -- to a small -- to a -- I was clearly
 17 involved, but to a very small point and I think I was very clear
 18 that I had very limited memory of Mr. McArdle. I
 19 testified -- and yes, I see your e-mails. 100 percent I made a
 20 couple of calls.
 21 Q You say here you really haven't been involved and I'm
 22 trying to understand if you're standing by that testimony or if
 23 you're willing to acknowledge that you did have involvement --
 24 MR. KISE: Objection. This is borderline
 25 harassment.

E. TRUMP - PLAINTIFF - DIRECT(MR. AMER) Page 3384

1 THE COURT: Asked and answered. He said he stands
 2 by it. You can make of that what you will.
 3 MR. AMER: Well, Your Honor, he said "I was clearly
 4 involved." He didn't stand by his testimony. That's in the
 5 transcript.
 6 MR. ROBERT: You asked him directly if he stands by
 7 it and you asked him directly if he stands by it and he said
 8 yes.
 9 MR. AMER: And then he said on line 16, "I was
 10 clearly involved."
 11 THE COURT: I thought he said no.
 12 MR. ROBERT: "I really hadn't been involved."
 13 You're now -- Mr. Amer is now conflating what limited
 14 involvement Mr. Trump had which is consistent with he hadn't
 15 really been involved. He just said he had a few e-mails.
 16 THE WITNESS: I really haven't --
 17 THE COURT: When I said he said no, I was talking
 18 about a different --
 19 MR. ROBERT: Sorry.
 20 THE COURT: It was my confusion. All right.
 21 MR. ROBERT: Sorry, Your Honor.
 22 THE COURT: If the question is do you stand by it,
 23 the earlier testimony on the screen, the answer is yes; am I
 24 correct?
 25 THE WITNESS: Yes, Your Honor. I stand by --

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1 THE COURT: You stand by it, okay.
 2 Q Let's look at line 16 when you testified at your
 3 deposition starting at line 16, that you don't focus on
 4 appraisals between a law firm and Cushman.
 5 Will you concede that your testimony was incorrect
 6 based on all of the e-mails we've been looking at; yes or no?
 7 A I don't focus on appraisals between law firms and
 8 Cushman, no, I don't. That's not a focus of my day. I'm an
 9 operator. I am a construction guy. I build projects. I don't
 10 focus on appraisals, no.
 11 Q And let's look at page 198, line 12. When you
 12 testified at your deposition, starting at line 12, that you
 13 recognized David McArdle's name only very vaguely, would you
 14 concede that you had significant communications back and forth
 15 and interactions with Mr. McArdle on the appraisal engagement
 16 for both Seven Springs and Briarcliff; yes or no?
 17 MR. KISE: Objection; "significant."
 18 A No, there's a handful of e-mails from well over ten
 19 years ago and I don't remember the person's name. I hardly
 20 remember the person's name. I stick by that 100 percent.
 21 THE COURT: The language doesn't have to be the
 22 exact same. Objection overruled and he answered it anyway.
 23 Q I want to fastforward to 2021. Were you on a video
 24 conference call in the fall of 2021 to discuss the 2021
 25 Statement of Financial Condition that was in the process then of

E. TRUMP - PLAINTIFF - DIRECT(MR. AMER) Page 3386

1 being drafted?

2 A I don't remember.

3 Q If I suggested that there was such a video call that

4 included your brother Donald Trump, Jr., Patrick Birney, Jeffrey

5 McConney and Ray Flores, does that refresh your recollection?

6 A It's possible. I -- I'm on a thousand calls a day. I

7 just don't remember.

8 Q Let me show you some testimony from Mr. Birney, Patrick

9 Birney to see if it can further refresh your recollection. Page

10 1390, line 8 to 1391, line 12:

11 "QUESTION: The meeting that I asked you about, how

12 many participants were in the meeting?

13 "ANSWER: I worked remote for 2021, so there were a

14 lot of these calls. So can you be more specific about which

15 meeting you're referring to?

16 "QUESTION: Sure. Specifically a meeting over

17 Google Meet about the 2021 Statement of Financial Condition.

18 "ANSWER: There were multiple meetings in 2021 as I

19 was remote.

20 "QUESTION: Were there any meetings about the 2021

21 Statement of Financial Condition in which Donald Trump, Jr.

22 and Eric Trump participated?

23 "ANSWER: Yes.

24 "QUESTION: So about -- speaking about the

25 meeting, how many other participants were there other than

E. TRUMP - PLAINTIFF - DIRECT(MR. AMER) Page 3387

1 those two people?

2 "ANSWER: Myself, Alan Garten, Ray Flores, Jeffrey

3 McConney.

4 "QUESTION: Allen Weisselberg was not in the

5 meeting?

6 "ANSWER: I don't think Allen Weisselberg was in

7 that meeting.

8 "QUESTION: Approximately when did this Google

9 Meeting occur?

10 "ANSWER: Probably in October of 2021.

11 "QUESTION: During the Google Meeting that we are

12 talking about now, did you share any information with the

13 other participants?

14 THE WITNESS: Yes.

15 "QUESTION: What did you share?

16 "ANSWER: I shared documents on the screen.

17 "QUESTION: And what were those documents?

18 "ANSWER: I believe I toggled between a few

19 documents during the call. One I think was a Statement of

20 Financial Condition summary. One was the supporting data

21 street and we may have seen the Word document which would

22 have been the -- a draft of the final Statement of

23 Financial Condition."

24 Does seeing that testimony from Mr. Birney jog your

25 memory about this Google Meeting call and whether you were

E. TRUMP - PLAINTIFF - DIRECT(MR. AMER) Page 3388

1 on it?

2 A It does not.

3 Q One more clip from Mr. Birney on this meeting. It's

4 page 1406:1 to 1407:4:

5 "QUESTION: So would it refresh your recollection

6 if we pulled up some of your prior testimony, pages 1194 to

7 1195?

8 "ANSWER: Sure.

9 "QUESTION: Starting at line 17. So I'm trying to

10 understand the change is discussed about golf club valuation

11 method. You described it as a consensus decision among you,

12 Mr. Garten and Mr. Flores, correct?

13 "ANSWER: Yes.

14 "QUESTION: Does this decision need to be approved

15 by someone else at the company who is superior to the three

16 of you after it's made in your group consensus?

17 "ANSWER: I don't know if there was an official

18 approval. I think that's why it brought up the change in

19 methodology in that call with Don and Eric."

20 And I just said, "okay, continue your answer."

21 "So that they were at least aware."

22 "Does that refresh your recollection as to whether

23 you wanted to advise Donald Trump, Jr. and Eric Trump about

24 the change in golf course methodology that occurred in

25 2021?"

E. TRUMP - PLAINTIFF - DIRECT(MR. AMER) Page 3389

1 "ANSWER: I discussed it. I don't know if I wanted

2 to discuss it. Can you ask the question in a different way

3 maybe?

4 "QUESTION: Sure. We can look at your testimony.

5 It says, "I think that's why it brought up the change in

6 methodology in that call with Don and Eric, so that they

7 were at least aware." Why did you want to make them at

8 least aware of that change?

9 "ANSWER: Because it was a, as you put it,

10 significant change to the year before."

11 Does that additional testimony from Mr. Birney

12 about needing to discuss with you and your brother the

13 significant change to the golf course methodology that

14 occurred in 2021 jog your recollection of this video

15 conference call?

16 A It doesn't. I would have left that to the finance

17 team.

18 Q You considered Patrick Birney to be a solid guy, didn't

19 you?

20 A I like Patrick Birney very much.

21 Q And you considered him to be a solid guy, right?

22 THE COURT: I think that's what he just said,

23 right?

24 MR. AMER: Well, he didn't adopt those exact words.

25 THE WITNESS: Your Honor, I was looking for help on

E. TRUMP - PLAINTIFF - DIRECT(MR. AMER) Page 3390

1 that one.

2 A Yes, I do.

3 THE COURT: You have to look up, not sideways for

4 help.

5 Q And you'll agree from his testimony here under oath at

6 this trial that he said you and your brother were on the video

7 call, right?

8 A Again, I have no reason to doubt Pat. I do believe

9 he's a very good guy and it's -- it's possible. I would have

10 left the details to methodology to somebody like him, but I

11 could have been on a phone call.

12 Q And you'll agree he says the purpose of the call was to

13 make you and your brother aware of the change in the methodology

14 in the change in the golf courses, right?

15 A Possibly. I just don't remember anything about this

16 phone call, so...

17 Q I'm asking you if you remember what you read on the

18 screen and heard just a minute ago.

19 A Yes, I do.

20 Q He testified that the purpose of the call was to make

21 you and your brother aware of the change in the methodology for

22 the golf courses, right?

23 A Presumably. I'll take your word for it.

24 Q I don't want you to take my word for it. You heard his

25 testimony. Can we agree that based on his testimony, he says

E. TRUMP - PLAINTIFF - DIRECT(MR. AMER) Page 3391

1 the purpose of the call was to advise you and your brother of

2 the change in methodology for the golf courses in 2021, right?

3 A It seems like that's possible, yes.

4 MR. AMER: Let's go ahead and put up the 2021 Jeff

5 Supporting Data which is Exhibit 1352 in evidence. Let's go

6 to Row 289.

7 MR. ROBERT: Just a point of clarification. This

8 would be Birney's supporting data if it is 2021, not Jeff's.

9 MR. AMER: I'll take that correction. Why don't we

10 just call it the supporting data.

11 MR. ROBERT: Fair enough.

12 MR. AMER: It is in evidence, so it is what it is.

13 Q Let's look at Row 289. That's where the section for

14 Briarcliff begins. Do you see that?

15 A Yes, I do.

16 Q If you look at Row 306, there's a note in that row and

17 it's -- it says, "Upon the advice and guidance of Marcus and

18 Millichap, golf course industry experts, a normal golf course

19 with a negative EBITDA trades at two to three times gross

20 revenue. We took an average of three times gross revenue and

21 net fixed assets."

22 Do you see that?

23 A I see that, yes.

24 Q And we've had testimony from Mr. Flores, others that

25 there was a change in methodology for 2021 based on the advice

E. TRUMP - PLAINTIFF - DIRECT(MR. AMER) Page 3392

1 and guidance that's referenced in this note. So can you accept

2 that?

3 A I mean, if you tell me that's true. I don't know.

4 This is very foreign to me, but if you tell me that's the

5 testimony, I'll believe you.

6 THE COURT: I may have to swear him in first if

7 he's going to testify.

8 Q And does seeing this note about the advice from Marcus

9 & Millichap and this being the basis for a change in the way the

10 golf courses were valued, does that trigger a recollection for

11 you about being on a call where that change in methodology was

12 discussed; yes or no?

13 A It does not.

14 Q And if we look at Row 363, which is Colts Neck, it

15 refers to "advice and guidance from Marcus & Millichap for a

16 course with a consistently positive EBITDA trading at six to

17 eight times EBITDA, but the last few purchases have been nine to

18 ten times based on the quality of Trump courses could sell at

19 ten times EBITDA."

20 Again, we've had testimony that this is the basis for a

21 change in methodology for those courses that consistently had

22 positive EBITDA. Does that trigger any recollection of being

23 involved in a call in fall of 2021 where the change -- this

24 change in methodology was discussed?

25 A It does not.

E. TRUMP - PLAINTIFF - DIRECT(MR. AMER) Page 3393

1 Q Now, just to orient us in time with respect to the

2 October 2021 video call that Mr. Birney testified about, as of

3 October 2021, you certainly knew about the Attorney General's

4 investigation that led to this enforcement action, right?

5 A Yes, I did.

6 Q In fact, a year earlier, you sat for an investigative

7 interview with attorneys from the Attorney General's office

8 where you provided testimony under oath, right?

9 A Yes, I did.

10 Q And on dozens of occasions during that interview, you

11 invoked your --

12 MR. ROBERT: Objection.

13 THE COURT: Go ahead.

14 MR. ROBERT: Mr. Amer is about to get into

15 something that is completely irrelevant and immaterial in an

16 attempt to sensationalize something that's not really

17 sensational. Maybe you want to excuse the witness and we

18 deal with it, but he is about to get into the fact that two

19 years ago when Mr. Trump was interviewed he invoked his

20 Fifth Amendment rights and then two years later sat for a

21 deposition. It's totally improper.

22 THE COURT: Is that what you were about to do?

23 MR. AMER: I'm happy to explain why it is relevant.

24 THE COURT: Should we excuse the witness?

25 MR. ROBERT: It's absolutely irrelevant.

E. TRUMP - PLAINTIFF - DIRECT(MR. AMER) Page 3394

1 THE COURT: If it is irrelevant, do we have to
 2 excuse the witness?
 3 MR. ROBERT: I don't believe so.
 4 MR. AMER: I don't think it is irrelevant.
 5 MR. ROBERT: If you want to --
 6 THE COURT: So do you want to explain the
 7 relevance?
 8 MR. AMER: Sure. I think it's relevant to this
 9 witness' recollection or lack of recollection of a phone
 10 call that's discussing the subject of something he knows is
 11 an ongoing Attorney General investigation where the call is
 12 about the very subject of that investigation where he sat
 13 for an interview under oath and even invoked his right
 14 against self-incrimination.
 15 I think it goes to his credibility as to whether or
 16 not he recalls this -- this Google Meeting call that was
 17 less than three years ago, Your Honor. So yes, it is
 18 relevant to his credibility.
 19 MR. ROBERT: It is absolutely not. Mr. Trump
 20 availed himself of a constitutional right that he has
 21 because at that point, it was the appropriate thing to do.
 22 The Attorney General then noticed him for a deposition in
 23 this case. He sat literally for seven hours on the nose
 24 because I remember at seven hours on the nose, we ended it.
 25 He answered every question. He did not invoke his

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1 constitutional right, which he could have, and this line of
 2 questioning is improper; but it was dealt with just so that
 3 at the end of the day, the stories would be that the issue
 4 that Mr. Trump invoked his Fifth Amendment right two years
 5 ago is what's going to be the news tonight. It is
 6 completely irrelevant. It's completely prejudicial and this
 7 line of questioning needs to stop.
 8 MR. KISE: One other issue --
 9 THE COURT: I'll let --
 10 MR. KISE: -- just to Mr. Amer only has to respond
 11 once. It is funny he's not interested in the witness being
 12 excused even though we asked three times. Here is the
 13 thing. So all of these conversations that we're talking
 14 about center around a privileged communication. We've been
 15 through this before. Mr. Garten was on the call, so the
 16 substance of what was discussed would have been privileged
 17 anyway and they've continued to invade that privilege.
 18 Second, anything that was done or decided as a
 19 result of that ruling they did as part of the subsequent
 20 remedial measures as a result of the investigation. So
 21 again, none of this should be really coming in at all. Any
 22 decision that was made as a result of the awareness of an
 23 investigation would be subsequent remedial measures and it
 24 shouldn't be admitted at all.
 25 The witness has said he has no reason to doubt that

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1 he was on the call, but he doesn't remember the call. He
 2 testified about the call. The fact that he testified before
 3 is established. The fact that he was subpoenaed and
 4 testified in the special proceeding in the investigation is
 5 established. So I don't know what else other than
 6 sensationalizing is the issue here other than either
 7 invading the attorney-client privilege, getting into
 8 subsequent remedial measures, or just harassing the witness.
 9 I'll wait again to get the note that you have from Ms.
 10 Greenfield. You may have a question for me. Maybe it is
 11 about dinner.
 12 MR. AMER: Can I mention one thing, Your Honor?
 13 THE COURT: In a second.
 14 MR. AMER: Okay.
 15 THE COURT: Mr. Kise, all joking aside, and even I
 16 like to leaven the proceedings, do not refer to my staff
 17 again. A person sitting alongside of me is my principal law
 18 clerk. She's a civil servant. She's doing what I ask her
 19 to do, which is help me process cases and decide them
 20 correctly.
 21 Sometimes I think there may be a bit of misogyny
 22 the fact that you keep referring to my female principal law
 23 clerk. If there is any further reference to anyone on my
 24 staff, and I don't have a big staff, I have about three
 25 people, I will consider expanding the gag order to include

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1 the attorneys including yourself. That being said, why
 2 don't we just break for the day because it is almost 4:30.
 3 I promised Mr. Amer --
 4 MR. KISE: May I respond to that on the record
 5 briefly?
 6 THE COURT: Respond to that and then we will get to
 7 Mr. Amer.
 8 MR. KISE: Briefly. I just want to be clear. I
 9 have my own constitutional First Amendment rights. I have
 10 the right to represent my client in a courtroom. I have the
 11 right to observe -- make points in the record about
 12 observations that I make if there is bias in the proceeding
 13 that my client perceives, I have to advance that. If there
 14 is reason for that bias, then that's an issue in the
 15 proceeding.
 16 I do often feel -- frequently, I do feel like truly
 17 that I'm fighting two adversaries and I'm not trying to
 18 impugn anyone. I'm trying to point out as a lawyer and I
 19 think it is fair comment as a lawyer. I understand what
 20 your ruling is, but I have to respond to this because this
 21 is important.
 22 So I feel like I'm sitting here and I have to
 23 respond to Mr. Amer or their arguments. I hear what those
 24 arguments are and I get to see what those arguments are and
 25 we get to have our engagement, but then there is someone

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1 else who is sending you information on a very, very frequent
 2 basis. I think yesterday we counted maybe 30 times, 40
 3 times and so I don't get to understand what this is and
 4 those -- and I'm not --
 5 THE COURT: That's right. You don't --
 6 MR. KISE: I'm not trying to invade it. All I'm
 7 trying to say is that gives off -- respectfully that gives
 8 off the appearance of impropriety and I'm entitled to at
 9 least make a record about that. It is not impugning anyone.
 10 It does give off the appearance of impropriety particularly
 11 if it is an individual or individuals that have a different
 12 view of the case than we do, have a different political
 13 background or political view than we do. And so those are
 14 relevant issues for Your Honor's consideration.
 15 Again, this is why I brought up on the
 16 constitutional -- I asked you to reconsider the gag order
 17 on the constitutional basis because I think it raises much
 18 more serious issues and I don't really want to go there and
 19 I'm trying not to; but at some level, I have to at least
 20 have fair comment on what I think is biased. I made my
 21 record and I understand Your Honor's ruling.
 22 MS. HABBA: By the way, I'm happy to make the
 23 record for Mr. Kise, so that none of my team members are
 24 accused of misogyny. I assure you that's not the issue. I
 25 have the same, frankly, issues with the person sitting on

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1 the bench and I've made that clear on the record. And
 2 frankly, it is not only distracting, but it is insulting.
 3 Your Honor, I respect your position, but I do feel
 4 like Mr. Kise that your position is often what you are given
 5 in notes and we don't have a clue what is going on; but we
 6 do know that there is a nod of the head by you when those
 7 notes are received and then decisions are made.
 8 We have to make a record of it because, frankly,
 9 it's become part, and as I have said for three years for me
 10 personally, a part of the record and I'm not going to stand
 11 by and allow it to happen. I'm not going to let someone
 12 who's my teammate be called a misogynist because he is
 13 pointing out something, frankly, that I can do myself. So I
 14 will make my own record. It is inappropriate.
 15 And I do have to say one other thing to Mr. Amer on
 16 the record and again, I'm happy to let Mr. Trump off the
 17 stand, but I do think it is inappropriate that he's trying
 18 to use something and make it appear as impeachment evidence
 19 and it is not. Mr. Trump has been very consistent. He
 20 doesn't like his answers, so he keeps trying to impeach my
 21 witness here and all he's doing is showing things that,
 22 frankly, show that he is consistent.
 23 He doesn't have a recollection. If he has a
 24 recollection now, he'll tell you; but by showing him
 25 somebody else's transcript and telling him that a video

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1 conference happened and then asking him if he remembers it
 2 and he's going to say, "No, I don't remember it." He's not
 3 disagreeing with Mr. Birney, but he doesn't remember it.
 4 We need to move on. We've been here now all day
 5 and gotten, frankly, not very far because the questions are
 6 repetitive, asked and answered, asked and answered. He's
 7 trying to elicit a response that's not accurate and Mr.
 8 Trump is not going to give him a response that's not
 9 accurate. He doesn't remember, he doesn't remember. We
 10 need to move on. We will be here well into next week if we
 11 do not move on.
 12 MR. ROBERT: May I simply say that I join in my
 13 colleagues' comments.
 14 MR. AMER: Can I make a few points, Your Honor?
 15 THE COURT: After me.
 16 MR. AMER: Okay.
 17 THE COURT: Mr. Kise and the rest of the team, I
 18 have an absolute right, absolute, unfettered right to get
 19 advice from my principal law clerk. It actually goes a
 20 little broader than that, but at the very least from my
 21 principal law clerk. There is no First Amendment value that
 22 I can see referring to her particularly when making things
 23 up and that's not you, that's somebody else. So weighing
 24 the First Amendment right against the safety of my staff, we
 25 know what's going on out there in the world, I think your

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1 points are not well-taken about that.
 2 In terms of the further -- on the merits here,
 3 some research has shown that subsequent remedial measures is
 4 only appropriate in personal injury cases. I will refer to
 5 Rule 4.19. I believe that's of the -- might be out of the
 6 benchbook, whatever.
 7 And now, let's let Mr. Amer, who is very anxious to
 8 talk, have a few words.
 9 MR. AMER: Number one, I'm entitled to question the
 10 witness' -- the credibility of the witness' claim that he
 11 doesn't recall this video conference meeting that took place
 12 two years ago. I'm entitled to question that. I don't have
 13 to accept it and I can elicit evidence that puts in doubt
 14 his claimed lack of recollection.
 15 Second, as to Ms. Habba's comment, this witness'
 16 testimony is great and I'm very happy with it, and so this
 17 is not about not liking his testimony. I think his
 18 testimony is extremely favorable to our case and I welcome
 19 it.
 20 And third, this witness' investigative interview
 21 and his invocation of his Fifth Amendment right has been in
 22 the news for years. If you want to Google it, you'll see
 23 that there are many articles that count the number of times
 24 he invoked his right against self-incrimination at that
 25 interview. So this is not about bringing to light something

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1 that has, heretofore, never been shared with the public.
 2 Those are my comments. I would like to continue
 3 tomorrow morning and I will just use this point to question
 4 the credibility of a claim that a call two years ago
 5 involving an ongoing investigation where he sat for an
 6 interview is simply not something that is plausible and
 7 that's my right, and the Court can do with it what it will.
 8 MR. KISE: Your Honor, then, just briefly on your
 9 initial point, I do disagree, respectfully. I have to on
 10 behalf of my client comment on what I see going on in the
 11 courtroom that I think could prejudice or bias the
 12 proceeding. I don't -- I don't see what is being passed to
 13 you, so it is not possible for me to know.
 14 THE COURT: That's right. You don't see it.
 15 That's -- I'm going to pound the table -- confidential
 16 communications from my principal law clerk. Absolute right
 17 to it and you don't have any right to see it or question it.
 18 MR. KISE: I certainly have a right to question
 19 what is perceived by my client as bias. I do have that. I
 20 have to make that record. I do have that. That's just what
 21 lawyers do. I mean, I have to make the record. I don't
 22 think, respectfully, there is any security concern. We're
 23 talking about observations of what's happening in open
 24 court.
 25 Everyone in this room can see what I'm seeing, so

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1 it is not a security issue. I'm not commenting
 2 inappropriately. I'm directing my comments to you and only
 3 to you, but I have to make a record if I perceive that there
 4 is potential bias.
 5 THE COURT: How do you perceive there is potential
 6 bias by notes being passed back and forth? Don't you and
 7 Mr. Robert talk to each other?
 8 MR. KISE: Of course, we talk to each other and
 9 we're advocates, so we are -- yes, we are biased, so it is
 10 the same principle. It's the same principle. Ongoing
 11 interaction, you can receive advice, of course, from a law
 12 secretary. I mean, you are a judge, but ongoing interaction
 13 in the course of the proceeding where it appears as though
 14 it is almost co-judging taking place, that's the perception
 15 from out here.
 16 That may not be what you're doing. I can't tell
 17 what you're doing, but that's what the perception is, so we
 18 have to at least make our record to comment on it and again,
 19 I understand your ruling. No one is trying to impugn
 20 anyone.
 21 I'm not a misogynist. I have -- I'm very happily
 22 married and I have a 17-year-old daughter, so I really have
 23 no issues there and so I reject that squarely. My point is
 24 and I think -- look, all I want to say is what I've said,
 25 which is we have to make our record. We perceive there is

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1 bias. There have been public commentaries about political
 2 persuasions of people involved in the proceeding. I don't
 3 know. So I think it is fair for me to at least make the
 4 record and comment. It's -- this is the real point.
 5 When they're speaking, notes don't get passed.
 6 That's really the issue, is that when the Attorney General
 7 is making arguments, there aren't notes being passed for you
 8 to consider. They -- 95 percent. So with us, whenever I'm
 9 speaking or -- yesterday, I saw it the best because I
 10 stepped out to go to that hearing beforehand. I'm watching
 11 on the closed circuit TV and there, you can see what's
 12 happening differently than you can see here.
 13 And so every time Mr. Suarez was making a point and
 14 there was a dialog, there would be notes passed to you.
 15 When the Attorney General was speaking, there would be no
 16 notes passed to you. So that's the perception of bias.
 17 Whether it is real or not, I have to make my record. So
 18 that's all I'm doing. I'm making my record. I'm doing it
 19 respectfully. I haven't made any comments outside this
 20 courtroom about anyone and I don't intend to. So all I'm
 21 doing is just making a record.
 22 I understand Your Honor's point and I will abide by
 23 Your Honor's ruling, but you can't keep lawyers from being
 24 advocates. I think that that's over the line, respectfully.
 25 THE COURT: I guess it is time to go. Ten o'clock

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1 tomorrow morning.
 2 I direct the witness, witness, please don't talk to
 3 anybody about your testimony, about this case, or anything
 4 related to it because you'll still be a witness tomorrow.
 5 Thank you, everyone.
 6 (Witness excused.)
 7 (Whereupon, the trial was adjourned to November 3,
 8 2023 at 10:00 a.m.)

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DONALD J. TRUMP, et al.

DONALD TRUMP, JR., ERIC TRUMP
November 2, 2023

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In The Matter Of:
PEOPLE OF THE STATE OF NEW YORK v.
DONALD J. TRUMP, et al.

ERIC TRUMP
November 3, 2023

NICOLE C. ROBINSON

PEOPLE OF THE STATE OF NEW YORK v. DONALD J. TRUMP, et al.

ERIC TRUMP November 3, 2023

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1 SUPREME COURT OF THE STATE OF NEW YORK
 2 COUNTY OF NEW YORK : CIVIL TERM : PART 37
 3 ----- X
 4 PEOPLE OF THE STATE OF NEW YORK, BY
 5 LETITIA JAMES, ATTORNEY GENERAL OF
 6 THE STATE OF NEW YORK,
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 8 Plaintiff,
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Index No.
452564/2022

-against-
DONALD J. TRUMP; DONALD TRUMP, JR.; ERIC TRUMP;
 IVANKA TRUMP; ALLEN WEISSELBERG; JEFFREY MCCONNEY;
 THE DONALD J. TRUMP REVOCABLE TRUST; THE TRUMP
 ORGANIZATION, INC.; TRUMP ORGANIZATION, LLC;
 DJT HOLDINGS, LLC; DJT HOLDINGS MANAGING MEMBER;
 TRUMP ENDEAVOR 12, LLC; 401 NORTH WABASH VENTURE,
 LLC; TRUMP OLD POST OFFICE, LLC; 40 WALL STREET,
 LLC.; AND SEVEN SPRINGS, LLC,

Defendants.

----- X
 60 Centre Street
 New York, New York 10013
 November 3, 2023

B E F O R E:
 HONORABLE ARTHUR F. ENGORON,
 Justice, Supreme Court

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 (Appearances continued on the next page.)

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1 THE COURT OFFICER: All rise. Part 37 is now in
 2 session. The Honorable Judge Arthur Engoron presiding.
 3 Make sure all cell phones are on silent. Laptops and cell
 4 phones will be permitted, but only to members of the press.
 5 There is absolutely no recording or photography of any kind
 6 allowed in the courtroom. Now be seated and come to order.
 7 THE COURT: We have some photographers. Tommy does
 8 that from memory. He's not holding up a script card.
 9 Good morning, everybody.
 10 Yesterday, Chris Kise noted in the morning that I
 11 bound up the steps I'm going too fast. I'm not sure you
 12 noticed as the day wears on I go up slower and slower, but.
 13 MR. KISE: You do.
 14 THE COURT: By the same token, as the day wears on,
 15 I go down faster and faster. It kind of balances out.
 16 Not yesterday, but several days ago, I believe that
 17 one or two or all of the defense lawyers said that they had
 18 never seen a judge be so intertwined with his or her law
 19 clerk basically passing messages. I mentioned that to the
 20 judge for whom I was a law clerk for many years, he reminded
 21 me of something that happened decades ago. There was an
 22 elected Supreme Court judge, which is what I am, in this
 23 very building, and I'll give away the genders. He was very
 24 well respected and he had this very high profile case. If I
 25 told you the name of the plaintiff and I told you the name

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NICOLE C. ROBINSON, CSR
 JANELLE C. LONDON, RMR, CRR
 Senior Court Reporters

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1 of the defendant everybody in this room would know both of
 2 them. Now you're really scratching your heads, right?
 3 The law clerk was running for judge and the
 4 campaign literature -- the campaign literature said, I'll
 5 almost quote this exactly -- I'll put on a little bit of the
 6 act. "I sit on the bench everyday with the judge and I
 7 whisper in his ear and I tell him how to rule."
 8 Now, of course we haven't seen that, fortunately.
 9 The law clerk was elected, is still a judge. This is
 10 decades ago and so just to the claim that you've never seen
 11 anything like this, apparently that's been even more
 12 extreme. I didn't see this happen. I'm assuming that's
 13 what the story was and the judge never said no, she doesn't
 14 sit up there and tell me how to rule.
 15 So -- but to finish up, I hope I made myself clear
 16 yesterday. Okay.
 17 MR. KISE: As too, Judge, I mean, I certainly heard
 18 you yesterday, yes.
 19 THE COURT: Okay.
 20 MR. KISE: I just don't know we were directed to do
 21 anything specific.
 22 THE COURT: Well, how about informally. Unless
 23 there is some real reason that I haven't seen any, please do
 24 not refer to any members of my staff.
 25 MR. KISE: So how do we then make -- how does the

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1 Court propose we make our record about things that we
 2 observe in open court happening?
 3 THE COURT: Well, I let you do that the other day,
 4 yesterday, whenever it was.
 5 MR. KISE: You did, right. I just want to make
 6 sure we're allowed to do that. I don't need to reference
 7 names or specifics, but to the extent there are issues that
 8 arise based on observations that we have, we have to make
 9 that record because, as you know, all that is left in the
 10 record is the written transcript. There is no video, there
 11 is no recordings and all that probably fortunately for all
 12 of us.
 13 THE COURT: Right. Well, let me ask you this: Do
 14 you feel the need to make a further record as things stand
 15 now?
 16 MR. KISE: I believe so, Your Honor. I mean, to
 17 the extent that there are perceptions of bias there are
 18 things that we as lawyers -- and I don't want to speak for
 19 my colleagues, but to the extent there are things that we
 20 observe that are taking place that create either the
 21 appearance of bias or the appearance of impropriety in our
 22 minds, then I think we have to take that up. I think it's
 23 our obligation as lawyers to make mention of these things
 24 even if it's just a brief mention.
 25 We all -- it's like any other issue in the case if

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1 I have a legal issue. We were respectful to the Court and
 2 we don't belabor the issues, but we have to at least mark
 3 it, otherwise it's waived.
 4 THE COURT: Well, I promise not to pound the table
 5 again and the bench. I have an absolute unrestricted,
 6 unfettered right to get advice from my principal law clerk
 7 or assistant law clerk. How that shows bias somehow, I
 8 don't see it. I mean, but if you want to say something now,
 9 say it. But I don't -- I don't want to endanger the safety
 10 of my staff. Maybe I'm being overly sensitive or overheated
 11 or cautious. I don't think so. I worry about this.
 12 And notice you could say whatever you want about
 13 me, right? I have no gag order about me and that has been
 14 taken advantage of -- not taken advantage of in the sense of
 15 anything improper, but, you know, I think that's what --
 16 that's where there would be any appearance of bias in me and
 17 I cut this case right down the middle.
 18 And I will respond to some of the earlier
 19 statements that oh, I never interrupt or rule against the
 20 Attorney General. That's just not so. And to the extent
 21 that one of your team might occasionally have said I might
 22 restrict the amount of time you have because I think you're
 23 wasting time, I have the right to do that. It's not because
 24 it's one side or the other. Right down the middle.
 25 And I said previously that I don't regard this case

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1 as political. I don't. To me, it's just a case about
 2 Executive Law Section 6312 and now about those other
 3 statutes. So I said enough.
 4 You want to make a record, but please be careful.
 5 MR. KISE: I always am.
 6 I think we're treading in a dangerous area here
 7 because what we perceive as counsel to be bias we're
 8 certainly entitled to raise those concerns. I think we have
 9 to raise those concerns as lawyers.
 10 The Rules of Judicial Conduct which I know you're
 11 well aware of maintain that the Court is to act in a way
 12 that promotes public confidence in the integrity and
 13 impartiality of the system. And so impartiality, I believe
 14 in the rules is defined as denoting the absence of bias or
 15 prejudice, the absence of it.
 16 So to the extent there is the potential for bias,
 17 that's certainly something that's relevant. I mean, the
 18 entire country, if not the world, is watching this
 19 proceeding and they are looking at this. The United States
 20 heretofore has been a model for the integrity and
 21 impartiality of the system since its founding. Nothing we
 22 do here should create any appearance that the adherence to
 23 those principles has wavered and so to the extent that there
 24 is even the perception of bias that's something that needs
 25 to be addressed and addressed in the record because we have

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1 no other way to address it other than in the record.
 2 Yes, as a judge you're entitled to receive input,
 3 but if you're receiving input from someone who has
 4 potentially demonstrable bias or at least there is a
 5 question about that and the manner in which that's taking
 6 place we have to at least make that record. That is our
 7 right.
 8 Now, in the view of President Trump, and I think to
 9 some extent the view of counsel here, if not to a large
 10 extent, our observations are what we say. You're free to
 11 disagree as you've done, but I think the record -- and this
 12 is the importance of making this record, demonstrates that
 13 we're getting hurried up, we're getting told to move on,
 14 we're getting put on the clock, we're -- the rulings are
 15 frequently, if not inordinately, against us on almost every
 16 major issue. And so we're also, as I said yesterday, I
 17 certainly am often thinking I'm arguing against two
 18 adversaries, not one. I'm debating with the government and
 19 then I'm debating with someone who is providing input to you
 20 on a regular, immediate basis.
 21 THE COURT: Hold on. You say you need to make a
 22 record. You've said all this. Those exact words basically.
 23 MR. KISE: I'm not adding words.
 24 So as I understand it this morning, there is a new
 25 story out about particular political partisan contributions

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1 that have been made by certain members of your staff; that
 2 there was a complaint made. It's public and on the web.
 3 There was a complaint made about this. It was addressed to
 4 Your Honor's attention on October 3rd, the very same day the
 5 gag order was entered and it raises questions of
 6 impartiality. At least from what I see this morning it
 7 raises questions of impartiality.
 8 And there are specific judicial cannons that
 9 prohibit campaign contributions and I don't know anything
 10 other than I saw this story this morning, let me be clear on
 11 that. But there are specific provisions that the Court is
 12 to make sure that the Court and -- I'll define the Court
 13 broadly to include the staff so I'm not making that
 14 interchangeably because I know Your Honor doesn't want me to
 15 be specific about any individual or persons, but that
 16 prohibit contributions, that prohibit certain partisan
 17 political activity by members of the Court. And this
 18 complaint that was filed and the news coverage of it at
 19 least calls into question that particular cannon. I believe
 20 it's Section 100.5 C2 of the rules governing judicial
 21 conduct.
 22 There are several judicial ethics opinions, 10-76,
 23 07-11 and 97-103, all of which address this particular
 24 issue. Again, I'm not weighing the facts of whether
 25 something has happened or hasn't happened. I'm just stating

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1 to the Court what is being reported and what has been
 2 reported as being presented to this Court on October 3rd,
 3 the same day as the gag order was entered. I don't know
 4 whether that's been considered or whether it's been ignored,
 5 but certainly it forms at least in my mind a basis for
 6 raising a question of potential bias. I think it's a
 7 legitimate question that needs to be addressed.
 8 The fact that we found out about it -- that I found
 9 out about it reading it on, you know, in the news, raises
 10 additional questions about the appearance of impropriety.
 11 Whether or not sustainable, it certainly raises the issue.
 12 President Trump, as you know, was here and
 13 purportedly made a statement about the same sort of bias
 14 outside. I won't get into the back and forth that took
 15 place about who he was speaking about, but he's purportedly
 16 making statements about someone who, by your own definition,
 17 is alongside of you having bias and now there is some
 18 allegation that maybe there is merit to that.
 19 And to the extent there is merit to that, then it's
 20 something that needs to be addressed. And it is a fair
 21 conclusion that warnings to Counsel, gag orders on
 22 parties -- we're not allowed to even mention these subjects.
 23 It's a fair conclusion to be drawn that the purpose of that
 24 is to silence any allegation of bias. It's to silence any
 25 challenge to any notion of impartiality and in a case that

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1 is this highly watched, I don't think that the systemically
 2 we can survive with those kinds of -- those kinds of issues.
 3 I mean, the constitutional rights and protections that are
 4 preserved to all in this country are at their peak when
 5 you're dealing with someone who might not be popular, might
 6 be someone who is controversial. And so in a case like this
 7 it's essential that we take real care to adhere as closely
 8 as possible to those cannons and I think it's incumbent upon
 9 the lawyers to raise these issues.
 10 I think the security concerns as you've heard me
 11 say I understand you're concerned, but I think given what
 12 just happened that photographers come into the Court and
 13 they take pictures of the open bench, all we're commenting
 14 on -- by the way, as I understand it, I never knew this
 15 before. As you know, I'm from Florida. Where we had open
 16 courts for 40, 50 years, TV cameras. Here, apparently, it's
 17 a crime to allow photographers into the courtroom and take
 18 pictures in a proceeding like this. I'm not an expert on
 19 this, I just know that -- so if the security concerns are
 20 that heightened, I'm straining to find the rationale that
 21 squares both.
 22 I think that if the allegations that have been out
 23 in the media have any substance to them and I'm not
 24 commenting on whether they do or not, but if they do then I
 25 think -- and we'll know more I guess in the coming days. If

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1 Your Honor was aware of this on October 3rd when this random
 2 individual apparently filed some complaint and sent it to
 3 the Court and no action was taken and no notice was given to
 4 Counsel and nothing was addressed, then I think the defense
 5 will have to give serious consideration to seeking a
 6 mistrial because of the -- as you say, the continuous input
 7 if there is someone that's biased.
 8 Again, I'm not the prejudging outcome here and I
 9 want to be very careful to note that, but since you've
 10 raised the issue of how we make our record, I mean, perhaps
 11 we make our record by just saying the Court has done X or
 12 the Court has done Y, the Court has accepted a note without
 13 any mention of any individual, without any mention of staff,
 14 but unfortunately, given the clarity of the rules of
 15 judicial conduct, the gravity of what has been reported and
 16 the significance of these proceedings to our American
 17 democracy it's incumbent upon us as lawyers and I will say
 18 respectfully to the Court to take this seriously. And I'm
 19 not suggesting that you don't. Let me be clear, but I think
 20 we all need to take this very seriously because the entire
 21 world is watching and none of us can afford to misstep.
 22 I have always and will continue to address my
 23 comments to you, the Court, but I have to be allowed as a
 24 lawyer to raise issues that are obvious in open court that
 25 everyone in this room can watch and see.

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1 And I notice that the closed circuit camera now --
 2 after my mention has now been adjusted so that it's much
 3 more difficult to see if notes are being passed. It may
 4 just be that somebody bumped the camera on the TV screen. I
 5 do that at home frequently nudging things, but we need to
 6 take care here, respectfully, to avoid any appearance.
 7 The allegations that I looked at in the news this
 8 morning gave me some concern and certainly gave me some
 9 thought that there is at least a plausible basis to have to
 10 raise considerations of bias, particularly when you're
 11 getting input on an ongoing basis. And I feel, as I have
 12 said, that I'm often debating with two adversaries.
 13 THE COURT: Yes, you've already said that.
 14 MR. KISE: That's it. But I'll leave it there,
 15 Your Honor, and I appreciate you allowing me to make the
 16 record.
 17 MR. AMER: Your Honor, I just have very four very
 18 quick points.
 19 THE COURT: Sure.
 20 MR. AMER: The first is --
 21 THE COURT: You expect me to let you make a record?
 22 MR. KISE: For once I'm not objecting to Mr. Amer's
 23 comments.
 24 MR. AMER: Well, you haven't heard them yet.
 25 The notion that bias can be based on the number of

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1 notes being passed between a clerk and a judge and whether
 2 there are more notes being passed when one side's witness is
 3 on the stand versus another is a position I've never heard
 4 of and I think is completely frivolous. That's our
 5 position. I've never heard that and I don't think it has
 6 any merit.
 7 Bias. It's clear from the case law can only be
 8 established by extrajudicial conduct. You can not establish
 9 bias based on decisions that a judge makes or rulings on
 10 evidence that a judge makes during the course of a trial.
 11 If that were the case, Your Honor, every time a judge issues
 12 a partial summary judgment decision against one side then
 13 the judge would have to recuse himself or herself. That's
 14 not the law. Clearly it's not.
 15 And this Court has already issued a summary
 16 judgment decision that makes certain rulings and you cannot
 17 base a -- an argument or bias on rulings during the course
 18 of the case.
 19 No party, no party has the right to be privy to the
 20 internal deliberations of a chambers. That's absolutely
 21 clear and that includes knowing when and how many notes are
 22 being passed one way or the other.
 23 And finally, and I would implore you to please, you
 24 know, compel that if the other side has evidence of
 25 extrajudicial conduct that they believe is a basis for

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1 recusal or a motion for a mistrial, make a motion on notice
 2 with papers and put in your evidence and let's not waste
 3 time during the trial with long speeches. There is a
 4 process to follow. It's making a motion on notice and
 5 that's what should happen and we're just wasting a lot of
 6 time with speeches when if they really have a basis, put it
 7 in motion papers. They can appeal it, they can do whatever
 8 they want with it, but this is just a waste of time, Your
 9 Honor.
 10 MR. KISE: Your Honor, just very briefly because
 11 Mr. Amer has now mentioned more specifically what I was
 12 referring to. Perhaps I was not transparent.
 13 The news this morning does in fact relate to
 14 extrajudicial conduct specifically and it makes specific
 15 allegations about specific extrajudicial conduct that
 16 violates Section 100.5 C2 of the rules governing judicial
 17 conduct with respect to contributions to partisan political
 18 activity.
 19 I -- since I don't know other than the news report,
 20 I haven't investigated, I haven't looked into anything other
 21 than what I'm saying, I'm not prepared to make a motion, but
 22 I did tell the Court just now that on Monday we may if this
 23 develops further, but I think it's incumbent to make the
 24 record. This information about extrajudicial conduct --
 25 THE COURT: It's not information. It's an

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1 allegation. I don't even know what you're talking about,
 2 but I'll respond later.
 3 MR. KISE: The allegation --
 4 THE COURT: Thank you.
 5 MR. KISE: -- was made and apparently delivered to
 6 the Court and that's something that has been brought to our
 7 attention so we have to raise it.
 8 MR. WALLACE: I'm sorry to interrupt. Mr. Wallace.
 9 Can I just ask what is the report you're discussing? Where
 10 does it appear?
 11 MR. KISE: I'm not the Internet person. I want to
 12 say it's on -- hold on. I want to say it's on Breitbart
 13 maybe, but I don't know. I don't know. I think it's on
 14 Breitbart. It's on a news outlet. We get pummeled with
 15 news information.
 16 In all events, I've made the record and I
 17 appreciate you allowing me to make the record. I do take
 18 the matter seriously and we're not just wasting time as
 19 Mr. Amer just said. These are important matters and they
 20 deserve at least to be heard and you have allowed that.
 21 Thank you, Judge.
 22 THE COURT: Well, I agree with Mr. Amer's points.
 23 As to Mr. Kise, I'll respond, not to everything.
 24 If I don't respond to something, doesn't mean I accept it or
 25 agree with it. You covered a lot of ground.

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1 First of all, this idea that somebody had notified
 2 me, what was that, on October 3rd or --
 3 MR. KISE: What I understand, yes.
 4 THE COURT: Absolutely untrue, okay. Absolutely
 5 untrue. I don't remember and my memory is good enough to
 6 remember whether I would have received such an allegation,
 7 so that's that.
 8 Secondly, I have no idea until you said Breitbart
 9 what this news allegation is. I'll let everybody in the
 10 room decide what they think of Breitbart.
 11 Third, having gotten myself elected twice --
 12 actually, three times, I'm not an expert on political
 13 fundraising campaign contributions. When a non-judge or a
 14 judge is running for office there are window periods -- I
 15 won't make a whole lecture because I couldn't. I think it's
 16 nine months before and six months after you're allowed to
 17 spend money. Okay, neither of us is an expert.
 18 So I'm sorry we've descended to this level where an
 19 allegation that the first part I know is untrue or at least
 20 I'm 99 percent sure is untrue and the second part what I
 21 didn't report today, I don't know. I can't comment.
 22 It's a shame we've descended to this level. I
 23 totally agree the world is watching. I've gotten, you know,
 24 a sense that it's not just the country. It's the world.
 25 As for the camera being moved, I was vaguely aware

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1 that Rob, the tech person, was switching the angle of the
 2 camera. Never occurred to me that it could have anything to
 3 do with what we're discussing today or why it was.
 4 So I just want to move forward with the trial. I
 5 just want to do the best job I can do. I want to be
 6 straight down the middle. I don't regard this as political.
 7 It's a trial about Executive Law 6312 and the other second
 8 through seventh cause of action provisions.
 9 So I hope we've all said what we feel like we need
 10 to say. Anything else?
 11 Okay. Mr. Amer, would you like to continue your
 12 examination?
 13 MR. AMER: I would. We would like to recall back
 14 to the stand Eric Trump.
 15 (Whereupon, the witness approaches the witness
 16 stand.)
 17 THE COURT: Morning. I'll remind the witness that
 18 he's still under oath, as I always do.
 19 And let's proceed.
 20 CONTINUED DIRECT EXAMINATION
 21 BY MR. AMER:
 Q Thank you.
 Mr. Trump before breaking for the day yesterday, we
 were discussing the October 2021 video conference call that
 Mr. Birney had testified about. Do you recall that?
 JCL

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E. Trump - Plaintiff - direct (Amer)
 A I do.
 Q And you'll recall he testified that he remembered that
 you and your brother, Donald Trump, Jr., were on the call and
 that the purpose of the call was to make the two of you aware of
 the change in methodology for valuing the golf clubs in the 2021
 Statement of Financial Condition. Do you recall that?
 A Yes, I do.
 Q So I just want to ask you a few questions about matters
 that you were aware of at the point in time when this call
 happened.
 In October of 2021, you did know about the Attorney
 General's investigation that led to this enforcement action;
 correct?
 A Yes. I would have been working with legal counsel.
 Q And you knew that the investigation focused on the way
 assets were being valued in your father's Statement of Financial
 Condition; yes?
 A Absolutely, yes.
 Q And a year before that call took place you sat for an
 interview in connection with the Attorney General's
 investigation where you provided testimony under oath in
 response to questions; right?
 A That's correct.
 Q And those questions were about the Statement of
 Financial Condition as well as other matters; correct?
 JCL

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E. Trump - Plaintiff - direct (Amer)
 A Yes.
 Q So I'm just going to ask you is it your testimony here
 today that you have no recollection of participating in a video
 call that occurred two years ago involving the same subject
 matter as the ongoing Attorney General investigation that you
 were aware of at the time; is that right?
 A I'm testifying that I don't recall a specific call out
 of thousands of calls on every single day. There isn't a
 question there were conversations in the organization about the
 Statement of Financial Condition after this action started.
 Q But your testimony is that you have no recollection of
 this specific call that Mr. Birney testified about at trial; is
 that right?
 A Mr. Amer, I --
 Q Yes or no?
 A I pick up my phone at 5 o'clock in the morning and I
 put it down at midnight. I don't remember a specific call.
 There are thousands of conversations about the Statement of
 Financial Condition after this exercise commenced.
 Q Just to be clear, you do not remember the call that
 Mr. Birney testified about?
 A I don't remember it.
 MR. ROBERT: Objection. Asked and answered.
 A I don't remember a specific call three years ago, no.
 THE COURT: Let's move on.
 JCL

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E. Trump - Plaintiff - direct (Amer)

Q We're good.

Let me ask you a couple follow-up questions that you gave toward the end of the day about a distinction you were drawing between the appraisals for easement donations and the exercise of valuing the assets for the Statement of Financial Condition.

MR. AMER: Let's go ahead and pull up the testimony. It's page 3376, line 13 to 3377, 5.

Q And I'll just sort of paraphrase your answer, but please feel free if you need to read the whole thing.

The gist of your testimony yesterday was that the exercise conducting an appraisal for an easement donation and the exercise of valuing the assets for the Statement of Financial Condition were, as you say on line 21, "two totally different exercises;" is that right?

A Yes.

Transcript continues on the following page....

JCL

E. TRUMP - PLAINTIFF - DIRECT(MR. AMER) Page 3427

1 Q And if you go down to the next page and you again
2 emphasize that they are two very different topics; is that
3 right?
4 A For the reason I noted above, yes.
5 Q Okay. Let's look at Plaintiff's Exhibit 3196 which is
6 already in evidence. This is an e-mail exchange from
7 David -- this is an e-mail from David McArdle to a consultant
8 that he testified he reached out to on September 13, 2013
9 related to Briarcliff and you are not on this e-mail, but it
10 does reference you.
11 So I want to just ask you about the second to last
12 sentence of that first paragraph. Mr. McArdle said to his
13 consultant, "of Course, Eric has lofty ideas on value and
14 assumes \$1,000 plus price PSF, per square-foot, is no problem."
15 Do you see that?
16 A I do, and I think the market today would show that that
17 would be --
18 THE COURT: Wait. Wait. The question was just do
19 you see that. One step at a time.
20 A Yes.
21 Q And do you have any reason to doubt that Mr. McArdle is
22 accurately reflecting what you told him about your ideas on
23 value?
24 A I think \$1,000 a square-foot would absolutely be
25 achievable, yes.

E. TRUMP - PLAINTIFF - DIRECT(MR. AMER) Page 3428

1 Q And based on this e-mail, it appears that that's what
2 you told Mr. McArdle, correct?
3 A It looks like that I say \$1,000 a square-foot would
4 absolutely be achievable for the product that we were going to
5 build, yes.
6 MR. AMER: Let's go ahead and pull up the 2013
7 supporting data spreadsheet which is Plaintiff's Exhibit 708
8 in native. Let's look at Rows 253 to 267.
9 Q This is the section that discusses the valuation of the
10 71 mid rise units. That was the subject of Mr. McArdle's
11 engagement, correct?
12 A Correct.
13 Q And line 264, what is the price per square-foot that
14 Mr. McConney is using?
15 A A thousand dollars a square-foot.
16 Q The same number that you provided to Mr. McArdle,
17 correct?
18 A Yes. I told you yesterday that those numbers look like
19 they would be very accurate for the project that we had in mind.
20 Q Okay. And let's put up some other testimony on the
21 same subject matter from yesterday. This is at line 3367.
22 Sorry. Page 3367, line 9 to 15 and this is a quick Q&A, so I'll
23 just read it.
24 "QUESTION: Mr. Trump, to your knowledge, did you
25 ever forward to Mr. McConney or tell Mr. McConney anything

E. TRUMP - PLAINTIFF - DIRECT(MR. AMER) Page 3429

1 about Mr. McArdle's valuation?
2 "ANSWER: I would have never thought to, no.
3 "QUESTION: So the answer is you did not?
4 "ANSWER: I didn't -- no, I did not. I would have
5 never thought to because I didn't work on this document.
6 THE COURT: Wait a minute. Wait a minute. You
7 said, "I didn't know." It sounds like "I'm not aware of."
8 I would read that, "I didn't, no."
9 THE WITNESS: Exactly, Your Honor. Anything in
10 life is possible. I sent thousands of e-mails every day.
11 Anything is possible.
12 Q I didn't ask you a question.
13 THE COURT: There's no question.
14 MR. AMER: Apologize, Your Honor. I do recall
15 reading it, so I may not have used the inflexion that I
16 should have, but I appreciate your point.
17 Q Let's look at Plaintiff's Exhibit 1074. This is an
18 e-mail exchange that you have with Mr. McConney in September of
19 2013, correct?
20 A Looks to be, yes.
21 MR. AMER: I move to admit into evidence, Your
22 Honor.
23 MR. ROBERT: Statute of limitations.
24 THE COURT: Overruled. It is in.
25 (Whereupon, the Document was marked in evidence as

E. TRUMP - PLAINTIFF - DIRECT(MR. AMER) Page 3430

1 Plaintiff's Exhibit 1074.)

2 Q I'm just going to look at the e-mails from the bottom

3 up. The first e-mail is an e-mail from Mr. McConney to you

4 where he says, "Eric, did the appraisal come in yet. Thanks,

5 Jeff." Do you see that?

6 A I do.

7 Q And then the middle e-mail is from you back to Mr.

8 McConney. "I have a call with David tomorrow at 1:30. Would

9 you like to join." That's a reference to David McArdle,

10 correct?

11 A Yes.

12 Q You were inviting him to join the call that you're

13 going to have with Mr. McArdle the next day at 1:30, correct?

14 A It's very diligent of me. I'm very proud of myself.

15 Yes, I am inviting my controller to join a call that apparently

16 I had with David McArdle.

17 Q So you thought it was appropriate to have Mr. McConney

18 join the call that you were going to have with Mr. McArdle; yes

19 or no?

20 A I asked him if he wanted to join, yes.

21 Q In the top e-mail, Mr. McConney says in response to

22 you, "I don't need to be on the call. I'd just like to know the

23 value, so I can use it for your dad's F/S." That's what he

24 wrote back to you, correct?

25 A Correct.

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1 Q And you understood "F/S" to mean financial statement,

2 right?

3 A A financial statement of my father's yes.

4 Q So at least on this one occasion, you did think it was

5 appropriate to share Mr. McArdle's valuation with Mr. McConney;

6 yes or no?

7 A Yes, clearly, I was very diligent. I asked him if he

8 would like to join our call.

9 Q Now, you testified you were aware that there was a

10 conservation easement donation over the Seven Springs property

11 in 2015, right?

12 A Correct.

13 Q And you are aware that that easement donation was based

14 on an appraisal done by Cushman & Wakefield, yes?

15 A Yes, I am.

16 Q Are you aware that the final appraisal for the Seven

17 Springs easement donation was a kind of appraisal known as a

18 before and after appraisal?

19 A I wouldn't get into these details. I would leave

20 something like that to Sheri Dillon.

21 Q My question wasn't about who you would leave the

22 details to.

23 A I don't know the appraisal methodology of exactly what

24 happened behind the scenes, no.

25 Q Do you know that it was a before and after appraisal;

E. TRUMP - PLAINTIFF - DIRECT(MR. AMER) Page 3432

1 yes or no?

2 A Sitting here today, ten years later, I would have zero

3 recollection of that.

4 MR. AMER: Okay. Let's go ahead and put up the 2016

5 Jeff Supporting Data which is Plaintiff's Exhibit 742 in

6 evidence and I'd like to take us to Row 927.

7 Q You'll see Row 927 is the row that relates to Seven

8 Springs and has the valuation. If we just go up to check the

9 dates, there's the value in Column G. Just go up until we hit a

10 date for Column G. Column G is 2015, June 30, 2015 and Column H

11 is June 30, 2016. Let's now go back to Row 927. And you see

12 that Mr. McConney's note says, "even Springs per appraisal for

13 easement."

14 And I'll represent to you, and we can put up the

15 testimony if you'd like to see it, but I'll represent to you

16 that Mr. McConney testified at trial that because the donation

17 was made after June 30, 2015, he used the before value from the

18 appraisal of 56 million for the 2015 value and he used the after

19 value from the appraisal of 35.4 million for the value in 2016.

20 Mr. Trump, were you aware that Jeffrey McConney used

21 the Cushman appraisal for the easement donation on Seven Springs

22 as the basis for the value of the asset in both 2015 and 2016;

23 yes or no?

24 A Not to the best of my knowledge, no.

25 Q I'd like to talk to you now about some certifications

E. TRUMP - PLAINTIFF - DIRECT(MR. AMER) Page 3433

1 you signed. Let's look at Plaintiff's Exhibit 1330 in evidence.

2 This is a document entitled, "power of attorney." I'll wait

3 until we get you a copy. If you turn to page 6 of 8 of this

4 document, you'll see that -- do you recognize that as your

5 father's signature under the principal line?

6 A It is very distinctive. I do.

7 Q And he signs it on March 9th of 2017, correct?

8 A Correct.

9 Q And on page seven, it lists both you and your brother

10 Donald Trump, Jr. as the agents, correct?

11 A That's correct.

12 Q And is that your signature on the second line?

13 A Yes, it is.

14 Q And you and your brother both signed this document on

15 March 13th of 2017, correct?

16 A Yes, we did.

17 Q And page three of the document shows the grant of

18 authority. Do you see that?

19 A I do.

20 Q And to just to go through this quickly, your father

21 initials item P, which indicates a grant of authority for items

22 A and D above. A is real estate transactions. D is banking

23 transactions. Do you see that?

24 A That's correct.

25 Q And then under G, modifications, there is an underlying

E. TRUMP - PLAINTIFF - DIRECT(MR. AMER) Page 3434

1 paragraph. I'm just going to read it. "The authority granted
 2 hereunder is solely with respect to the execution and delivery
 3 of certifications and similar documentation (including without
 4 limitation compliance certificates) in connection with existing
 5 financings in which Donald J. Trump is a guarantor."
 6 Do you see that?
 7 A Absolutely.
 8 Q Can we agree that this is the document that authorized
 9 you to sign certifications as attorney in fact for your father
 10 in connection with loans?
 11 A That looks to be accurate, yes.
 12 Q Let's go ahead and look at some certifications for
 13 2020. We are going to look at Exhibit 518. You'll see that the
 14 first page is an e-mail from Adam Rosen to an individual at
 15 db.com, which is Deutsche Bank.
 16 Do you see that?
 17 A I do.
 18 Q His attachment lists a number of compliance
 19 certificates -- sorry. The e-mail lists as attachments a
 20 number of compliance certificates. Do you see that?
 21 A Yes, I do.
 22 Q Do you recall that you were the person who signed these
 23 2020 certificates?
 24 A Yes, I do.
 25 Q If we could just quickly look at them and identify your

E. TRUMP - PLAINTIFF - DIRECT(MR. AMER) Page 3435

1 signature the on these. Page three, if you'd look at that
 2 first, that's your signature, correct?
 3 A Yes, it is.
 4 Q And page five, that's your signature, correct?
 5 A Yes, it is.
 6 Q And page seven, that's your signature, correct?
 7 A That's my signature, yes.
 8 MR. AMER: Your Honor, I move to admit this into
 9 evidence.
 10 THE COURT: It's in. Granted.
 11 (Whereupon, the Document was marked in evidence as
 12 Plaintiff's Exhibit 518.)
 13 MR. AMER: Thank you.
 14 Q Let's go back to page two of the exhibit. This is the
 15 compliance certificate for the Chicago loan, correct?
 16 A That's correct.
 17 Q And under the first numbered paragraph, "financial
 18 information," I'm correct that there's no "X" mark next to the
 19 first bullet that indicates the 2020 Statement of Financial
 20 Condition as attached, correct?
 21 A That looks to be correct, yes.
 22 Q And the paragraph underneath the three bullets
 23 indicates in the second sentence, "As agreed by lender and
 24 without prejudice to lender's reliance on the certifications
 25 herein, guarantor hereby certifies that the guarantor's

E. TRUMP - PLAINTIFF - DIRECT(MR. AMER) Page 3436

1 Statement of Financial Condition as of June 30, 2020 shall be
 2 submitted to the lender no later than December 31, 2020."
 3 Do you see that?
 4 A That's what it says, yes.
 5 Q So it appears that that statement was not ready yet to
 6 be included in the certification as of the date the
 7 certification was signed, right?
 8 A I wouldn't know the answer to that question. That's a
 9 legal or accounting question. I would have no idea sitting here
 10 today.
 11 Q It is a question about whether the Statement of
 12 Financial Condition was available as of this date.
 13 A I just -- I don't know the date of this document so it
 14 is a little bit hard for me to say.
 15 Q Let's scroll down. The other way. Sorry. It is dated
 16 October 28, 2020?
 17 A Scroll back down, please.
 18 Understood. It looks like it wasn't due until
 19 December 31, 2020.
 20 Q Do you know why it wasn't ready yet by the date of this
 21 certification? Just yes or no.
 22 A I would have no idea.
 23 Q And there's the same statement in absence of an "X" in
 24 the box for the other two compliance certificates, so can we
 25 agree your response would be the same for those as well?

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1 A If it saves this Court time, absolutely.
 2 THE COURT: It does.
 3 MR. AMER: It does.
 4 THE WITNESS: Your Honor, there we go.
 5 Q And if you look -- if we go down in the document,
 6 there are certain facts being stated in paragraph four about the
 7 net worth of the guarantor. Do you see that?
 8 A I do.
 9 Q Can we agree that by executing -- by the way, there
 10 are -- there's a net worth of guaranty section in the other two
 11 certificates as well. Can we agree that by that executing each
 12 of the three certifications as Donald J. Trump's attorney in
 13 fact, you were certifying to Deutsche Bank the facts set forth
 14 in the net worth of guaranty section in each of the
 15 certifications, yes?
 16 A Absolutely.
 17 Q And when you executed these three certifications, you
 18 intended the bank to rely on the certifications; isn't that
 19 right?
 20 A I don't know what the bank does with the
 21 certifications. I certified something that I believe was
 22 accurate and my lawyers told me that it was accurate and our
 23 financial people told me it was accurate and that's absolutely
 24 accurate. As to what Deutsche Bank does with a piece of paper
 25 like this, I have no idea.

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1 Q Let me just be clear because I don't think that was my
 2 question. I'm not asking you about what you think the bank did
 3 or didn't do with the certification. I'm asking you about your
 4 own intention when you sign this.
 5 Is it correct that when you signed this, it was your
 6 intent that the bank rely on these certifications to satisfy
 7 obligations under the loan agreements; yes or no?
 8 A No.
 9 Q Your answer is no, you didn't have that intent?
 10 A I don't choose what somebody relies on. What the bank
 11 wants to rely on, they can rely on. I believe everything I put
 12 in this statement was absolutely accurate and I stand by it
 13 100 percent. As to what Deutsche Bank Deutsche Bank does with,
 14 it is their purview, their own company.
 15 Q Let me ask it this way. Was it your purpose and intent
 16 of signing the certification to satisfy the obligations of the
 17 borrower under the loan agreements that these certifications
 18 relate to; yes or no?
 19 A I don't know.
 20 Q You did intend for this to be accurate, though,
 21 correct?
 22 A Yes. I think my father's net worth is far higher than
 23 that number, yes.
 24 Q Let's go ahead and look at Plaintiff's Exhibit 517.
 25 This is now October 28, 2021 and this is a certification

E. TRUMP - PLAINTIFF - DIRECT(MR. AMER) Page 3439

1 relating to Trump Endeavor 12, LLC. Do you see that?
 2 A Yes, I do.
 3 Q Is that the Doral loan?
 4 A That is Trump Doral.
 5 Q And it's your signature on the second page of this
 6 document, yes?
 7 A Yes, it is.
 8 MR. AMER: Your Honor, I move to admit this into
 9 evidence.
 10 THE COURT: Granted. It is in.
 11 (Whereupon, the Document was marked in evidence as
 12 Plaintiff's Exhibit 517.)
 13 Q If we go to the first page and for this certification,
 14 the box is -- got an "X" mark in the first bullet that says,
 15 "Attached hereto is the guarantor's Statement of Financial
 16 Condition as of June 30, 2021," correct?
 17 A That's correct.
 18 Q So in 2021, the Statement of Financial Condition was
 19 available to be attached to this certification, correct?
 20 A It certainly appears that way, yes.
 21 Q And by signing this document, you certified as attorney
 22 in fact for your father that Donald J. Trump's 2021 Statement of
 23 Financial Condition presents fairly in all material respects the
 24 financial condition of Donald J. Trump as of June 30, 2021,
 25 correct?

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1 A That is certainly our belief, yes.
 2 Q And you intended that to be an accurate representation,
 3 correct?
 4 A I wouldn't sign something if it wasn't accurate, so
 5 yes.
 6 Q And let's go ahead and mark as Plaintiff's Exhibit 516
 7 the next certification. And this is a 2021 certification for
 8 the Chicago loan, correct?
 9 A Yes, it is.
 10 Q And that's your signature on the second page of the
 11 document, right?
 12 A Yes, it is.
 13 MR. AMER: Your Honor, I move to admit this into
 14 evidence.
 15 THE COURT: Granted. It's in.
 16 (Whereupon, the Document was marked in evidence as
 17 Plaintiff's Exhibit 516.)
 18 Q By signing this document -- if we look at the first
 19 page again, by signing this document, you certified as attorney
 20 in fact for your father that Donald J. Trump's 2021 Statement of
 21 Financial Condition presents fairly in all material respects the
 22 financial condition of Donald J. Trump as of June 30, 2021,
 23 correct?
 24 A That's certainly what it says, yes.
 25 Q You intended this to be an accurate representation when

E. TRUMP - PLAINTIFF - DIRECT(MR. AMER) Page 3441

1 you signed it, correct?
 2 A I would not sign something that was not accurate.
 3 MR. AMER: And the next document is Plaintiff's
 4 Exhibit 515.
 5 A Mr. Amer, I could probably save you some time. I think
 6 my answers are going to be the exact same to every one of them.
 7 Q It's going to be very quick, but I just need to do it.
 8 These are important documents.
 9 THE WITNESS: Just to save Your Honor some time.
 10 THE COURT: I appreciate the witness' desire to
 11 save time. Let Mr. Amer do what he needs to do ASAP,
 12 quickly.
 13 MR. AMER: I think I've been doing that, Your
 14 Honor.
 15 Q This is the certification for the Old Post Office loan,
 16 correct?
 17 A Yes, that's correct.
 18 Q That's your signature on the second page, correct?
 19 A Yes, it is.
 20 MR. AMER: I move to admit this into evidence.
 21 THE COURT: Granted. It is in.
 22 (Whereupon, the Document was marked in evidence as
 23 Plaintiff's Exhibit 515.)
 24 Q And by signing this document, you certified on behalf
 25 of your father as his attorney in fact that Donald J. Trump's

E. TRUMP - PLAINTIFF - DIRECT(MR. AMER) Page 3442

1 Statement of Financial Condition present the fairly in all
 2 material respects the financial condition of Donald J. Trump as
 3 of June 30, 2021, correct?
 4 A Correct.
 5 Q And you intended this to be accurate when you signed
 6 it, correct?
 7 A I would not sign something that wasn't accurate.
 8 Q Now, we've just looked at three certifications you
 9 signed stating that your father's 2021 Statement of Financial
 10 Condition presents fairly in all material respects the financial
 11 condition of your father as of June 30, 2021.
 12 Can you tell us what, if anything, you did to ascertain
 13 that the 2021 Statement of Financial Condition in fact presents
 14 fairly all material -- in all material respects the financial
 15 condition of your father as of June 30, 2021?
 16 A I relied on a very big accounting office. I relied on
 17 one of the biggest accounting firms in the country. And I
 18 relied on a great legal team and when they gave me comfort that
 19 the statement was perfect, I was more than happy to execute it.
 20 Q Did you personally review any of the methodologies used
 21 to value any of the assets in the 2021 Statement of Financial
 22 Condition, yes or no?
 23 A No.
 24 Q Did you personally review any of the supporting data
 25 prepared by Patrick Birney in connection with the preparation of

E. TRUMP - PLAINTIFF - DIRECT(MR. AMER) Page 3443

1 the 2021 Statement of Financial Condition yes or no?
 2 A Not that I can remember.
 3 Q One more certification. It's Plaintiff's Exhibit 76.
 4 Actually, let me rephrase that. This is a loan modification,
 5 not a certification.
 6 Do you recognize this as the July 9, 2019 loan
 7 modification relating to the Seven Springs mortgage?
 8 A Yes, I do.
 9 Q And am I correct that you executed this document on
 10 behalf of Seven Springs, LLC as its president?
 11 MR. AMER: If we go to the signature page.
 12 A It looks like that I did it as attorney in fact for my
 13 father.
 14 Q Were you at this time the president of Seven Springs,
 15 LLC?
 16 A I likely was, yes, July 9th of 2019.
 17 MR. AMER: Your Honor, I move to admit this
 18 document.
 19 THE COURT: Granted. It's in.
 20 (Whereupon, the Document was marked in evidence as
 21 Plaintiff's Exhibit 76.)
 22 Q Let's go to paragraph 8H. You'll see 8H says, "All of
 23 the representations and warranties of borrower under the loan
 24 documents are hereby restated and reaffirmed as true and correct
 25 by borrower as of the date thereof and hereof and are

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1 incorporated herein by their "-- herein in their entirety by
 2 this reference." Do you see that?
 3 A I do.
 4 Q And you understood when you signed this loan
 5 modification that you were confirming that representation and
 6 warranty, correct?
 7 A That's what it says.
 8 Q And you intended that representation to be accurate
 9 when you signed this document, right?
 10 A I wouldn't sign something that I thought was
 11 inaccurate.
 12 Q Let's go ahead and move to Mar-A-Lago. Let me show you
 13 Exhibit 1382 in evidence. It is already in evidence. Mr.
 14 Trump, you'll see that there are two e-mails here. The first
 15 is -- the bottom e-mail is from a gentleman, Mr. Corbiciero who
 16 was a tax advisor to the company and his e-mail is dated
 17 November 17, 2021 and he's sending it to Ray Flores. Mr. Flores
 18 reported to you, correct?
 19 A Yes, Mr. Flores worked in our office.
 20 Q Not my question, though.
 21 He reported to you, correct?
 22 A He had several different reports.
 23 Q Were you one of them?
 24 A Oh, absolutely. Yes, I was.
 25 Q And the subject matter of the e-mail is Mar-A-Lago

E. TRUMP - PLAINTIFF - DIRECT(MR. AMER) Page 3445

1 homestead exemption. Do you see that?
 2 A I do.
 3 Q Then if you look at the top e-mail, Mr. Flores is
 4 passing this along to both you and Mr. Weisselberg. Do you see
 5 that?
 6 A I do.
 7 Q And he passes it along for your information and asks
 8 you to let him know if you'd like to discuss this homestead
 9 exemption further. Do you see that?
 10 A I do.
 11 Q Do you recall receiving this e-mail and reviewing it?
 12 A I recall some details about this issue, yes.
 13 Q And if we look at the second sentence of Mr.
 14 Corbiciero's e-mail, he writes, "Last year, we briefly discussed
 15 the possibility of filing for a homestead exemption on the
 16 Mar-A-Lago property since President Donald Trump had really
 17 declared Palm Beach and the Mar-A-Lago property as his permanent
 18 residency." You were certainly aware of that fact, right?
 19 A Absolutely.
 20 (Continued on the next page.)
 21
 22
 23
 24
 25

E. Trump - Plaintiff - direct (Amer) Page 3446

1 Q And then the second paragraph I'm going to walk you
 2 through and ask you some questions about -- he begins by saying,
 3 "in order to do this and this being filing for a homestead
 4 exemption, Mr. Trump would have to meet certain requirements to
 5 establish residency."
 6 Did you understand when you got this e-mail and
 7 reviewed it that there were certain requirements that would need
 8 to be met in order for your father to file for a homestead
 9 exemption now that he was legally declaring Palm Beach to be his
 10 legal residence?
 11 A It's certainly what it says.
 12 Q My question is different.
 13 A Do I understand it? Yes, I understand.
 14 Q Okay.
 15 THE COURT: Mr. Amer, try not to say "okay."
 16 MR. AMER: I will try not to.
 17 Q Skipping two sentences down, he says "since the private
 18 club is currently owned by a corporation, the property ownership
 19 would need to be changed/transferred into his name as an
 20 individual and not under a corporation."
 21 First of all, at this point in time you and your
 22 brother were running the company; right?
 23 A Yes, I would have been the head of the company at this
 24 time.
 25 Q Were you aware that Mar-A-Lago was owned by a

E. Trump - Plaintiff - direct (Amer) Page 3447

1 corporation as of this time?
 2 A I don't think we have a single asset that wouldn't be
 3 owned in an entity structure. It's just not how you own real
 4 estate. Yes, I would be aware of that it's owned in form of
 5 entity.
 6 Q And you were also aware it was being operated as a
 7 private club; right?
 8 A As a club, yes.
 9 Q He goes on to say "if he was to meet all these
 10 requirements then the part of the property that he uses as a
 11 residence would be eligible for homestead. The property
 12 appraiser would need to come out and do a property inspection
 13 and measure the residential area and that portion of the
 14 assessment would receive the homestead exemption."
 15 Did you read and understand what Mr. Corbiciero was
 16 saying would have to happen to the property in order for your
 17 father to file for homestead exemption?
 18 A That's what it said. I, again, don't remember much
 19 about this, but sure, I certainly trust the words on this piece
 20 of paper.
 21 Q Let's look at the next paragraph.
 22 Mr. Corbiciero says "currently, this property is
 23 assessed as a private club with the current assessed value at
 24 \$359 per square foot."
 25 Did you understand in November of 2019 that Mar-A-Lago

E. Trump - Plaintiff - direct (Amer) Page 3448

1 was being assessed as a private club at a rate that applied to a
 2 commercial property?
 3 A Certainly says that.
 4 Q My question is a little different.
 5 Were you aware of that fact in this time frame?
 6 A I don't think I'd be so nitty-gritty that I focused on
 7 details like this. This is just not what an executive at my
 8 level focuses on. I certainly see it says that in words.
 9 Q And when you reviewed this you would have understood it
 10 at the time; right?
 11 A Presumably. I'm not sure how much attention I paid to
 12 this to tell you the truth.
 13 Q Goes on to say "the surrounding residential properties
 14 are assessed on average of over 2,000 per square foot with a
 15 recent sale just over \$3,000 per square foot."
 16 Mr. Trump, did you understand that there was a
 17 different rate that applied to residential properties versus
 18 commercial properties in Florida?
 19 A As a real estate guy do I think that residential
 20 properties are taxed differently than commercial properties?
 21 Yes, absolutely. 100 percent.
 22 Q I want to be more specific. Did you understand that in
 23 the state of Florida residential properties were assessed at a
 24 higher rate per square foot than commercial properties; yes or
 25 no?

E. Trump - Plaintiff - direct (Amer) Page 3449

1 A I would have no idea.
 2 Q That's what this says, though? We can agree?
 3 A That's what -- sure. That's what this says.
 4 Q And you would have understood that when you reviewed
 5 this e-mail which you indicated to us you did; right?
 6 A Very tangentially.
 7 Q And he goes on to say "if the property appraiser were
 8 to separately assess the residential portion of Mar-A-Lago in
 9 order for it to qualify for homestead, we believe this would
 10 result in a much higher assessment and therefore outweigh the
 11 potential tax savings from the \$50,000 homestead exemption in
 12 the immediate future." Do you see that?
 13 A Yes, I do.
 14 Q So did you understand from reviewing this e-mail that
 15 by categorizing a portion of Mar-A-Lago as residential it would
 16 increase the tax assessment because the rate that applies to
 17 residential properties is much higher than the rate that applies
 18 to commercial properties?
 19 A Potentially. Again, as I said, I probably didn't focus
 20 too much on an e-mail like this.
 21 Q Let's look at Plaintiff's Exhibit 1352, which is the
 22 2021 supporting data that's in evidence.
 23 I'm going to ask to look at Rows 184 and 185 relating
 24 to Mar-A-Lago. Do you see in Row 185 it says "value if sold to
 25 individual?"

E. Trump - Plaintiff - direct (Amer) Page 3450

1 A Yes, I do.

2 Q Did you understand at the time that you certified the

3 2021 statement of financial -- sorry -- withdrawn.

4 Did you understand when you certified to Deutsche Bank

5 that the 2021 Statement of Financial Condition presents fairly

6 in all material respects the financial condition of your father

7 as of June 30, 2021 that Mar-A-Lago was being valued as if it

8 were a private residence that could be sold to an individual;

9 yes or no?

10 A Well, I think I testified very extensively I haven't

11 seen the backup, but Mar-A-Lago is a residence that could be

12 sold to a private individual and we have that absolute zoning

13 right to do so, so that doesn't surprise me at all that you

14 value it that way.

15 Q And you're saying that was your understanding at the

16 time that you certified to Deutsche Bank that the 2021 statement

17 presents fairly in all material respects the financial condition

18 of your father; correct?

19 A It's very clear that Mar-A-Lago is not a club. It's a

20 private residence and yes -- so I see nothing wrong with that a

21 hundred percent.

22 Q And did you understand at the time that you certified

23 to Deutsche Bank that the 2021 statement presents fairly in all

24 material respects the financial condition of your father that at

25 that time Mar-A-Lago was being valued for purposes of tax

E. Trump - Plaintiff - direct (Amer) Page 3451

1 assessment as though it were a commercial property used as a

2 private club; yes or no?

3 A It is being used as a private club.

4 MR. AMER: Your Honor --

5 A Yes.

6 THE COURT: We'll take "yes" to be the answer.

7 A It's used as a private club.

8 Q And you understood that at the time you signed the

9 certification; yes?

10 A That Mar-A-Lago is a private club, yes. Mar-A-Lago is

11 a private club.

12 Q And more to the point that it was being assessed for

13 property tax purposes as a private club; yes?

14 A Sure. I think that's how you would assess it.

15 Q Okay.

16 THE COURT: Try not to say "okay". Even softly.

17 THE WITNESS: If you're worried about me, it

18 doesn't bother me.

19 MR. AMER: The Judge has to be even handed. I take

20 his point.

21 THE WITNESS: I've got thick skin, Your Honor.

22 THE COURT: Good. You'll need it.

23 Q You'd be happy to hear I have one more document and the

24 Judge will be happy to hear that it's already in evidence.

25 And this is Exhibit 1751. I'm just waiting for the

E. Trump - Plaintiff - direct (Amer) Page 3452

1 extra copy.

2 A And I'm happy to read off the screen. I don't need the

3 formalities.

4 Q This is a Separation Agreement between the Trump

5 Corporation and its various related entities and Allen

6 Weisselberg. Do you see that?

7 A Yes, I do.

8 Q And I just want to confirm on page seven of eight that

9 you are the person who signed this agreement on behalf of the

10 company?

11 A On page six?

12 Q Yes. I'm using the page numbers at the very bottom

13 next to the plaintiff's exhibit number. So it says page seven

14 of eight?

15 A Don't worry about it. I clearly signed this agreement.

16 Q I just want the record to be clear we're looking at the

17 right page?

18 A Understood.

19 Q Okay. And you signed this on January 12, 2023;

20 correct?

21 A It looks that way, yes.

22 Q And we've had testimony from Mr. Weisselberg just so we

23 have the timeline correct that he had pled guilty to 15 counts

24 of tax fraud on August 18th of 2022, so several months before

25 you signed this agreement. You were aware of his guilty plea

E. Trump - Plaintiff - direct (Amer) Page 3453

1 when you signed this document; correct?

2 A I don't know what I was aware of when I signed this

3 document. Presumably if this document would be after, yes; if

4 it was before, clearly not. I don't --

5 Q Well, I just said that he testified at trial that he

6 pled guilty on August 18th of 2022, so that's --

7 A Yes, I would have been aware if that's the case.

8 Q And if you look at page two of the document under -- at

9 the bottom of the "benefits" paragraph.

10 MR. AMER: If we could blow that up.

11 Q It says "the company agrees to make severance payments

12 to the employee," that's Mr. Weisselberg, "in installments of

13 250,000." I'm just paraphrasing pursuant to a schedule. Do you

14 see that?

15 A Yes, I do.

16 Q And let's just quickly look at the schedule, which is

17 the last page of the document.

18 According to the payment dates Mr. Weisselberg has

19 received only the first three of his eight installments;

20 correct?

21 A I presume that to be the case, yes.

22 Q And if we go back to page two of the document under

23 paragraph three there is a list of employee promises. Do you

24 see that?

25 A I do.

E. Trump - Plaintiff - direct (Amer) Page 3454

1 Q And it says "in exchange for the benefits provided in
 2 paragraph two, that would include the installment payments;"
 3 right?
 4 A Yes, I assume that's what it's referring to.
 5 Q Mr. Weisselberg promises certain things. I just want
 6 to highlight two of them. One of the things he promises is
 7 Paragraph B, not to verbally or in writing disparage, criticize
 8 or denigrate the company or any of its current or former
 9 entities, officers, directors, managers, employees, owners or
 10 representatives. Do you see that?
 11 A Absolutely.
 12 Q So one of the things he was promising not to do in
 13 exchange for getting his payments was to not disparage,
 14 criticize or denigrate you; correct?
 15 A Certainly not a lawyer, but it seems like that's pretty
 16 standard language for any severance agreement, yes.
 17 Q So the answer is yes?
 18 A I don't know what it's intended for, but it probably
 19 means that he can't openly in the press disparage me, yes. I
 20 would never disparage him.
 21 Q But at any rate you are not getting installment
 22 payments from him. He's getting installment payments from the
 23 Trump Company; correct -- Trump Corporation?
 24 A He's a man that worked at the company for 50 years. I
 25 was -- ten years before I was born he was working at the

E. Trump - Plaintiff - direct (Amer) Page 3455

1 company, yes.
 2 Q Okay. And in exchange for getting these installment
 3 payments he's agreeing not to verbally or in writing disparage,
 4 criticize or denigrate certain entities and individuals? And
 5 I'm just asking you simply to confirm that those entities and
 6 individuals would include you; correct? Yes or no?
 7 A Well, I'm certainly an officer of the company, so, yes.
 8 Q Okay. And it would also include your brother Donald
 9 Trump, Jr.; correct?
 10 A Very much sounds like it, yes.
 11 Q And it would include your father Donald Trump; yes?
 12 A Presumably.
 13 Q And because it includes former officers it would
 14 include your sister Ivanka Trump; correct?
 15 A She would be a former officer, yes.
 16 Q Okay. And then if we look at Paragraph D, another one
 17 of the promises that Mr. Weisselberg makes in exchange for
 18 getting his payments is "except for acts or testimony directly
 19 compelled by subpoena or other lawful process issued by a Court
 20 of competent jurisdiction," he will not, "one, communicate with,
 21 provide information to or otherwise cooperate in any way with
 22 any other person or entity, including his counsel or other
 23 agents having or claiming to have any adverse claims against the
 24 company or any person or entity released by this agreement with
 25 regard to the adverse claim."

E. Trump - Plaintiff - direct (Amer) Page 3456

1 Let me just stop there. Can we agree that one such
 2 entity with adverse claims against the company at the point you
 3 signed this is the Attorney General's Office of the State of New
 4 York; yes?
 5 A I don't know. This looks like pretty boilerplate
 6 language for me in an agreement like this, but are you adverse
 7 to us, yes. I think the whole world knows you're adverse to us,
 8 so I will say yes.
 9 Q "Or two, take any action to induce, encourage,
 10 instigate, aid, abet or otherwise cause any other persons or
 11 entity to bring or file a complaint, charge, lawsuit or other
 12 proceeding of any kind against the company or any person or
 13 entity released by this agreement." That was the second part of
 14 that promise; correct?
 15 A That's correct.
 16 Q Okay.
 17 MR. AMER: Sorry, Your Honor.
 18 THE COURT: Mr. Amer, how much longer with the
 19 witness, with this topic, etc.?
 20 MR. AMER: Just a couple questions both with the
 21 witness and with the document and I'm done.
 22 THE COURT: Roughly how long?
 23 MR. AMER: Two minutes.
 24 THE COURT: Go right ahead.
 25 Q Mr. Trump, did you participate in the business decision

E. Trump - Plaintiff - direct (Amer) Page 3457

1 to enter into this agreement with Mr. Weisselberg; yes or no?
 2 A Yes.
 3 Q And was entering into this agreement a business
 4 decision that you approved; yes or no?
 5 A I signed it. I clearly approved it.
 6 Q And you testified at the very beginning of our session
 7 yesterday that if your father directed you to take an action
 8 post his leaving the presidency you would follow his direction.
 9 Do you recall that?
 10 A I do.
 11 Q Did your father direct you to enter into this agreement
 12 with Mr. Weisselberg?
 13 A No, he did not.
 14 Q Did he approve of it to your knowledge?
 15 A I did this agreement with Mr. Weisselberg. He's a
 16 person that worked with our organization for 50 years. I was
 17 the person who did this, I was the person who signed it, I was
 18 the person who negotiated it.
 19 Q That doesn't really answer my question, which is
 20 whether your area approved it; yes or no?
 21 A He did not.
 22 MR. AMER: That's all I have, Your Honor.
 23 THE COURT: Give me a moment or two.
 24 MR. AMER: We have some housekeeping. We don't
 25 need do with the witness on the stand.

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1 THE COURT: All right. We'll excuse the witness.
 2 Thank you.
 3 THE COURT OFFICER: Members of the audience, remain
 4 seated.
 5 (Whereupon, the witness is excused from the witness
 6 stand.)
 7 THE COURT: I'd like to go back to where we were
 8 this morning after our various statements on the record.
 9 I'll consider defendants' objection to by consulting with or
 10 receiving notes from my law clerk to be a continuing
 11 objection and I will continue to consult with the staff that
 12 I'm ethically allowed to consult with, that being my two law
 13 clerks and I will continue to do that for the trial.
 14 Mr. Kise and your colleagues, your record is
 15 preserved and going forward I don't want any other comments
 16 about my staff or how I communicate with them.
 17 Would you like to respond?
 18 MR. KISE: Again, just to be clear, Mr. Robert may
 19 have something as well.
 20 So then we are not permitted to note for the record
 21 just the observation? That's it? Without comment, without
 22 any argument? Just simply make a note on the record so that
 23 it's clear in the record what's taking place in the
 24 courtroom? Because otherwise there is no way to -- there is
 25 no other way to do it. I don't have another way to do it.

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1 There is no recording, there is no video. So the only way
 2 the record will reflect what's actually taking place is to
 3 have some reference.
 4 MR. WALLACE: Mr. Kise can note the number of notes
 5 passed and submit an affidavit if he chooses to make a
 6 motion at some point.
 7 MR. KISE: I don't know that we need to do that,
 8 but if something is taking place it could just be simple as
 9 making reference that the Court paused or the Court received
 10 a note. I mean, it doesn't have to reference anyone
 11 specific or any way. It's just we have to be able to make
 12 some record.
 13 THE COURT: Okay. You've made considerable record
 14 and I am stating on the record that I will continue to
 15 receive notes, consultations of any sort at anytime with my
 16 staff. So now you have as much as you need. If you want to
 17 appeal or move to recuse or whatever you want to do, you
 18 have plenty of ammunition. The problem is it's totally
 19 useless and meaningless because I have an unfettered,
 20 absolute right to consult with my law clerks anytime,
 21 anyplace about any matter. Go ahead.
 22 MR. KISE: All I'm saying is from here forward the
 23 record isn't complete so between now and the end of the
 24 trial, there may be other things we have to note.
 25 Appeals, as you know, generally take place at the

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1 end of the case and so there has to be a complete record. I
 2 may have made a record to this point, but --
 3 THE COURT: But I'm giving you an opportunity to
 4 make a record going forward. I will continue to do it. If
 5 you want me to say every week or every day yes, I can
 6 communicate with my law clerk today or yesterday, I'll do
 7 that because I am absolutely certain that I have the right
 8 to do that and you can make whatever record you want, but
 9 let's not belabor this point.
 10 MR. KISE: I'm not trying to, but I just want to be
 11 clear the contemporaneous nature of it is relevant for
 12 purposes of the record. So, in other words, the fact that
 13 there are notes being passed in the abstract I might agree
 14 with you may not give rise to any issue, but if notes are
 15 being passed at certain specific times or if they're being
 16 passed in a way that might indicate some bias -- and I'm not
 17 going over that record again. It's there. That's a record
 18 that needs to be made contemporaneously. There is no other
 19 way to do it contemporaneously.
 20 To say at the end of the day yes, you received
 21 notes, okay, that may be fine. As you yourself indicated,
 22 you may receive notes about lunch. It's possible, so it's
 23 the contemporaneous nature of it and I'm not trying to
 24 burden the proceeding and we can even come up with a
 25 shorthand for it if you want me to note an objection or some

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1 statement like that just so it's in the record. If that's
 2 what that means we're happy to do that. We're not trying to
 3 disrupt. It's just in order to have a complete record for
 4 appellate purposes. And what we do with that record will
 5 have to be decided at the time by maybe the appellate
 6 lawyers. We just have to be able to make the record on a
 7 contemporaneous basis. That's all I'm saying.
 8 Mr. Robert.
 9 THE COURT: You've had, what is it, four weeks now?
 10 And you've made a record continuously and I completely agree
 11 with the Attorney General's position. If you want to make a
 12 motion at this point, go ahead and do it.
 13 MR. ROBERT: Your Honor, I think we may --
 14 THE COURT: There is no more need to make a record.
 15 You have such a complete record. You've made speeches, you
 16 made observations. I've said yes, it's being done and yes,
 17 I'll continue to do it. What more record do you want?
 18 MR. KISE: It's like -- well, it's no different
 19 from now until the end of trial you're going to make other
 20 evidentiary rulings, I presume, or you're going to make
 21 other rulings about other aspects of the case. It's the
 22 same record. I mean, just because I've objected before to
 23 some particular thing, we still have to object going
 24 forward. I mean, that's just the nature of the appellate
 25 record. We just have to have some basis for it.

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1 Whether we will make a motion now or not, as I
 2 said, that's something that we will determine, but that's
 3 very different than an appellate record that needs to be
 4 complete for appellate purposes. So it would be no
 5 different than if I'm not allowed to object to some
 6 evidentiary ruling or some other issue. It's the same sort
 7 of thing. It's just really no difference to it at all.

8 THE COURT: What do you propose to do when you see
 9 a note or ten notes or a day's worth of notes to make a
 10 record every day hey, the principal law clerk is passing
 11 notes to the judge on the bench?

12 MR. KISE: Your Honor, as we have done before, to
 13 the extent there is something that gives rise to in our
 14 minds the appearance of impropriety or bias then I think we
 15 have to flag that in the record. Otherwise, it's waived.
 16 We're going to get to the First Department and the First
 17 Department will look at us and say why didn't you raise that
 18 on the record? Why is it not there? If you're talking
 19 about a specific ruling at a specific time, why did you not
 20 raise it. That's all I'm saying. It goes back to what I
 21 was saying before in the past. I have certainly felt truly
 22 that I'm debating with two adversaries. I've got one in one
 23 place and one in another and that's a record that needs to
 24 be made because that is a record that is I think,
 25 respectfully, relevant for appellate purposes.

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1 MR. WALLACE: It's not relevant to what is going
 2 on. We are trying to put on a trial and we are putting in
 3 witnesses making evidence. This sideshow of talking about
 4 the clerk passing notes to the Court is interrupting -- is
 5 seems, to me, largely designed -- I don't know. I guess
 6 you're making a record trying to blow up the trial, but also
 7 designed to interrupt our ability to put in evidence.

8 We've been doing this for five weeks. If you think
 9 this has been prejudice that has disrupted this trial,
 10 please make your motion now. Don't let us go on for another
 11 four weeks. But if there is something improper about the
 12 judge and the clerk passing notes, you should make your
 13 motion now instead of continuing to interrupt this trial.

14 The difference between making an objection about
 15 evidence and making an objection about something that is not
 16 relevant to an appeal, I think should be obvious at this
 17 point.

18 MR. KISE: So I appreciate the fact that to
 19 Mr. Wallace it appears obvious. Maybe I'm slow. It's not
 20 obvious to me. The record is the record. I've only
 21 handled, I don't know, 200 appellate cases in my career.
 22 I've only handled four cases in the Supreme Court of the
 23 United States. I don't know much about appellate records.

24 MR. WALLACE: And how many of those cases involved
 25 an overturned decision based on notes passed from a judge to

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1 a clerk?
 2 THE COURT: Mr. Wallace, one at a time.
 3 MR. KISE: The answer to the question is none.
 4 That's why it's a significant record to be made. But no one
 5 is obstructing the trial. No one is doing anything to
 6 obstruct the trial. We are proceeding forward. They have
 7 been allowed to put in ample evidence and so, therefore --
 8 and over objection, sometimes the objections are sustained.
 9 But the point is we have to make our record. That's our --
 10 that is our role and right as attorneys.

11 So I -- and we haven't made it repeatedly. I have
 12 to disagree with that characterization. It's not been like
 13 every minute of every day that this issue has been brought
 14 to the forefront if it is impeded or proceeded in any way
 15 but there has so be some way if we believe that there is an
 16 issue that it be raised. That's all and we will be, as we
 17 have before, we will be direct, appropriate and measure.
 18 We're not making extra judicial statements about this. I
 19 certainly have not made any and don't intend to as you have
 20 probably observed over the last year is my general practice.

21 So the point is as a lawyer, though, I have to make
 22 a record and while I appreciate the advice and direction
 23 from the he Attorney General, those sorts of things are
 24 decided on this side of the table, just like what motions
 25 they bring and how they proceed is decided by them.

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1 And Mr. Robert I know had one other thing.
 2 MR. ROBERT: I just wanted some clarity because,
 3 Your Honor, are you directing us not to object or that we're
 4 not allowed to object to the conduct we observe in the
 5 courtroom? That's all I want to know.

6 THE COURT: I'll issue a written decision later
 7 today and you'll know.

8 All right. Anybody else? I understand we have
 9 housekeeping matters or matter?

10 MR. AMER: Yes, Your Honor. It goes to the point
 11 that we played some video clips of testimony and I realize
 12 the court reporter does not transcribe the video clips, so
 13 what we have are reports that contain the testimony that
 14 we've marked as Plaintiff's Exhibit so that we can get those
 15 admitted into evidence since there needs to be a record of
 16 what we all heard when we played the video clips and I've
 17 just --

18 MR. KISE: A record? Really? There needs to be a
 19 record? Wow. That's interesting.

20 MR. AMER: Yes, there needs to be a record.
 21 So I'm going to hand out the plaintiff's exhibits.
 22 They're all a stack. So that's one stack, this is another
 23 stack.

24 Transcript continues on the following page...
 25

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1 MR. AMER: I'm going to go through them
2 individually. Mr. Kise, I already discussed with your
3 colleague Mr. Robert, so we agreed on this process. The
4 first one is a clip of Mr. Weisselberg's testimony and --
5 MR. KISE: If it is confirmed that they're correct,
6 Your Honor, then we don't have a problem with it. I mean,
7 he doesn't have to go through each line by line.
8 MR. AMER: I'm not. I'm going to say the exhibit
9 number and I'm going to ask that they be admitted into
10 evidence.
11 MR. KISE: We can do it by agreement.
12 MR. AMER: Plaintiff's Exhibit 3334 is a clip from
13 Mr. Weisselberg. Plaintiff's Exhibit 3335 is the clip we
14 played from Mr. McArdle's direct testimony. We did that
15 both with Mr. Trump on the stand. I'm sorry. This is from
16 Mr. Trump's -- Eric Trump's testimony. We played that for
17 Mr. McArdle. That's 3335. Plaintiff's Exhibit 3339, that
18 was Eric Trump's testimony that we played. Plaintiff's
19 Exhibit 3338, also Mr. Trump's testimony we played.
20 Plaintiff's 3337, another clip from Eric Trump. And
21 finally, Plaintiff's 3336, another clip from Mr. Eric
22 Trump's deposition testimony. So we ask that all of these
23 exhibits be admitted into evidence.
24 MR. ROBERT: No objection.
25 THE COURT: Okay. Granted. They're in evidence.

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1 THE COURT: The only witness will be Donald J.
2 Trump. Thanks, everybody. Good weekend.
3 (Whereupon the trial was adjourned to Monday,
4 November 6, 2023.)

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1 (Whereupon, the Clips were marked in evidence as
2 Plaintiff's Exhibits 3334-3339.)
3 THE COURT: Any other housekeeping matters?
4 MS. FAHERTY: Yes, Your Honor. During the
5 examination of Mr. Orowitz, there were two exhibits that
6 were discussed. There was testimony on them, but counsel
7 did not move them in for admission. So I'm putting it on
8 the record we'd like to move these into evidence.
9 First is plaintiff's Exhibit P X 3111 and the
10 second is PX 3332. Mr. Orowitz identified both of these
11 exhibits as e-mail chains to which he was a sender and
12 recipient as well. Although, they weren't formally moved
13 in, we would ask the Court do so now.
14 (Whereupon, the Documents were marked in evidence
15 as Plaintiff's Exhibits 3111&3332.)
16 MR. KISE: Your Honor.
17 THE COURT: Yes.
18 MR. KISE: For good measure on a Friday, statute of
19 limitations and relevance objection.
20 THE COURT: Overruled. Any other housekeeping
21 matters or any other matters? Just give me one second.
22 Okay. We will reconvene on Monday at ten o'clock and the
23 first witness will be?
24 MR. AMER: The only witness will be Donald J.
25 Trump.

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In The Matter Of:
NYS Attorney General v.
Donald J. Trump

November 6, 2023

Ny Supreme Court- Civil

1 SUPREME COURT OF THE STATE OF NEW YORK
2 COUNTY OF NEW YORK: CIVIL TERM: PART 37

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3 PEOPLE OF THE STATE OF NEW YORK, BY LETITIA
4 JAMES, ATTORNEY GENERAL OF THE STATE OF NEW
5 YORK,

Plaintiff,

- against -

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452564/2022

6 DONALD J. TRUMP; DONALD TRUMP JR.; ERIC TRUMP;
7 IVANKA TRUMP; ALLEN WEISSELBERG; JEFFREY
8 McCONNEY; THE DONALD J. TRUMP REVOCABLE TRUST;
9 THE TRUMP ORGANIZATION, INC.; TRUMP ORGANIZATION
10 LLC; DJT HOLDINGS, LLC; DJT HOLDINGS MANAGING
MEMBER; TRUMP ENDEAVOR 12, LLC; 401 NORTH WABASH
VENTURE, LLC; TRUMP OLD POST OFFICE, LLC; 40 WALL
STREET, LLC; and SEVEN SPRINGS, LLC,

Defendants.

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12 Bench Trial

13 November 6, 2023
14 60 Centre Street
15 New York, New York 10007

16 B E F O R E: THE HONORABLE ARTHUR S. ENGORON,
17 Justice of the Supreme Court

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Senior Court Reporters

25

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1 THE COURT: Well we have a lot of people here
2 and apparently a lot of photographers outside that want to
3 photograph some of you.

4 We always call them the gaggle of photographers.
5 I think gaggle refers to geese, doesn't it?

6 (Photographers entered the courtroom.)

7 (Photographers exited the courtroom.)

8 THE COURT: I would like to start right away
9 with the next witness.

10 Are there any housekeeping matters that can't
11 wait until later?

12 MR. KISE: Not that can't wait, Judge. We have
13 a minor housekeeping matter, but if Your Honor would like
14 to proceed we will just wait until later.

15 THE COURT: Great. Thanks.

16 Plaintiff would you like to call your next
17 witness?

18 MR. WALLACE: Certainly, Your Honor. The People
19 call Donald J. Trump.

20 (Whereupon the witness took the stand.)

21 COURT OFFICER: Please raise your right hand.

22 D O N A L D J. T R U M P, after
23 having first been duly sworn was examined and
24 testified as follows:

25 COURT OFFICER: Please state your name and

D. J. Trump - by Plaintiff - Direct(Wallace)

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1 either home or business address for the record.

2 THE WITNESS: Yes. It is Donald J. Trump, and I
3 live in Palm Beach, Florida, 1200 Southern Boulevard.

4 THE COURT: That sounds good.

5 I'll just ask you, like I ask every witness,
6 talk right into the microphone loudly, slowly, clearly.

7 Mr. Wallace, please proceed.

8 MR. WALLACE: Thank you, Your Honor.

9 DIRECT EXAMINATION

10 BY MR. WALLACE:

11 Q Good morning, Mr. Trump.

12 A Good morning.

13 Q You were the beneficial owner of a bunch of companies
14 branded as The Trump Organization; is that correct?

15 A Yes.

16 Q From May 1, 1981 to January 19, 2017, you were the
17 Director, President and Chairman of the Trump Organization
18 Incorporated; is that correct?

19 A Yes.

20 Q And the assets of the Trump Organization are
21 currently held in a revocable trust; is that correct?

22 A Yes.

23 Q And that trust is called the Donald J. Trump
24 Revocable Trust; is that right?

25 A Yes that's right.

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1 Q If we talk about the Trust today, you will understand
2 that's what I am referring to?

3 A Yes, certainly.

4 Q You are the donor of all of the assets in the Trust?

5 A Yes.

6 Q Are you the sole beneficiary of the Trust?

7 A Yes.

8 Q And you formed the Trust when you decided to run for
9 president; is that correct?

10 A Pretty much when I won, I formed the Trust.

11 Q Do you recall that the Trust may have been formed
12 actually in 2014?

13 A It could have been earlier, but it was primarily when
14 I thought about running. And I think maybe came into -- it
15 could be a little earlier, but pretty much around the time that
16 I won.

17 Q And the purpose was related to your run for the
18 Presidency; is that correct?

19 A I thought there would be a conflict of interest if I
20 had the properties outright, so I formed the Trust. But no --
21 Excuse me, even though I would be allowed to do that.

22 In fact, I told you the story once about George
23 Washington, he had two desks, one for business and one for
24 President. You are allowed to do that. But I didn't like it.
25 And I felt there may be a conflict of interest, so I formed the

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1 Trust.

2 Q But prior to you becoming President of the United
3 States you were the sole Trustee of the Trust; is that correct?

4 A That's correct, yes.

5 Q And after you were elected President of the United
6 States you appointed your son, Donald Trump Jr. and Allen
7 Weisselberg as Trustees; is that correct?

8 A That's correct, yes.

9 Q So why did you select Mr. Weisselberg to be a
10 Trustee?

11 A Well, he had been with the company a long time. And
12 he was somebody that I had confidence in. He did a good job.
13 I mean, he was very good at what he did. He was a -- he was
14 the comptroller and financial person. And we really liked him
15 for a long time.

16 Q And you trusted Mr. Weisselberg?

17 A I did, yes.

18 Q At the time you appointed him as Trustee he was the
19 Chief Financial Officer of the Trump Organization; is that
20 correct?

21 A Yes, that's right.

22 Q Why did you select your son, Don, to serve as a
23 Trustee?

24 A He is a hard working boy, you know, young man, and he
25 has done a very good job; as has Eric. Eric was very busy

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1 running the company, and I thought that putting Don in would be
2 good. He is smart. He is a very honorable guy.

3 Q And when you left the White House you appointed
4 yourself as Trustee again; is that correct?

5 A That's correct.

6 Q And at that time after you left the Presidency you
7 were the sole Trustee of the Trust; is that correct?

8 A Um, yeah, around that time, yes.

9 Q Why did you make yourself the sole Trustee?

10 A Well, I figured that I would be back in the business
11 world for a little while, depending on what happened in
12 politics. And I was going to get involved with the business
13 again. I wasn't in politics other than thinking about running
14 or doing whatever I had to do. So, I figured that I would be
15 back in business, I might as well be the Trustee.

16 Q I am going to hand up to the court officer a document
17 that has been marked as Plaintiff's Exhibit 1720.

18 (Handing)

19 MR. WALLACE: If you could put a copy of that up
20 on the screen, please?

21 If we could skip to page two of this document.

22 Q This is a document entitled the Donald J. Trump
23 Revocable Trust Removal of Trustee. And if we look down at the
24 bottom of the page it says: "Now, therefore, pursuant to
25 subarticle A of Article 13 of the Agreement of Trust settlor

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1 hereby removes Donald J. Trump as Trustee under the agreement
2 of Trust, effective as of 2:30 p.m. eastern standard time,
3 July 7, 2021."

4 If we look on the next page you will see -- is that
5 your signature?

6 A Yes.

7 Q Why did you remove yourself as Trustee as of July 7,
8 2021?

9 A I don't know that -- I think we were at a position
10 where I was gaining more and more confidence in my family in
11 terms of business. And you would have to see what the
12 alternative is. Who are the trustees that were appointed,
13 because I had many different.

14 Q Sure. Yeah, I am happy to show you page five of this
15 document, which is entitled Appointment and Acceptance of
16 Trustee.

17 It states at the bottom: "Now, therefore, pursuant
18 to subarticle A of Article 13 of the Agreement of Trust (i)
19 settlor hereby appoints Donald J. Trump Jr. as Trustee under
20 the Agreement of Trust. And (ii) Donald J. Trump Jr. hereby
21 accepts such appointment effective as of 2:30 p.m. eastern
22 standard time, July 7, 2021."

23 A Yeah.

24 Q So that's your son, Don Jr.?

25 A That's right. He was impressive in business, as was

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1 Eric. And I thought that I would do that while I continue
2 onward with politics.

3 Q Okay. Anything in particular was happening in July
4 of 2021 that led to that decision?

5 A Well other than you and about every other Democrat,
6 District Attorney, AG and U.S. Attorneys, et cetera, were
7 coming after me from 15 different sides, all Democrats, all
8 Trump haters. And all cases that are not good, that are
9 inappropriate and not good. Weaponization they call it.

10 But I felt Donald would do a good job. He would be
11 running the business with Eric. And I had great confidence in
12 him.

13 Q So I am just trying to understand. Was the decision
14 to appoint Don actually related to the investigations you
15 referred to?

16 A I think more so to the fact that I was staying very
17 much in politics. You know, obviously as you see I was -- I
18 have been in politics pretty much more than I thought perhaps.

19 Q Okay. Mr. Trump, I am going to put a document up on
20 the screen. I don't think we need to have a hard copy of it.
21 This is a document that is already in evidence as Plaintiff's
22 Exhibit 787. This is a copy of your 2011 Statement of
23 Financial Condition; is that correct?

24 A Yes.

25 Q Is it correct that you had a Statement of Financial

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1 Condition prepared as of June 30 for every year from 2011 until
2 you became President in 2017?

3 A I think so, yes.

4 MR. WALLACE: Your Honor, housekeeping, I failed
5 to move into evidence document 1720, which was the Trust
6 document we just looked at.

7 THE COURT: Granted. It is in evidence.

8 MR. WALLACE: Thank you, Your Honor.

9 Q If we go back to the Statement of Financial
10 Condition, is it correct that you had reviewed the Statement of
11 Financial Condition in each of those years from 2011 to 2017
12 before it became final?

13 A Yeah, I would look at them. It was not something
14 that was of great urgency because I knew they weren't very
15 badly needed in a true sense, but I would look at them. I
16 would see them. And I would maybe, on occasion, have some
17 suggestions.

18 Q When you say they weren't badly needed, what do you
19 mean?

20 A Banks didn't find them very relevant. And they had a
21 clause in it, a disclaimer clause. You could call it a
22 worthless statement clause, because they were done in such a
23 way that they really were -- you talked about it here recently,
24 a compilation. They were just something that you would have
25 for yourself. But if you were borrowing money, and as I guess

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1 people are starting to say I was very under levered anyway to
2 start off with. But they were not really documents that the
3 banks paid much attention to. They looked at the deal. They
4 looked at the asset. If it is real estate, they looked at the
5 location. But they weren't -- these were not very important --
6 primarily for the reasons that you had a disclaimer clause that
7 was very, very powerful.

8 Q How did you know that the banks did not pay much
9 attention to your statements?

10 A Because I have been dealing with banks for 50 years,
11 and I probably know banks as well as anybody. And I have
12 borrowed a lot of money, I have paid back a lot of money, and I
13 know what they look at. They look at the deal. They look at
14 the location. They don't want to get involved in financial
15 statements because that's not what they are after. If a deal
16 goes bad, they want to be able to take the deal back over and,
17 you know, have it. They want you to be able to put up some
18 cash or whatever it is you may be -- including expertise. But
19 they don't want to be fighting for ten years over a personal
20 financial statement. They want to take over the deal.

21 Q So you understood that these statements would go to
22 banks, but it is your view based on your experience that they
23 didn't rely on them very much?

24 A They may go to the banks. Some banks wanted them.
25 They didn't -- they just weren't a very important element in a

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1 bank's decision-making process.

2 And we will explain that as this trial goes along,
3 this crazy trial goes along, because we are bringing in some
4 bankers, and the bankers will tell you -- very big bankers,
5 bankers that dealt with me, and they will explain exactly what
6 their processes were. But these were very substantial bankers,
7 and they will explain what the process is.

8 But they paid little attention to documents, unless
9 they were certificated documents, unless they were at the
10 highest level, where everything was checked, everything was --
11 but even then they were more interested in the deal.

12 THE COURT: Mr. Trump, Mr. Wallace is being very
13 patient, but I would like to move things along a little
14 faster. Please, just answer the questions, no speeches.
15 Mr. Wallace is going to ask questions. You are going to
16 answer them. I am going to make sure that happens. And
17 some of your answers have not been responsive to the
18 question. They responded, but then there is a speech to
19 be had after that.

20 Mr. Kise?

21 MR. KISE: Your Honor, respectfully, I have been
22 watching that. All of Mr. Wallace's questions have called
23 for narratives: Not badly needed, what do you mean;
24 that's an open-ended question. How did you know the banks
25 didn't rely; that's an open-ended question. So you

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1 understood. I mean, if Mr. Wallace is going to ask
2 open-ended questions that call for narratives, that I
3 haven't objected to, ordinarily, you know, I like to
4 object to Mr. Wallace's questions, but they are
5 narratives. So if they call for narratives, I think it is
6 fair for the witness to narrate. He will certainly
7 understand your instruction, but they are open-ended
8 questions he is asking. He is not asking narrow questions
9 like: What do you mean by, you know, this. What is your
10 understanding of that.

11 Those are questions that call for narratives,
12 respectfully.

13 THE COURT: Well, we agree on the principles.
14 We disagree on the application. So let's just continue.

15 MR. WALLACE: Thank you, Your Honor.

16 Q Why don't we go through one of the later statements
17 in a little more detail.

18 MR. WALLACE: If we could get Plaintiff's
19 Exhibit 730, please.

20 This is in evidence, Your Honor, so we are
21 providing an extra copy for the witness.

22 (Handing)

23 Q Mr. Trump, I have handed you a copy of a document
24 that is in evidence as Plaintiff's Exhibit 730. Do you
25 recognize this as a copy of your 2014 Statement of Financial

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1 Condition?

2 A Yes, I do.

3 MR. WALLACE: If we can turn to page two of the
4 document, we will also put it up on the screen.

5 Q The second paragraph states: "Donald J. Trump is
6 responsible for the preparation and fair presentation of the
7 financial statement in accordance with accounting principles
8 generally accepted in the United States of America. And for
9 designing, implementing and maintaining internal control
10 relevant to the preparation and fair presentation of the
11 financial statement."

12 Is that statement true and accurate?

13 A True in the sense that what they wanted was -- this
14 is Mazars, what they wanted was as much information as we could
15 give them so they could do their statements. And if you look
16 at every other paragraph, that's what they talk about.

17 Q So it is true that you were responsible for the
18 preparation and fair presentation of financial statements?

19 A Getting them information, yes. In a form of getting
20 them information.

21 Q Okay.

22 A And if they had a problem with it, they wouldn't have
23 done the statement. In other words, if they didn't get what
24 they wanted as per that paragraph, they would call, can you get
25 this, can you get that, and they wouldn't do the statement.

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1 Q So who is responsible --

2 MR. WALLACE: Well, strike that.

3 Q Can you tell me, what did you do to meet your
4 responsibility for the preparation and fair presentation of
5 this financial statement in accordance with accounting
6 principles generally accepted in the United States?

7 A Me personally? Me personally or...

8 Q Let's start with you personally.

9 A Okay. Well, first of all it is so long ago, you
10 know, this is well beyond the statute of limitations. I would
11 think anybody else would be well beyond the statute of
12 limitations, but I am probably not because I am sure the Judge
13 will rule against me, because he always rules against me. But
14 this is something well beyond the statute of limitations.

15 But, I will tell you that my primary thing was to
16 tell people to give them anything they needed.

17 THE COURT: Mr. Kise, was that comment necessary
18 and part of the narrative to answer the question?

19 MR. KISE: Well, Your Honor, you know, he is
20 asking broad questions about him personally. I think what
21 he is trying to understand is the witness's perspective.
22 I mean, we are -- this is an unusual situation and an
23 unusual trial. I think the Court should grant the former
24 President of the United States and according to the New
25 York Times this morning perhaps soon to be the future

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1 President of the United States a little latitude to
2 explain himself. It is a bench trial, there is no jury,
3 if it is his view, it is his view.

4 Your Honor is in charge of the courtroom, you
5 have our view. You can instruct him as you see fit. But
6 again, Mr. Wallace is trying to get at what is this
7 witness's understanding and what he did. The only way he
8 can present that is to explain his position. I think it
9 is fair for the Court to hear his position, whatever it
10 may be, whether it agrees or not. I certainly think it is
11 fair for the American people to hear his position. But,
12 we are subject to Your Honor's instruction.

13 THE COURT: I think it was a yes or no question,
14 was he responsible.

15 MR. KISE: Is the question to me or?

16 THE COURT: The comment that I always rule
17 against him, which as you know is not true anyway, it
18 certainly didn't answer the question.

19 So Mr. Trump just answer the question. You can
20 attack me, you can do whatever you want, but answer the
21 questions.

22 MR. WALLACE: Could we get a readback please,
23 Your Honor?

24 THE COURT: Read back, please.

25 (Whereupon, the record was read back by the

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1 court reporter.)

2 Q The question is, yes, what did you personally do to
3 fulfill your responsibilities for the preparation and fair
4 presentation of the financial statement?

5 A All I did is authorize and tell people to give
6 whatever is necessary for the accountants to do a statement.
7 In other words, we supplied them with what they needed. And if
8 they didn't get it, they wouldn't do the statement.

9 Q What people did you authorize?

10 A Really anybody, you know, sometimes they would call a
11 building or they would call a project, or maybe perhaps I think
12 one or two times they wanted to go see a project. They would
13 go out to Westchester and see something that I did out there
14 and Briarcliff Manor or do things -- I authorized, whatever
15 they needed to get their statement done, they could do.

16 Q When you said that they would go see a project, are
17 you talking about the firm Mazars?

18 A Excuse me?

19 Q You said that sometimes they would want to go see a
20 project and you mentioned Westchester. Is the "they" you are
21 referring to Mazars?

22 A Yes.

23 Q Who internally at the Trump Organization would you
24 provide the direction to give Mazars whatever they wanted?

25 A Almost anybody, if somebody would ask. For instance,

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1 if they would call somebody within the organization in
2 purchasing or whatever, I would give them. But I would do it
3 principally Allen Weisselberg and Jeff McConney.

4 Q Any other instructions besides -- let me withdraw
5 that question.

6 Would you provide Mr. Weisselberg and Mr. McConney
7 with any instructions for how the statements should be
8 prepared?

9 A Not really. No. I just wanted them to get the
10 information to the accountants so they could do a statement.

11 MR. WALLACE: If we could turn to page six of
12 this document. This is the top.

13 Q It states: Basis of Presentation. And says: "The
14 accompanying Statement of Financial Condition consists of the
15 assets and liabilities of Donald J. Trump. Assets are stated
16 at their estimated current values and liabilities at their
17 estimated current amounts using various valuation methods.

18 Such valuation methods include but are not limited to
19 the use of appraisals, capitalization of anticipated earnings,
20 recent sales and offers, and estimates of current values, as
21 determined by Mr. Trump in conjunction with his associates and
22 in some instances outside professionals."

23 Let me ask first, Mr. Trump, is it correct that you
24 were responsible for determining the values stated in the
25 financial statement?

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1 A If somebody would ask me an opinion, I would give it
2 to them. If Mazars would ask me an opinion, which rarely they
3 did, I mean you are talking about many years ago, you are
4 talking about over years, but I would certainly, I think I am
5 probably more expert than anybody else. I think I, you know,
6 have shown that I know more about real estate than other
7 people. So if somebody would ask me or if I would have an
8 opinion I would -- I would give it.

9 Q In light of your expertise in real estate, do you
10 recall ever thinking that the values were off in your
11 Statements of Financial Condition?

12 A Yeah, on occasion.

13 Q What were some of those occasions?

14 A Both high and low; both high and low.

15 Q Which occasions do you recall?

16 A I thought that Mar-a-Lago was very underestimated,
17 but I didn't do anything about it. I just left it be. It
18 didn't matter, I didn't care, because the numbers you are
19 talking about here is, you know, they are very big numbers,
20 very, very big. Far bigger -- the values are far bigger than
21 what is on the financial statement. I thought Mar-a-Lago was
22 underestimated. I thought 40 Wall Street was very
23 underestimated because that building has tremendous value. I
24 thought that there were numerous other things. I thought Doral
25 was very underestimated. I thought it was considerably more

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1 valuable. Not necessarily his golf courses, but it is right in
2 the middle of Miami, right next to the airport. I would say
3 you could build thousands of units and hotels on the site. So
4 you don't look at it as a golf course. It is a great golf
5 course, very successful, four of them, four courses. One was
6 sold. It was five. One was sold that was a little
7 disconnected, and sold it.

8 But I thought Doral was very underestimated.

9 And you yourself had Mar-a-Lago at \$28 million. The
10 Judge had it at \$18 million. And it is worth, say, I say from
11 50 to 100 times more than that. So I don't know how you got
12 those numbers. But the Judge ruled against me based on the
13 fact, I guess, that he thought it was worth \$18 million, which
14 is just absolutely crazy.

15 THE COURT: The question was examples of when
16 properties were undervalued or overvalued, not why you
17 think so.

18 Q I may ask you about those as you go on. Your counsel
19 are free to either cross examine you or call you as a witness.
20 And you can tell the full story as you see fit, but it will go
21 faster if --

22 A That's fine.

23 Q You mentioned Mar-a-Lago, 40 Wall and Doral?

24 A And others. But I think that -- I can think of one
25 that was, I thought, overvalued and we changed it. I thought

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1 the apartment was overvalued when I looked at it. But I didn't
2 spend a lot of time looking at this. But when I heard about
3 the apartment and the valuation, I thought it was overvalued.
4 But you never know, because people come along and they -- they
5 will give you -- an apartment was sold fairly recently in New
6 York for \$250 million. I like this much better. So I don't
7 know what overvalued means. Somebody comes along, it only
8 takes one very rich person to buy it. But I thought the
9 apartment was high. But I thought many things were low.

10 And we -- we didn't value the most valuable asset and
11 I didn't put it on the statement, but it is the most valuable
12 asset, is the brand value. And I asked about that and I really
13 didn't -- I didn't put it on the statement, but if you look at
14 companies, the brand value is a very big part of the asset
15 value of a company.

16 Q We, again, I am probably not going to ask you much
17 about brand value, your attorneys are free to ask you all about
18 brand value.

19 Going back to the estimate.

20 A Excuse me, sir, but if I wanted to build up a
21 statement, like you said that I would before up found out
22 exactly how rich we are, I would have added brand value here
23 and I would have increased it by tens of millions of dollars.

24 Q Do you have an understanding of whether a Statement
25 of Financial Condition prepared under GAAP is allowed to

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1 include brand value?

2 A It is an asset. Coca-Cola includes it and other big
3 companies, public companies, I think they all include brand
4 value. And, you know, I became President because of my brand.
5 I sell books at levels that are incredible because of my brand,
6 and so many other things.

7 And if I wanted to build up this statement like you
8 are saying, you know, you were very surprised when you saw the
9 real numbers. And now you go a different way, you changed your
10 case midstream. If I wanted to build up my financial statement
11 all I had to do is add brand value and my financial statement
12 would be very, very substantial.

13 THE COURT: Mr. Wallace, did you ask for an
14 essay on brand value?

15 MR. WALLACE: No, Your Honor.

16 Q My question was, and I will ask it again, Mr. Trump,
17 do you have an understanding of whether a Statement of
18 Financial Condition that is prepared under GAAP, is allowed to
19 include brand value?

20 A I think it is, because public companies have brand
21 value. Coca-Cola has brand value.

22 Q And did you ever discuss with Mr. Weisselberg whether
23 or not under the rules of GAAP you were allowed to include your
24 brand value on your statement of financial condition?

25 A No, because I didn't care about it. I didn't care

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1 whether we added it or not. It wasn't something that was
2 important to me. If I wanted to build up my numbers in a fake
3 way, which you are trying to say, but now you are not. Maybe
4 you are going a different direction. But I didn't care enough
5 about it to bother with it.

6 THE COURT: That was a yes or no question. It
7 could have been answered yes or no. Please answer yes or
8 no if you receive such a question.

9 Q So the statement was primarily prepared by Allen
10 Weisselberg and Jeff McConney; is that correct?

11 A Yes.

12 Q And they would give you a copy of the statement; is
13 that correct?

14 A Yes, at some point.

15 Q And you would, in fact, review it; is that correct?

16 A I would in some cases, yes.

17 Q And as we just discussed, the only example you
18 remember of an asset being higher than you thought should be
19 was your apartment; is that correct?

20 A There were a couple of other things, I just don't
21 remember. You know, you are talking about a lot of years ago.

22 Q Would you discuss the statement with Mr. Weisselberg?

23 A Very little.

24 Q When you say, "very little," what discussions did you
25 have with Mr. Weisselberg about the statement?

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1 A I would look it over. I may have a suggestion or
2 something, but very little. It just wasn't very important.
3 You have made it important, but it wasn't important. It wasn't
4 important financially. Most developers don't use accountants
5 for this, they just take a piece of paper and write the name of
6 the building and the address of the building and what they
7 think it is worth, they don't go through this.

8 I don't believe any developer, at least that I know
9 of, has done a statement so thorough as this. And frankly so
10 lowball, as this statement is much less valuable in terms of
11 the dollar amount than the actuality of the wealth or the
12 worth.

13 (The following proceedings were stenographically
14 recorded by Senior Court Reporter Michael Ranita.)

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1 Q So this statement was prepared in a manner that you
2 agree with; that you think was appropriate?

3 A That was fine. It was fine. I didn't go into great
4 detail on it, but it was fine.

5 Q If anything, you think the statement under valued your
6 assets; is that correct?

7 A Well, I do by a substantial amount. It was the
8 opposite of your case your case. Your case was that I had no
9 money at all. I mean, looking at this year, what could I have
10 300-some-odd million dollars based on just saw -- 300 -- let me
11 look. But, you know, you sued me on the basis that Trump had no
12 money and he wrote up phony statements and defrauded banks even
13 though they were represented by the biggest law firms in the
14 world and the most sophisticated and best lawyers, and even
15 though these banks were paid back in full, there was no harm;
16 there was no anything. Everybody got their money in full; there
17 was no victim. And then you are saying, I deferred it. The
18 banks don't even know what they are doing in this case. They
19 said you paid us back.

20 MR. WALLACE: Your Honor, I move to strike that
21 answer.

22 THE COURT: Granted.

23 Mr. Kise, can you control your client. This is not
24 a political rally. This is a courtroom with a case about
25 Executive Law section 6312. I've asked several times, asked

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1 the witness several times to answer the questions. I don't
2 want editorializing. We'll be here forever and we'll
3 accomplish nothing. Maybe you should have a talk with him
4 right now.

5 MR. KISE: Your Honor, I'll do as you instruct.
6 You are in control of the courtroom, not me, and I don't
7 mean that disrespectfully. Truly, I don't, but I'm happy to
8 do as you instruct. Again, we are dealing with an
9 extraordinarily unusual situation here.

10 THE COURT: "Again" is a bad word.

11 MR. KISE: I know it is.

12 THE COURT: I know --

13 MR. KISE: It's part of the record.

14 THE COURT: -- it's an extraordinary situation.

15 MR. KISE: It's an extraordinary situation. It
16 would be most efficient, ultimately, to allow the
17 explanations. It's a bench trial.

18 THE COURT: I disagree. Talk to your client for a
19 minute.

20 MR. KISE: Okay. Then should we take our
21 ten-minute break. And I can't to do it here.

22 THE COURT: No. Do you want to go in the back?

23 MR. KISE: If we are going to have a conversation,
24 I would ask your Honor to give us a ten-minute break.

25 THE COURT: Will you spend the ten minutes in the

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1 back explaining the rules here.

2 MR. KISE: I think the former and again soon to be
3 chief executive of the United States understands the rules.

4 THE COURT: He doesn't abide by them.

5 MR. KISE: I'm happy to do as you instruct. Again,
6 I think Mr. Wallace's questions still are very broad
7 questions. They do call -- in some sort of senses they call
8 for narratives, so.

9 MR. WALLACE: I'm happy to restate my last
10 question, your Honor, and see if we could proceed.

11 Q The last question was, if anything, do you think the
12 statement under valued your assets; is that correct?

13 A Yes, by a lot. The financial statements.

14 Q The financial statements.

15 A Yes.

16 Q Would you discuss the valuation of individual
17 properties with Mr. Weisselberg and Mr. McConney?

18 A On occasion. If I disagreed.

19 Q Do you recall discussing with Mr. Weisselberg and
20 Mr. McConney the valuation of Mar-a-Lago?

21 A No.

22 Q Would they ever ask your opinion about the valuation of
23 40 Wall Street?

24 A They might, yes.

25 Q Seven Springs?

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1 A A little bit. It was done largely by a big law firm
2 who testified, as you know.

3 Q You are referring to Sheri Dillon?

4 A Yes.

5 Q Sheri Dillon did the valuation of Seven Springs?

6 A Yes, very much her transaction. She was at a very
7 prestigious firm, one of the most prestigious firms.

8 Q I think you've already said it, but you did not
9 consider the Statement of Financial Condition to be an important
10 document; correct?

11 A It's nice to see, but it's not very important when it
12 comes to borrowing money. As I think you've learned, I'm very
13 under levered relevant to the asset value.

14 Q Why was it nice to see?

15 A It's a compilation. We'll use that word that you've
16 been using for two weeks. It was a nice restatement of assets.
17 And you could go up on some and down on some, but it was a nice
18 compilation of assets. It's a great statement, particularly the
19 year you picked, I had essentially \$342 million worth of cash.
20 It's a lot of cash. Sometimes you borrow money for tax purposes
21 because you could deduct interest and other reasons, but it's a
22 lot of cash. The banks came to me. They wanted to make deals
23 with me. They liked me very much.

24 THE COURT: Stricken, stricken --

25 A -- for office, your Honor.

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1 THE COURT: Stricken. Once he got into the last
2 sentence or two.

3 MR. WALLACE: Your Honor, I would ask it be
4 stricken after the statement, "it was nice to see. "It was
5 a nice restatement of assets."

6 THE COURT: Well.

7 MR. WALLACE: Or "it was a nice compilation of
8 assets."

9 THE COURT: I don't mind the part about how much
10 cash he had, so we'll end it after that.

11 MR. KISE: Your Honor, again, noted, Mr. Wallace's
12 question, "Why was it nice to see?" When lawyers are in
13 depositions they ask questions like "Why." That's what they
14 do. When they get to trial, usually what they do is ask
15 more focused questions.

16 MR. WALLACE: Or they sit at Counsel table and
17 don't ask questions and they throw up a bunch of ridiculous
18 questions.

19 MR. KISE: Mr. Wallace, are you done? I'm just
20 trying to make a point for the record. And that is, if you
21 ask open-ended questions, then he can anticipate open-ended
22 answers. And it's not fair to put all this on the witness.
23 I understand your Honor's instructions. I think the witness
24 does, but if you ask a "why" question, why questions are
25 usually in depositions, not in trial, unless you already

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1 know the answer.

2 MR. WALLACE: The open-ended question was about why
3 it was nice to see. I did not ask about the cash on record.
4 It is not relevant to the answer. I think that's the issue.

5 MS. HABBA: It's absolutely relevant. It's --

6 MR. KISE: That's his opinion, why. When you ask a
7 witness why, they are going to give you an opinion as to
8 why.

9 MR. WALLACE: You've now stated your objection.
10 I'm being filibustered by the witness and Counsel. I would
11 like to proceed.

12 MR. KISE: Okay.

13 THE COURT: Just proceed.

14 Q Going back to the work of Mr. McConney,
15 Mr. Weisselberg, you understood they were making a good faith
16 effort to put down the value of the properties; is that correct?

17 A Yes, I did.

18 Q You understood that they used common sense to prepare
19 the statements; is that correct?

20 A I hope so. I don't know, but I hope so.

21 Q And as we stated, if anything, you thought the
22 valuations they reached were too low; correct?

23 A Absolutely. Well, that's been proven.

24 Q Okay. Let's go through a few of those valuations.

25 MR. WALLACE: If we could turn to page eight.

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1 (Whereupon, the exhibit was displayed on the
2 screen.)

3 Q Of this document, the top we see -- this is the
4 Niketown property. If we look at the middle paragraph here, the
5 third paragraph, it states "The estimated current value of
6 \$348,800,000 is based on an evaluation by Mr. Trump in
7 conjunction with his associates and outside professionals,
8 applying a capitalization rate to the cash flow to be derived
9 pursuant to the building's net rental stream."

10 Do you believe that statement to be true and accurate?

11 A No.

12 Q How is it inaccurate?

13 A The net rental stream is one way, but the bigger value
14 here is holdup. Well, it's not a nice term in real estate, but
15 it's called holdup value. I'm directly with that site and
16 behind, and next to on 57th Street, which is probably the best
17 location 57th and Fifth. It's the best location in New York.

18 I'm directly next to Tiffany. They cannot expand
19 without us, and I'm directly next to IBM. So I'm between IBM
20 and Tiffany. And the holdup value is 348 million for holdups,
21 you know. Probably what I mean, if you know real estate it's
22 peanuts compared to what the value is.

23 So I view that as it's a great property. It's a great
24 rental stream, as you probably have figured out, but it's got
25 much more value as a holdup. They could come to me and offer me

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1 \$500 million for that site in two minutes if they wanted to
2 expand or if they wanted to do something.

3 Q The statement, however, is the estimated current value
4 as of June 30, 2014 --

5 A Yes.

6 Q So, the \$500 million price you just referred to, that
7 is as of today; correct?

8 A No. I would say it would be as of anytime. It just --
9 it's, it's --

10 Q I'm not asking for further explanation?

11 A It could be any time. It could be then, it could be
12 now.

13 Q So there's no change of value of, this \$500 million
14 value since 2014?

15 A Well, I don't want to sell it. If I wanted to sell
16 it -- I had discussions with Tiffany for years about possibly
17 doing something. In fact, they rented from me right now for a
18 lot of money, and but Tiffany used -- as you know, when Tiffany,
19 as you possibly heard, when Tiffany was rebuilding their store,
20 they came to me and they wanted to do something. And I leased
21 it to them for a period of time, but they would do -- they would
22 love to be the owner of that site.

23 My point is, it's a holdup. It's not a nice word, but
24 it's a holdup site. And holdup sites in New York have made --

25 Q The question was, had there been a change of value

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1 since 2014, and you said, "I don't want to sell it." So I take
2 it the answer is no?

3 A No. I think it's gotten more valuable like everything
4 else.

5 Q So you do not think that this statement in your 2014
6 Statement of Financial Condition is accurate; correct?

7 A Well, it's a great rental stream, but I think the real
8 value here is the -- the value it would be for IBM or Tiffany if
9 they wanted to say, and they do, at least Tiffany does.

10 Q This statement says that the estimate was "based on a
11 valuation by Mr. Trump in conjunction with his associates and
12 outside professionals." What was your role in prepare that
13 valuation?

14 A I think I mentioned to them the value of that is it
15 makes a lot of money, throws off a lot of money, as you see,
16 because you see the numbers. And now more than ever, because
17 Tiffany had to pay us a lot of money in order to lease it. I
18 just wanted to lease it. We gave them a five-year lease while
19 they built their store. They are building -- as you know, they
20 just opened. But, they would love to own it. And so would, I
21 believe IBM. I don't talk to IBM at all. But they can't expand
22 without it. I believe that -- I did mention, quickly, I didn't
23 know if I -- this wasn't something I devoted a lot of time to,
24 but I did mention to them there is tremendous holdup value on
25 that site.

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1 Again, 57th Street. You have Tiffany, IBM, and you
2 have my building right in the middle of them. And if they want
3 to expand anywhere, they have to go through my building. And I
4 bought the air rights --

5 THE COURT: Hold on.

6 A Excuse me. I bought the air rights over Tiffany, so
7 they can't go up.

8 THE COURT: In addition to the answers being
9 nonresponsive, they are repetitive, and we don't have time
10 to waste. We have one day with this witness.

11 Mr. Kise, can you control your witness, because I
12 am considering drawing a negative inference to any questions
13 that might be asked.

14 MR. KISE: Well, I would urge your Honor not to
15 draw the negative inferences. We have a record on that,
16 which I won't go into, but I think the witness is doing his
17 best to answer the questions and be as responsive as
18 possible.

19 If you think that it would be beneficial for us to
20 take a break, I'm happy to do that. This is your Honor's
21 courtroom, so I'll do as you suggest. But, again, there --
22 the questions are calling, maybe not as broadly as the
23 answer, but they are not tight questions. I mean, we are
24 seeing "why" questions; we are seeing "how" questions. I
25 mean, this is not one someone who is a professional lawyer

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1 or a witness, so he's answering based on his responses and
2 the reactions to the questions.

3 Q Mr. Trump, you testified under oath many times;
4 correct?

5 A Yes.

6 Q The question was, "What did you do, based on an
7 evaluation of Mr. Trump in conjunction of his associates and
8 outside professionals", and you said you talked to them about
9 the holdup value.

10 Is there anything else you did in preparing this
11 valuation in 2014?

12 A No, I don't think so.

13 Q Did you ultimately approve this valuation?

14 A No.

15 Q Did you approve the issuance of this statement?

16 A I think they did something with it, because when I told
17 them about the holdup value, they said, "Well, you're right."

18 Q Who is "they"?

19 A The people compiling the statement. It could've been
20 Mazars, too.

21 Q Did you --

22 A I didn't make a big deal.

23 Q I didn't ask you if you made deal. I'm asking if you
24 told Mazars about the holdup value for the 2014 Statement of
25 Financial Condition?

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1 A It's a long time ago. I probably did, but I told Jeff
2 and I told Allen.

3 Q Okay.

4 Do you believe that the stated value of \$348 million
5 was based on true and accurate information?

6 A Well, as a holdup, I think it's very low.

7 Q I'm not asking about the holdup. I'm asking about
8 whether you have an understanding of whether this valuation in
9 your Statement of Financial Condition was based on true and
10 accurate information. It's a yes or no question?

11 A Well, I'll say it differently. I wouldn't sell it for
12 that number. If somebody offered me that number, I wouldn't
13 sell it for that number.

14 Q I'm not asking your individual valuation. I'm not
15 asking for an analysis. I'm just asking if whether the
16 information that Mr. McConney and Mr. Weisselberg used was true
17 and accurate when they reached this number?

18 A I guess so. I really can't answer that. I guess so.
19 It's a number that I wouldn't sell it for.

20 Q Okay.

21 MR. WALLACE: Can we move down to the bottom of
22 this page.

23 (Whereupon, the exhibit displayed on the screen was
24 scrolled through.)

25 Q We have the header for 40 Wall Street, and if we flip

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1 over the next page we'll see the valuation for 40 Wall Street.
2 The top paragraph states "The estimated current value of
3 \$550,100,000 is based upon a successful renegotiation of the
4 ground lease and an evaluation made by Mr. Trump in conjunction
5 with his associates and outside professionals of leases that
6 have been signed or are currently the subject of negotiation.
7 And a capitalization rate applied to the resultant cash flow to
8 be derived from the building's operations."

9 Do you believe that statement I just read is true and
10 accurate?

11 A I don't believe -- it depends on how you look at it,
12 but I don't believe it talks about the making of the building
13 the condominium, a residential condominium, which is absolutely
14 a perfect use for that building.

15 Q My question is --

16 A Even though it's full.

17 Q -- is this statement true and accurate?

18 A Well, let's see. So number one, you -- again, you go
19 back a long time. Are you still in 2014.

20 Q We are still on the 2014 statement.

21 A Five-year statute of limitations. You are still in
22 2014. So, it says here based upon successful renegotiation of
23 the ground lease. Well, that was done. I did that. I made a
24 new 100-year lease, and a very good lease, and long term, very
25 long term. I got a "lollipop" in the lease. It's a legal term,

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1 believe it or not, but it's a lollipop, which allows you to
2 build condominiums because you own the land. You own a piece of
3 land. That gives you the right to build condominiums. So this
4 would be a low number, because the highest and best use for that
5 building is the -- it's -- I think it's the tallest building in
6 downtown after the World Trade Center, but there's a dispute
7 about 60 Pine Street, but, whatever.

8 The tower is of perfect measurement for turning them
9 into condos. And I have the right to do that, and at some point
10 we, or somebody, will do that. That's the highest and best use.
11 In which case, \$550 million is a very low number. All you have
12 do is look at a picture of the building and say "That
13 building" -- you just look at it and you say that's worth a lot
14 more than \$550 million. If you want to put up the picture.

15 Q My question is --

16 THE COURT: Mr. Kise, that was a simple yes or no
17 question. I don't have it right in front of me, but the
18 question was whether he believed that was an accurate
19 number. We got another speech. I would beseech you to
20 control him if you can. If you can't, I will. I will
21 excuse him and draw every negative inference that I can. Do
22 you understand that?

23 MR. KISE: I certainly understand, your Honor. But
24 I will say this: The purpose of this trial is to determine
25 the veracity of the Statement of Financial Condition, in

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1 part, to figure out whether there is intent, so I would
2 think, respectfully, your Honor, of all witnesses, would
3 want to hear everything that this witness has to say by
4 way --

5 THE COURT: No, I do not want to hear everything
6 this witness has to say. He has a lot to say that has
7 nothing to do with the case or the questions.

8 MR. KISE: Again, your Honor, I will -- I have to
9 say that you're determining what's going to happen here. So
10 I would urge the Court to take in all the information
11 possible, including what this witness has to say about the
12 numbers on the statement, what he did, why he did it. I
13 mean, all of those circumstances. Do we really want to come
14 back here in a few weeks and go through it that way?

15 I mean, with this witness I would suggest it's far
16 more efficient to listen to what he has to say and take it
17 in, and then you have an understanding of what he has to
18 say. And I don't think it's fair to draw a negative
19 inference based on his explanations simply because he wants
20 to explain why he got to where he was. We are talking about
21 ten years ago.

22 And so I, ordinarily with a witness, you might
23 think differently, but this is a situation where you have,
24 on the stand, a candidate for presidency of the United
25 States. Having him here takes away from that effort. And

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1 so the most efficient way, I would submit to the Court, to
2 get through this is to listen to what he has to say, and
3 then you weigh it one way or the other.

4 I don't think you should respectfully draw a
5 negative inference. And, again, I'm happy to discuss this
6 and take a break. More than happy to do that. I'm not
7 saying not to do that.

8 But I just would like the Court to take in that
9 perspective, because this is a different situation. It's
10 unusual situation, and it would be most efficient. The
11 Court needs to hear what he has to say about what happened
12 with the statements and why he thinks they are viable, and
13 why there is no intent.

14 He's describing to you why there's no intent to
15 mislead anyone with his answers. That's what he's doing.
16 And so I would think that's highly relevant and highly
17 probative. If you want to do it the way where we have yes
18 or no questions and then we go back and do it that -- it's
19 subject to your direction, but I think the most efficient
20 way is to listen to what he has to say. I'm happy to talk
21 to him about making the answers more contained. We
22 certainly don't want to waste anymore time than necessary,
23 and spend anymore time than necessary, but this is, as
24 you've acknowledged this a unique situation.

25 MS. HABBA: If I may also add, your Honor. I had

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1 to cross examine Mr. Cohen. If I could get him to answer
2 the questions in yes or no, I advise Mr. Wallace to look at
3 that cross examination. It was far more succinct.

4 The reality of the situation is, he put up two
5 paragraphs which talk about interest rates, the current
6 value, as well as tenants, and et cetera, et cetera, et
7 cetera. If he would like to narrow it, then you narrow it,
8 but President Trump is answering about 40 Wall Street and
9 the values, the interest rates, the purpose of the SOFC;
10 that is absolutely relevant.

11 So I'm going to push back and say it is time to
12 start pushing pack on the AG. Kevin can try to ask better
13 questions, and then we'll move on. But he is relevant. He
14 is talking about two paragraphs of information, and he's
15 explaining them. Ask succinct questions you'll get SUCCINCT
16 answers.

17 THE COURT: Well, Mr. Kise, I think you said
18 several times we should hear what he did, what the witness
19 has to say. No, I am not here, and these people are not
20 here, and the Attorney General is not here to hear what he
21 has to say. We are here to hear him answer questions, and
22 most of the time he's not. He goes into speeches. It's
23 very simple. Is this an accurate number? We don't need a
24 whole speech.

25 MS. HABBA: It's not that simple. I apologize.

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1 It's not that simple, and you are here to hear what he has
2 to say.

3 THE COURT: No, I'm not here to hear what he has to
4 say.

5 MS. HABBA: Thank you.

6 THE COURT: I'm here to hear him answer questions.
7 Sit down already. Mr. Kise, Mrs. Habba, sit down.

8 Mr. Wallace, continue.

9 THE WITNESS: This is a very unfair trial, very,
10 very. And I hope the public is watching it.

11 Q Mr. Trump, was the valuation presented here based on
12 leases and capitalization rates true and accurate to your
13 belief?

14 A It could be, but again, what I told you is a building
15 has many different forms of value. And this building, the most
16 valuable -- the most valuable asset here is making it into
17 condominiums. That would be -- it will happen as soon as
18 interest rates go down and as soon as the City maybe comes back.
19 It would be nice if it came back; wouldn't it?

20 But the value of this is -- the big value of this is
21 making it into a condominium, residential condominium.

22 Q Could we put up --

23 A It would be one of the biggest jobs in the City.

24 MR. WALLACE: Could we put up Plaintiff's
25 Exhibit 635. It's already in evidence, but I have an extra

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1 copy for the witness.

2 (Whereupon, the exhibit was displayed on the
3 screen.)

4 Q There is a very thick document. I'm not going to ask
5 you to go through all of it, but it is an e-mail from Jeff
6 McConney to Jack Weisselberg, Ladder Capital, attaching a
7 modification of the ground lease. The e-mail is dated April 10,
8 2015. If you go to page three of this document.

9 (Whereupon, the exhibit displayed on the screen was
10 scrolled through.)

11 Q I'll put it up on the screen for you. You could see at
12 the top. Title says -- this is a resume of the fourth
13 modification of the ground lease on 40 Wall Street, NYC. We
14 flip over to page four.

15 (Whereupon, the exhibit on the screen was scrolled
16 through.)

17 MR. KISE: Do we have a copy of this document for
18 the witness?

19 MR. WALLACE: He has a copy.

20 MR. KISE: I'm sorry?

21 MR. WALLACE: It's already in evidence.

22 Q If we look at the header. "Condominium conversion
23 right." It states "Paragraph four eliminates the tenant's
24 condominium conversion rights which it had under Section 2709."

25 Do you recall that in this amendment to the ground

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1 lease your condominium conversion rights were eliminated?

2 A No, because I have a right to do a co-op. You could do
3 condo -- you could do a condo, but I have the right to do a
4 co-op. I believe I have a right to do condo, because we have a
5 lollipop clause, but I have a right to do a co-op.

6 Q If we go back to the Statement of Financial Condition;
7 that's Exhibit 730.

8 (Whereupon, the exhibit was displayed on the
9 screen.)

10 Q We were on page nine?

11 (Whereupon, the exhibit displayed on the screen was
12 scrolled through.)

13 Q Did this valuation include the lollipop conversion that
14 you were talking about?

15 A Um, I don't know. It was around that time. I
16 renegotiated the lease and got a new lease, and one of the
17 things in the lease was a lollipop conversion.

18 Q My question is about this statement though, which says
19 "That the valuation is based on leases that have been signed and
20 capitalization rate." There is no mention here of converging to
21 condos, is there?

22 A Well, I know you are asking -- you are talking about
23 the estimated current value. And the estimated current value
24 would be co-op, condo.

25 Q I'm not asking about what you could do. I'm asking

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1 about what was actually prepared?

2 A I don't know because I didn't do it.

3 Q Okay.

4 Was the stated value -- let me ask, did you approve of
5 this valuation?

6 A I accepted it. It was just one of many -- this is a
7 very big statement. I have many different things, and this is
8 one of many values. I accepted it. I didn't say, oh, gee, it
9 should be higher or lower.

10 Q And you approved the statement's issuance?

11 A Yeah, I accepted it. Other people did it, but I didn't
12 say make it higher or make it lower.

13 Q Was the \$550 million valuation here based on true and
14 accurate information?

15 A I assume so.

16 MR. WALLACE: If we could move on to page 20 of 26
17 here.

18 (Whereupon, the exhibit was displayed on the
19 screen.)

20 Q And if we see at the bottom of the page is the listing
21 for the mansion at seven Springs. I'll direct your attention to
22 the paragraph -- first sentence in this listing that says "An
23 entity wholly owned by Mr. Trump acquired a property known as
24 "The Mansion" at Seven Springs in Bedford, New York, which
25 consists of over 200 acres of land, a mansion and other

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1 buildings. This property is zoned for nine luxurious homes. It
2 has been valued at \$291 million based on an assessment made by
3 Mr. Trump in conjunction with his associates of the projected
4 net cash flow, which either derived as those units are
5 constructed and sold, and the estimated fair value of the
6 existing mansion and other buildings."

7 Do you have an understanding of whether that
8 \$291 million valuation is true and accurate?

9 A I thought it was too high, and we lowered it. I guess
10 the next statement or sometime, but I thought it was too high.
11 This is the equivalent of Mar-a-Lago in New York, and I think it
12 sells for -- I think it's valued -- I think the value is higher
13 if you don't build additional housing. This is the kind of --
14 it's a magnificent place. This is the kind of place that
15 somebody will pay a lot of money for, I think more money than if
16 you build nine, or 16, or 20 units of other homes on the site.

17 I think the site, as I remember, is 213 acres, and I
18 think it's much more valuable, actually, without the building.
19 I think it's more valuable the way it is.

20 MR. WALLACE: Your Honor, I think maybe we may need
21 to take our break now, and if Mr. Kise could talk to the
22 witness, I think I would appreciate it.

23 THE COURT: Let's take -- how long a break would
24 you suggest? Make it 15 minutes so it's easy. A 15-minute
25 break.

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THE WITNESS: Thank you.

THE COURT: I'll direct the witness not to talk about the case or his testimony other than in the ways that I've asked.

(Continued on the next page.)

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1 THE COURT: Mr. Wallace, please continue.

2 MR. WALLACE: Thank you, Your Honor.

3 Q Mr. Trump, when we broke we were looking at the
4 valuation for Seven Springs in your 2014 Statement of Financial
5 Condition. I believe you said that that valuation, you said,
6 eventually dropped that valuation; is that correct?

7 A Yes.

8 Q Did you eventually take a tax deduction based on
9 easement donation for Seven Springs?

10 A I believe so, yes.

11 Q You recall receiving appraisals showing that the
12 total value of the Seven Springs before the easement was
13 \$56 million?

14 A No, I don't know. It could have happened, but I
15 don't remember.

16 Q Do you remember if the easement appraisal was the
17 reason for dropping the value of Seven Springs?

18 A No. The person that did that, I believe, was Sheri
19 Dillon. That was the law firm that we mentioned, and a very
20 good one, very prestigious. And she really was responsible for
21 doing it. It was sort of, I think, her idea to do it.

22 Q So when you say the person that did "that" the
23 "that" that you are referring to --

24 A Easement.

25 Q -- is the easement donation itself?

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1 A Yes.

2 Q So if you did not decide to lower the value of Seven
3 Springs based on the appraisal from the easement donation, what
4 was the basis upon which you decided to drop the value?

5 A Well, I thought it was high. I mean, I saw that.
6 When I saw it the statement was done, and I said I thought that
7 was high. That was one of the ones that was high. That
8 doesn't mean it is not going to get that kind of money, because
9 that's the kind of a place that would get that kind from the
10 right person. But I thought it was high. And they dropped --
11 they dropped the value.

12 Q And so in your view, the estimated current value of
13 Seven Springs as of June 30, 2014 was not \$291 million; is that
14 correct?

15 A I thought it was high. Maybe I'll sell it for more
16 than that, you don't know. With that kind of a property, you
17 never know, but I thought it was high.

18 Q Is the Seven Springs easement donation under review
19 by the IRS?

20 A Not that I know of. It might be.

21 Q Was it at any point under review by the IRS?

22 A I don't know. I don't know.

23 Q Do you remember when you decided to lower the value
24 of Seven Springs?

25 A Well, I guess probably when I looked, I don't know if

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1 I looked immediately upon -- because again, I haven't spent a
2 lot of time on these statements, because I realize the value of
3 these statements is not that important. But when I looked at
4 it, I thought it was high and I said, you have to lower it.

5 Q So the answer is, no, you don't remember when you
6 decided to lower the value?

7 A I don't remember. It might not have been
8 immediately, but it was, you know, within a period of time.

9 MR. WALLACE: If we could turn to page 21 of 26.

10 Q This is a section of your Statement of Financial
11 Condition entitled Partnerships and Joint Ventures. And there
12 is a reference to a joint venture that is 1290 Avenue of the
13 Americas in New York, New York; and 555 California Street in
14 San Francisco, California.

15 Are you familiar with those properties?

16 A Yes.

17 Q Underneath that it states: "In May 2007 Mr. Trump
18 and Vornado Realty Trust became partners in two properties;
19 1290 Avenue of the Americas located in New York City and 555
20 California Street (formerly known as Bank of America Center)
21 located in San Francisco, California."

22 A Mm-Hm.

23 Q If we look down a few more paragraphs it states:
24 "Mr. Trump owns 30 percent of these properties."

25 Is that accurate?

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1 A Yes.

2 Q And so you do not control the partnership with
3 Vornado; is that correct?

4 A In many ways it is better, because I have no
5 liability. I am a limited partner, that's limited liability.
6 I have a 30 percent interest, but my interest I don't have to
7 put up any money. I didn't put up any money and don't have to.
8 I have a very good relationship with them. They are great, and
9 very professional. But it is also a limited -- it was limited.
10 I had no liability for what I own. So, it was a lot of people
11 don't understand that. They think that a limited partnership
12 gives you limited rights. In this case it gives me limited
13 liability.

14 Q The question was: So you do not control the
15 partnership with Vornado; is that correct?

16 A I have 30 percent of the partnership, yes.

17 Q And so you do not control the partnership?

18 A In the true sense, no. I will say this, we have a
19 very good relationship and --

20 THE COURT: No. No. You answered the question.

21 A -- never had a problem.

22 THE COURT: And we appreciate that it is the
23 true answer. Thank you.

24 Q The next paragraph states: "The estimated current
25 value net of debt of \$816,900,000 is based on an evaluation

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1 made by Mr. Trump in conjunction with his associates and
2 outside professionals."

3 Is that a true and accurate statement that you valued
4 the property based in conjunction with your associates and
5 outside professionals?

6 A I don't know, because I am not familiar with the
7 number.

8 But I do know that, as you know, the one building is
9 the Bank of America building, one of the most, I think, one of
10 the, I think, the best building on the west coast. And the
11 other is a very great building in Manhattan on Sixth Avenue,
12 Avenue of the Americas. We refinanced that building about two
13 and a half, three years ago at a very, very low rate. And
14 there were valuations placed on it then, and if you want I can
15 get you that information, but the valuations were very high.

16 Q The question was whether you made an evaluation in
17 conjunction with your associates and outside professionals of
18 the value of those two properties?

19 A I don't know. It doesn't sound high to me. Not for
20 these two buildings, so I don't know.

21 Q I am going to ask it again.

22 The question is whether or not you made an evaluation
23 of the property value.

24 A Is that a double property right there? Is that both
25 properties?

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1 Q Both properties.

2 A It doesn't sound high. I don't know if I was
3 involved in that. I remember looking at it, but it didn't get
4 my attention. I think it is worth more than that.

5 Q Do you remember playing any role in evaluating the
6 estimated current value of these two properties for any years
7 between 2011 and 2021?

8 A 2021?

9 Q Correct.

10 A You mean bringing it back to two --

11 Q All the way, for the last ten years. That ten-year
12 period.

13 A By the way, that was the hottest period ever for
14 office properties. So I think you should know that. And you
15 don't want me to talk much, but I think you should know that.

16 No, I think the value sounds very reasonable. I
17 don't know. I don't know. I doubt it. I don't know that I
18 would sell my interest for that, actually.

19 MR. WALLACE: I am going to hand the witness a
20 document or ask the officer.

21 THE WITNESS: And excuse me, the buildings have
22 been refinanced, two years ago.

23 MR. WALLACE: There is no question pending.

24 Q Mr. Trump, I have handed you a document that has been
25 marked as Plaintiff's Exhibit 3344. This is an e-mail from

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1 Jeff McConney to Donald Bender entitled Ferry Point. It is
2 dated October 1, 2012.

3 Your Honor, I ask this document be entered into
4 evidence.

5 MS. HABBA: Objection, statute of limitations.

6 THE COURT: Overruled. It is in evidence.

7 (Whereupon, the document referred to was deemed
8 marked for evidence as Plaintiff's Exhibit 3344 by
9 the Court.)

10 Q At the top there is an e-mail from Mr. McConney to
11 Mr. Bender, it says: "Doc, I am almost done revising last
12 year's footnotes. Allen wants S to speak to DJT tomorrow about
13 the Vornado buildings. I am going to send you a few e-mails
14 with some info on new properties, Doral and Charlotte, and an
15 update to the Scotland footnote."

16 I want to ask if this refreshes your recollection
17 about whether you had any conversations with Mr. McConney and
18 Mr. Weisselberg about the value of the Vornado properties?

19 A About the Vornado buildings?

20 Q Correct.

21 A No, but I probably did.

22 MR. WALLACE: If we can go back to the Statement
23 of Financial Condition; and if we could blow up the
24 section with the valuation there, the estimated current
25 value and amount of debt.

D.J. Trump - by Plaintiff - Direct(Wallace)

3523

1 Q Mr. Trump, do you believe that the stated value here
2 of \$816 million was based on true and accurate information?

3 A I think so. I hope so. I can say, if you go to 2021
4 where it is more familiar to me, because it is more updated, I
5 think that would be a low number.

6 Q Were you involved in the preparation of the 2021
7 statement?

8 A No.

9 Q Who was responsible for the preparation?

10 A I don't know. That was when it was in trust, so I
11 assume Allen and Jeff and perhaps they dealt a little bit with
12 Don and Eric. But they were not involved with these statements
13 very much at all, as I understand it.

14 Q Would you get copies of the statements in 2021?

15 A I hadn't seen it. I was so busy in the White House.
16 I was really -- my threshold was China, Russia and keeping our
17 country safe.

18 Q My question is actually about 2021. Did you see a
19 copy of the 2021 statement?

20 A I don't believe so.

21 Q And just to clarify for the record, you weren't
22 President in 2021, correct?

23 A No, I wasn't.

24 MR. WALLACE: If we could turn back, if we could
25 go to page 23 of 26 in this document.

D.J. Trump - by Plaintiff - Direct(Wallace)

3524

1 Q And if we look at the bottom of the page, on the
2 category of other assets it says: Trump Tower. Mr. Trump owns
3 a triplex apartment on the top three floors of Trump Tower (see
4 note 3.)

5 I'll just represent to you that note 3 doesn't
6 discuss your apartment, it discusses the building.

7 Were you involved in the valuation of your triplex
8 apartment for this statement of financial condition?

9 A No. What date is this?

10 Q 2014.

11 A No, I wasn't.

12 Q Did there come a time when you determined that the
13 valuation for your triplex apartment was too high?

14 A Yes, I did.

15 Q After you made that determination, did
16 Mr. Weisselberg and Mr. McConney lower the valuation of your
17 triplex apartment?

18 A I believe so, yes.

19 Q Did they do that at your direction?

20 A I told them I thought it was too high. I thought the
21 number was too high. And I know they lowered it after that,
22 yes.

23 MR. WALLACE: If we could pull up Plaintiff's
24 Exhibit 758. This is a spreadsheet, so it is only going
25 to be up on the screen here.

D.J. Trump - by Plaintiff - Direct(Wallace)

3525

1 And if we could go to row 893.

2 Q This is a category Other Assets. And if we look
3 down, if we could go down to rows 969 and 971, this shows the
4 valuation of your apartment.

5 I'll represent to you that the valuation of the
6 apartment is not actually in the Statement of Financial
7 Condition, it is incorporated. So this is where we are going
8 to try and find it.

9 A I think that's why I missed it also.

10 Q Okay. And if you look you can see here, I'll
11 represent to you that column G are the values for 2013. Column
12 H is the value for 2014. So you can see that it goes from
13 \$116 million in 2013 to \$327 million in 2014.

14 And so it is your understanding that the \$327 million
15 valuation is too high?

16 A Yeah. And the reason I didn't pick it up sooner is
17 that I thought it was high, but it is not mentioned -- it is
18 not broken down in the financial statement, so I wouldn't have
19 known.

20 Q Okay. And I am sorry, I apparently -- this is the
21 Statement of Financial Condition for 2017, so I misrepresented.

22 A That's okay.

23 Q The 2017 number is in G, and the 2016 number is in H.
24 So I apologize.

25 MS. HABBA: Sorry, just to make the record

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3526

1 clear, Kevin, this is the backup, not the SOFC?

2 MR. WALLACE: Correct.

3 MS. HABBA: I think you said SOFC on the record.

4 MR. KISE: And this is the backup for 2016?

5 MR. WALLACE: 2017. So showing a change from

6 2016 to 2017.

7 Q And this change in valuation came at your direction?

8 A Probably. I mean, I thought it was too high. I
9 don't know what is too high anymore because I am seeing things
10 being sold at numbers that are very high. But I thought it was
11 too high, so I assumed that they didn't.

12 Q Do you have an understanding of why the valuation was
13 too high?

14 A Well, I have heard different reasons. But one of the
15 reasons was they did it off a broker. A broker was sending
16 lists of apartments and they had it down at 30 -- 30,000 feet.
17 Is it 30?

18 And another one was that, you know, I have the roof,
19 we have access to the roof which is very big. And when you add
20 the roof it is not that far off.

21 And there are a lot of other reasons. And there is
22 another reason, they just made a mistake. And that's why we
23 have a disclaimer clause in case there is a mistake. There is
24 a disclaimer clause, where you don't have to get sued by the
25 Attorney General of New York.

D.J. Trump - by Plaintiff - Direct(Wallace)

3527

1 Q Mr. Trump, as you sit here today, do you know how big
2 your triplex apartment is?

3 A You know, you wouldn't -- you wouldn't know. I have
4 heard, obviously, because of the trial, they say 11 to 12 to
5 13,000 feet.

6 Q At your deposition testimony, does it sound correct
7 that you testified that each floor of Trump Tower is about
8 10,000 square feet?

9 A As the floor. And it is a triplex, and I think they
10 probably took 10,000 feet per floor. I could see how it was
11 done. They took 10,000 feet per floor, because the floors are,
12 I believe, about 10,000 feet, and they went times three. But
13 the -- but they didn't take out, you know, elevator shafts and
14 different things.

15 Q Okay.

16 MR. WALLACE: I would like to go back to the
17 2014 Statements of Financial Condition. F if could go to
18 page ten of 26.

19 Q This is the heading for club facilities and related
20 real estates. And if we scroll down, this is the listing for
21 Mar-a-Lago.

22 If you look, I'll read it into the record, it states:
23 "Mr. Trump acquired this property in 1985 and transferred
24 ownership to a wholly owned limited liability company in 1995.
25 It is now an exclusive private club which consists of 117

D.J. Trump - by Plaintiff - Direct(Wallace)

3528

1 rooms.

2 Formerly known as the Marjory Merriweather Post
3 Estate, it features a 20,000 square foot Louis XIV style
4 ballroom, world class dining, tennis courts, spa, cabanas and
5 guest cottages."

6 I am going to direct your attention to where it
7 states that the property is an "exclusive private club." Is
8 that correct?

9 A Yes.

10 Q Okay. And is it correct that the ownership of the
11 club was transferred to a wholly owned limited liability
12 company in 1995?

13 A I guess so. If you represent, I would say yes.

14 Q Well, I am asking if you know whether or not the
15 representation here, which is that it was transferred to a
16 wholly owned limited liability company in 1995; do you know if
17 that's correct?

18 A No. But it is probably so because I have done that
19 with many properties over the years.

20 Q Is Mar-a-Lago today still wholly owned -- is the
21 ownership of Mar-a-Lago today still underneath a wholly owned
22 limited liability company?

23 A I believe it is the same.

24 Q And there is no separate valuation for Mar-a-Lago on
25 the Statement of Financial Conditions in this century, correct?

D.J. Trump - by Plaintiff - Direct(Wallace)

3529

1 A You know, I have no mortgage on Mar-a-Lago, no debt.
2 There is no debt. There was no reason to do it. So I don't
3 know if they did it or not. But there is no debt, zero, on
4 Mar-a-Lago.

5 Q My question is just that the price of Mar-a-Lago or
6 the, I should say, estimated current value of Mar-a-Lago is not
7 listed here, is it?

8 A No, it is not. It is not.

9 Q Okay.

10 MR. WALLACE: If we could pull up the supporting
11 data for this Statement of Financial Condition,
12 Plaintiff's Exhibit 719.

13 Q This is, I'll represent to you, the supporting
14 spreadsheet for the 2014 --

15 MR. WALLACE: Do I have this wrong?

16 Okay. If we could go down to row 189. And
17 actually go down to the club facilities. Sorry 205.

18 Q You see the entry is at 207 for Mar-a-Lago, and
19 underneath that it states: "Value if sold to an individual."

20 That is referencing to selling the property to an
21 individual as a residence; is that correct?

22 A Yes, that's right.

23 Q Did you approve valuing Mar-a-Lago as if it could be
24 sold to an individual as a residence?

25 A I personally -- well, did I approve it? On this? I

D.J. Trump - by Plaintiff - Direct(Wallace)

3530

1 don't know. There are two ways you can approve it, as a club
2 or as a residence or as both. It is most valuable as both.

3 Q And here it is being valued as a residence, correct?

4 A I guess so. What is the number?

5 Q We will get to the number in a minute. I was just
6 wondering, did you at some point discuss with Mr. McConney or
7 Mr. Weisselberg valuing Mar-a-Lago as a private home?

8 A I don't remember that, no.

9 MR. WALLACE: If we go down to row -- just go to
10 the bottom, row 242.

11 Q Do you see a value listed for Mar-a-Lago --

12 A Yes.

13 Q -- is \$405,362,123 as of June 30, 2014.

14 Did you approve that valuation number?

15 A No. But it is a very low number.

16 Q So you -- do you agree with that number?

17 A No, it is much -- it is much more valuable than that,
18 much, much. We are bringing in an expert so that they will
19 explain to you what it is worth.

20 Q I'll ask you a question. You believe as of today
21 Mar-a-Lago is worth at least 1.5 billion; is that correct?

22 A How much.

23 Q 1.5 billion?

24 A I think between a billion and a billion five, yes.

25 Q As of June 30, 2014 though, do you have a view as to

D.J. Trump - by Plaintiff - Direct(Wallace)

3531

1 how much Mar-a-Lago was worth at that time?

2 A More than this number. I don't know, but much more
3 than this number.

4 Q Mr. Trump, we are going to hand you a copy of a
5 document that is already in evidence. This has been stamped as
6 Plaintiff's Exhibit 1013. This is a deed of development rights
7 for the Mar-a-Lago club. And I'll direct you to it up on the
8 screen.

9 If you could turn to page two of the document just
10 quickly. Do you see your two signatures?

11 A Yes.

12 Q There? Okay.

13 If we go back to the first page, under the third
14 "Whereas" clause, and I'll read it into the record for you and
15 highlight it here.

16 It states: "Whereas, the club and Trump intend to
17 forever extinguish their right to development or use the
18 property for any purpose other than club use."

19 Was it in fact your intent to forever extinguish your
20 right to use the property for any purpose other than club use?

21 A Well, when you say, "intend" intend doesn't mean we
22 will do it. That's number one. It says "intend." I intend.
23 But we have the right to change it back to a house. I
24 intended, I would always leave it as a club; or a club and a
25 residence, which is really the best combination, which is what

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3532

1 it is right now. It is a residence and it is a club, and a
2 very successful club at that.

3 Q I take it your answer was that, yes, you did intend
4 to do this?

5 A Yeah, I intend. I intend. But I also have the
6 right, if I wanted to, there is no reason to do that, to switch
7 it back.

8 Q Switching it back would be contrary to forever
9 extinguishing something though, wouldn't it?

10 A No. It says to intend. It doesn't say that. It
11 says to intend. It doesn't say I will. It says intend.

12 But I don't mind leaving it as a club. In fact, if
13 somebody actually wanted it, the smartest thing to do, because
14 there are a lot of advantages to the club status, the smartest
15 thing to do would be to have a club and have one member; and
16 that would be the member that lives in the club. But it is
17 much more valuable and we will show that in two weeks or five
18 weeks or nine weeks or whenever this thing goes, that it is
19 most -- its biggest value is to be able to use it as a club and
20 residentially simultaneously.

21 Q If we look at the next paragraph it states:
22 "Whereas, the National Trust for Historic Preservation in the
23 United States (The National Trust) is the grantee of a Deed of
24 conservation and preservation easement recorded on April 6,
25 1995, in official record book 8691, page 764, of the public

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3533

1 records of Palm Beach County, Florida (The preservation
2 easement).

3 As reflected here you had in fact granted a
4 preservation easement to the National Trust for Historic
5 Preservation in 1995; is that correct?

6 A That is correct.

7 Q If you look down at the next paragraph it states:
8 "Whereas, the preservation easement limits changes to the
9 property including, without limitation, the division or
10 subdivision of the property for any purpose, including use as
11 single family homes, the interior renovation of the mansion,
12 which may be necessary and desirable for the sale of the
13 property as a single-family residence estate. The construction
14 of new buildings and the obstruction of open vistas."

15 A Yeah.

16 Q As reflected in the 1995 preservation easement then,
17 it was prohibited to renovate the interior of the mansion in a
18 way which may be necessary or desirable for the sale of the
19 property as a single-family residential estate; is that
20 correct?

21 A It was a single-family home. It was the home of
22 E.F. Hutton and Marjory Merriweather Post. I don't think
23 anybody would want to touch it. It is designed as a home. And
24 it was converted to a club very successfully, and it does
25 great. And that's where it is. But this is, you don't have to

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1 do anything to convert it.

2 And also, the easement really talks about views. It
3 is only a view easement. If I want to build something, I go to
4 the National Trust. I built a ballroom as an example. I built
5 a very big ballroom there. The ballroom you mentioned in your
6 last page was built by me. And it is very large, beautiful.
7 And what happens is, if I want to development other parts of
8 the property, but not in the view corridor. It is called a
9 view corridor. It is a certain view corridor from the main
10 windows of the living room.

11 But on the side, what is called the side corridors, I
12 have a right to develop, if I want to. But this is a little
13 like we were talking about Seven Springs, this property is more
14 valuable without building houses on it. It is much more
15 valuable, actually, in this case.

16 Q After this Deed of Development rights, you stated
17 publicly that Mar-a-Lago would forever be a club; didn't you?

18 A That is what?

19 Q You stated that Mar-a-Lago would forever be a club;
20 is that correct?

21 A No, I don't think so. I mean it says "intends." I
22 would personally never change it. If somebody later on,
23 including my children, if they want to change it, I believe
24 they would have the right to do that, if they wanted to.

25 Q Mr. Trump, the court officer is handing you a

D.J. Trump - by Plaintiff - Direct(Wallace)

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1 document that has been marked Plaintiff's Exhibit 1730.

2 (Handing)

3 Q This is an article from the Palm Beach Post dated
4 August 27, 2023. And if you look at the bottom of the page
5 there is a quote from you. It states: We waited until it
6 became a great success, Trump said, and the Mar-a-Lago club is
7 a great success. It will forever be a club.

8 That was your statement, correct?

9 A Yeah.

10 Q In 2003, that the Mar-a-Lago club would forever be a
11 club?

12 A Well, I hope so. I mean, I think that was said with
13 bravado as opposed to with legal intent. It will be for, you
14 know, as long as I am around, it will be a club. And I live
15 there.

16 Q And by making -- I apologize for interrupting.

17 A Yeah. Please.

18 Q By making sure it was forever a club, you paid less
19 in taxes on the property; is that correct?

20 A A club will pay less in taxes, correct.

21 Q And that says that, if we look at the forth paragraph
22 here, it states: We pay less tax, Trump said Tuesday, now we
23 are treated like the bath and tennis and the other clubs?

24 A That is correct, pay less taxes. Not too many clubs,
25 you pay much less tax.

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1 MR. WALLACE: Your Honor, I ask this document be
2 entered into evidence.

3 MR. KISE: For what purpose are they introducing
4 the document?

5 MR. WALLACE: He has admitted these are his
6 statements at the time.

7 MR. KISE: So all of his statements in here will
8 be admitted?

9 MR. WALLACE: The statements of Mr. Trump only.

10 THE COURT: It is in evidence.

11 MR. KISE: The statement where it says if it
12 didn't work out as a club it could go back to some other
13 use, that's acceptable as well?

14 MS. HABBA: The one you didn't show the witness.
15 The one on the bottom.

16 MR. WALLACE: I'll ask him about that then.

17 MS. HABBA: Yeah, you should.

18 Q Mr. Trump, if you look to the second to last
19 paragraph on the page, we will highlight it for you.

20 It states: If it didn't work out as a club we could
21 have gone back to some other use; is that accurate?

22 A I believe so, yes.

23 MR. WALLACE: I believe Your Honor has overruled
24 the objection and this is in evidence; is that correct?

25 THE COURT: Yes, the entire document is in

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3537

1 evidence.

2 (Whereupon, the document referred to was deemed
3 marked for evidence as Plaintiff's Exhibit 1730 by
4 the Court.)

5 Q Mr. Trump, I would like to hand you another document.
6 This one is marked as Defendant's Exhibit 478.

7 Mr. Trump, in order to win approval to convert
8 Mar-a-Lago to a club, you took the position that it was
9 impractical for a single individual to continuously own
10 Mar-a-Lago as a private estate at his or her sole expense; is
11 that correct?

12 A Yeah probably in those days. That was a long time
13 ago.

14 Q Well I can show you, this is -- this document is the
15 Mar-a-Lago, if we turn to the second page, please?

16 A Sure.

17 Q It is the Mar-a-Lago club special exception use and
18 preservation plan. Do you remember submitting this plan to
19 Palm Beach in order to convert?

20 A Yes, I did.

21 MR. WALLACE: Your Honor, we ask that
22 Defendant's 478 be marked into evidence.

23 THE COURT: Granted it is in.

24 (Whereupon, the document referred to was deemed
25 marked for evidence as Defendant's Exhibit 478 by the

D.J. Trump - by Plaintiff - Direct(Wallace)

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1 Court.)

2 Q If we look at page six of this document, I believe.

3 It states at the top: As to item (1)

4 I'll represent to you that item 1 is private

5 ownership of Mar-a-Lago.

6 It states: "It is impractical for a single

7 individual to continuously own Mar-a-Lago as a private estate

8 at his or her sole expense. When the Post Foundation marketed

9 the property after its return to the foundation from the U.S.

10 government, it was almost impossible to sell. About 80

11 qualified buyers, thoroughly screened, inspected Mar-a-Lago and

12 elected against even making an offer.

13 H. Ross Perot was one prospect. Although 'everything

14 is for sale at a price' no one would step forward to make

15 offers for this so called 'white elephant.'" And cites to

16 articles from the Miami Herald and the Palm Beach Post Times.

17 Is it correct, was this statement correct at the time

18 it was made?

19 A Yeah. I got luckily.

20 Q I take it, it is now your position that it is no

21 longer a white elephant?

22 A That's true. There is a man building a house down

23 the road spending one billion dollars to build it, and it ain't

24 Mar-a-Lago. They are spending 1 billion down the road.

25 Q If we could go back to the Statement of Financial

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3539

1 Condition, that's Exhibit 730.

2 Mr. Trump, I would like to focus on your Golf Club at
3 Aberdeen. So if we could go to page 16 of 26.

4 Here we see the listing for Trump International Golf
5 Club in Scotland-Aberdeen. I am just going to read into the
6 record the description of the club here. It states:

7 "Mr. Trump, through wholly owned entities, acquired 500
8 hectares (approximately 1,236 acres of land) on the northeast
9 coast of Aberdeenshire.

10 The development received outline planning permission
11 in December of 2008 for a world class, Martin Hawtree designed
12 championship golf links golf course, suitable for hosting major
13 events; a second future award winning 18-hole course; a luxury
14 clubhouse; a state-of-the-art driving range, and golf academy;
15 a tennis center; an equestrian center; a luxury five-star 450
16 room hotel with associated conference and banquet facilities;
17 an full-time spa; a residential village consisting of 950
18 holiday homes; and 500 single-family residences and 36 golf
19 villas."

20 Start there. Was that description of the club as of
21 June 30, 2014 true and accurate?

22 A Probably. But you know, we could do more or less.
23 We could do a bigger job, a smaller job.

24 (The following proceedings were stenographically
25 recorded by Senior Court Reporter Michael Ranita.)

D. J. Trump - by Plaintiff - Direct (Mr. Wallace)

3540

1 Q Do you believe it was accurate, that's as of December
2 2008, you had received outline tenant permission for a
3 residential village consisting of 950 holiday homes?

4 A Yeah.

5 Q And 500 single family golf residences and 36 villas?

6 A Yes, Aberdeen is the oil capital of Europe, very rich.

7 THE COURT: Irrelevant. Irrelevant. You answered
8 the question.

9 THE WITNESS: It is.

10 Q There's no valuation value for the Aberdeen property
11 listed in this paragraph; correct?

12 A I don't know.

13 Q Okay. It's not.

14 MR. WALLACE: So why don't we put back up
15 Plaintiff's Exhibit 719.

16 (Whereupon, the exhibit was displayed on the
17 screen.)

18 Q This is the supporting spreadsheet for the 2014
19 Statement of Financial Condition. If we could go to row 481,
20 please.

21 (Whereupon, the exhibit displayed on the screen was
22 scrolled through.)

23 Q 481, here we see the listing for Trump International
24 Golf Club, Scotland. That's your club at Aberdeen; is that
25 correct?

D. J. Trump - by Plaintiff - Direct (Mr. Wallace)

3541

1 A Yeah, right.

2 Q If we look over in column G, we could see the valuation
3 for 213 -- I will rephrase that question. In column G we see
4 the valuation, as of June 30, 2013, in column H, we see the
5 valuation as of June 30, 2014. Do you see that? Or do you see
6 the dates?

7 A Do I see what?

8 Q The dates at the top. G is -- I'll direct you to it.

9 A Yes, yes. I do.

10 Q June 30, 2013, H is June 30, 2014?

11 A Right.

12 Q Okay. Let's go down and take a look at those
13 valuations, which I believe are down on 43 or 46.

14 (Whereupon, the exhibit displayed on the screen was
15 scrolled through.)

16 Q No, I was wrong. If we stop here, it's in 527.

17 So you could see the valuation in -- as of June 30,
18 2013, is \$191,165,600, and as of June 30, 2014, the valuation is
19 \$435,562,426?

20 A Yeah.

21 Q Do you see that difference?

22 A Yes, I do.

23 Q You did not build a second golf course at Aberdeen
24 between June 2013 and June 2014?

25 A I'm building it now.

D. J. Trump - by Plaintiff - Direct (Mr. Wallace)

3542

1 Q So you had not done it by June 2014?

2 A No, I didn't. The first one, it was very successful,
3 and then the second one. And then basically you would have a
4 thousand acres of land -- you have 1230 some-odd acres. It's
5 lot of land on the ocean. And it was a big development job.
6 And I could do it anytime I want. I just don't really want to
7 do it. I don't really need to build 2,000 or 1,000 or 500
8 houses in Aberdeen. I don't want to do it.

9 This was an artistic expression. I think it's the
10 greatest golf course ever built. I believe it is. And we've
11 gotten reviews saying that we are close to that. It's one of
12 the greatest pieces of land I've ever seen. And we have, now,
13 one course, and we built a clubhouse, we built the roads, we
14 built everything. I'm no rush to build. I'm not looking to
15 build a lot things. I'm doing other things right now. But it's
16 an unbelievable site. We could build more than what you showed
17 in the plan, or less than what you showed in the plan. But I
18 don't want to build anything. I just want to sit with it. It's
19 called an investment.

20 Q So I just want to make sure I heard that last part.
21 You are not planning to build anything as of today?

22 A Well, I'm building right is now.

23 Q Apart from the golf course, you are not planning on
24 building any housing developments?

25 A I'm sort of preparing the site, because I'm putting up

D. J. Trump - by Plaintiff - Direct (Mr. Wallace)

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1 the second course. And it's under construction. It will be
2 done in a year. And then we have all this -- we have a thousand
3 acres of land that we can do whatever we want with, but I'm in
4 no hurry to do anything with it. I have enough things to do.

5 Q And your statement was, "I'm not looking to build a lot
6 of other things right now"; is that correct?

7 A I'm not looking to -- yeah, as I said, I'm not looking
8 to go to Scotland and build a big development, but it's got
9 tremendous value.

10 Q So we got away from what the actual question was, which
11 was, I believe that you did not build a second golf course at
12 Aberdeen between June 2013 and June 2014; correct?

13 A Yeah, nor was I supposed to.

14 Q And you did not build a new hotel at Aberdeen between
15 June 2013 and June 2014 did you?

16 A Because I didn't want to.

17 Q And you did not build any homes at Aberdeen between
18 June 2013 and June 2014 did you?

19 A No. I have a castle that we renovated, but no. I want
20 it just the way it is, and at some point, at some point maybe in
21 my very old age I'll go there and do the most beautiful thing
22 you've ever seen, but I just don't have -- I don't want to do it
23 now. It's an unbelievable piece of property.

24 Q I'm focused, then, on where we get the \$245 million
25 increase in the value of the property from 2013 to 2014. So I

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1 would like us to go back up to -- if we look at. Let's go down
2 to see 489 at the top. I'll represent to you -- well -- no, go
3 down a little more.

4 (Whereupon, the exhibit displayed on the screen was
5 scrolled through.)

6 Q That's it. Right there. So you'll see the valuation
7 for the club, the golf club, the land allocated to hotel and
8 residential, the remaining value for the golf courses, stays
9 about the same. It goes from \$76 million in 2013 to 2014. The
10 remainder of the value for 2013 comes from the line item
11 valuation per George Sorial e-mail, 9/6/2011, in addition to DJT
12 Capital contributions.

13 George Sorial was a lawyer in the Trump Organization;
14 is that correct?

15 A Yes.

16 Q He was not a valuation professional; is that correct?

17 A No.

18 Q Okay.

19 And if we look at what changes in 2014, we could go
20 down to the column starting at 508 that says "value of
21 undeveloped land."

22 (Whereupon, the exhibit displayed on the screen was
23 scrolled through.)

24 Q And you could see that there is a listing that says the
25 residential parcels are 83,000 pounds each. The number of homes

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1 to build at 2,500, which generates a value of 207 million
2 pounds, which is then converted into dollars; that's the basis
3 for the 245 some-odd million dollar increase in value; is that
4 correct?

5 A I really don't know, but the job could be much bigger
6 than that, too. It's 1200 acres, more than that, fronting the
7 entire width -- fronting on the North Sea. It's, it's, it's
8 like one of the easiest -- in the oil capital of Europe.

9 Q I'm asking, was it actually done?

10 A It's a very nice piece of land that everybody said I
11 could never get zoned, and I not only got it zoned, I got it
12 zoned for much more than anyone thought possible.

13 Q Let's take a look, then, if we could compare this,
14 because 2,500 homes is not the same used in the Statement of
15 Financial Condition, which I think --

16 MR. WALLACE: Please split those screens.

17 (Whereupon, the exhibit was displayed on the
18 screen.)

19 Q If we look, it says -- the valuation states there is
20 2,500 homes?

21 A Yes.

22 Q But the statement itself says that it's 950 holiday
23 homes, 500 single family residences, and 36 golf villas?

24 A More luxurious, yes.

25 Q And I'll represent to you that that comes to 1,486

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1 homes in total, with only 500 single family residences. So the
2 Statement of Financial Condition for 2014 does not accurately
3 disclose the number used in the calculation; is that correct?

4 A Those homes will sell for a tremendous amount of money;
5 they are on the North Sea. I could also go with a much bigger
6 job if I wanted to. The relationship is very good with
7 Aberdeen. Aberdeen is a very rich place. It's an incredible
8 piece of land. And again, it may be the greatest golf course
9 ever built. And I own Turnberry and I own great ones.

10 The numbers there are not shocking numbers. And this
11 is a very big job. I just don't want to build it now. You
12 know, you're probably right, I'm doing other things right now.

13 THE COURT: Mr. Wallace, I'm so what following your
14 lead. If you want to let the witness ramble on, be
15 unresponsive, repeat himself, go ahead.

16 MR. WALLACE: I might normally move to strike, but
17 there are things I would like to preserve for the record in
18 that answer, so I'm reluctantly allowing this to continue.

19 THE COURT: That's why I'm following your lead.

20 MR. KISE: I just want to note, I'm not really sure
21 it's clear. Maybe this is the subject of the ambiguity. I
22 mean, I think his answer is a brilliant answer. I just
23 don't know if he is answering the question because he is
24 confused as to whether or not we are talking about the
25 Statement of Financial Condition or the backup data, which

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1 he's testified -- I think Mr. Wallace has already
2 admitted -- this witness has never seen, before, the backup
3 data. So I'm not sure what he's answering, whether he is
4 talking about the backup data or he is talking about the
5 Statement of Financial Condition, or if the question is
6 both.

7 MR. WALLACE: I don't think my question was
8 answered, so I was going to re-ask it, but I'm happy to
9 have --

10 MR. KISE: If you could clear it up, that's fine.
11 I just think it's not even in the record.

12 MR. WALLACE: I am I'm just asking that his prior
13 statement remain on the record, even though it's
14 nonresponsive.

15 Q Mr. Trump, my question is more directed. It's simply
16 that the number of homes used in the calculation for 2014 do not
17 actually match the number of homes disclosed in the statement;
18 is that correct?

19 A I don't know, but it could very well be. It's sort of
20 like a painting. You could do pretty much what you want to do.
21 The land is there. You could do what you want to do. So you
22 could do either one of them, actually.

23 Q As of 2012, you had actually made a determination that
24 you would not be developing the Aberdeen property because of
25 Scottish plans to build a wind farm off shore; is that correct?

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1 A Well, I was not happy because they are -- they've
2 fought long and hard to build wind mills, I think nine of them,
3 out in the ocean, out in the sea. And they built them.

4 Q Okay. "They" being Scotland?

5 A Scotland.

6 Q And because of those wind mills, you decided in 2012
7 that you were not going to be doing further development of the
8 Aberdeen property?

9 A I told them, I don't know if it has an impact or not,
10 I'm not a windmill person. I think I'm being proven to be
11 right.

12 Q Did you testify about your unwillingness to develop the
13 Aberdeen property for a subcommittee of the Scottish parliament
14 in 2012?

15 A Yes, I did.

16 Q And do you believe that -- I'll see if I could skip
17 ahead and just ask. Would it sound correct to you that
18 Mr. Weisselberg submitted a statement to the UK regulators in
19 September of 2014 saying that the Trump Organization did not
20 intend to develop the Aberdeen property any further based on the
21 wind farms?

22 A We had a big fight over the wind farms, but they were
23 put in years ago. They've been there for many years now.
24 They'll probably come down, like all the other wind farms are
25 coming down, and I've been asked whether or not they have an

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1 impact -- they are miles out in the ocean. They are not on the
2 property. They are miles out. And most people tell me, no.
3 Almost everybody tells me no. I don't know if that's true. But
4 regardless, we have the right to build a very big project, if I
5 want to build it. That was in 2014, when we were fighting the
6 wind mills, yes.

7 Q And as of today, November 6th, 2023. You haven't built
8 any homes at Aberdeen; is that correct?

9 A It's just a beautiful piece of property sitting there
10 waiting for homes to be built. It will be very successful. I
11 just don't -- you know, there's nothing wrong with sitting with
12 property and waiting if you have the money to play that game,
13 and I do have a lot of money, a lot more money than you thought,
14 I guess. At some point that will be developed into a
15 magnificent job. I just don't want to do it now.

16 Q Mr. Trump, apart from the Seven Springs valuation we
17 discussed, and your apartment, do you stand by all the
18 valuations in this Statement of Financial Condition for 2014?

19 A I haven't looked at it in years.

20 Q Do you have any reason -- so, you might not agree with
21 the valuations in here anymore, is what you are saying?

22 A I think I've been proven to be right, because if you
23 take those valuations and bring them up to 2021, a couple of
24 years ago they are much higher than they were in that statement.

25 Q But the valuations were the estimated current value as

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1 of June 30, 2014; is that correct?

2 A Yeah, but if you carry that forward to 2021, all of
3 those valuations were low.

4 Q Meaning the properties are now worth more today,
5 November 2023, than they were --

6 A Much more, yeah.

7 Q Than they were in June of 2014.

8 Okay. Apart from the Seven Springs valuation we
9 discussed and the triplex apartment, are you aware of any other
10 properties on the Statement of Financial Condition between 2011
11 and 2017 that were overstated?

12 A Um, not that would have -- I don't know of any, but not
13 that would have a material effect, because I'm worth billions of
14 dollars more than the financial statements. The financial
15 statements are just the opposite of what your Attorney General
16 thought, and they are having a big problem with it. I'm worth
17 billions of dollars more, so anything that would be a little bit
18 off would be nonmaterial, nonmaterial.

19 Q And are you aware of any nonmaterial items that were
20 overstated in the Statement of Financial Condition between '11
21 and '17?

22 A I haven't looked.

23 Q Do you still approve of the work that Mr. McConney and
24 Mr. Weisselberg did preparing the Statements of Financial
25 Condition between 2011 and 2017?

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1 A Well, again, we have a disclaimer clause that tells you
2 we are doing the work. It's not in accordance with your normal
3 -- if you are going to do some kind of a big certified
4 statement. You are not doing appraisals and everything else.
5 We have a very important clause called a "disclaimer clause",
6 and it's a 100 percent disclaim. And some people call it a
7 "worthless statement clause." They call it lots of different
8 things. And as you will be hearing in testimony, they always
9 hold up in court, except maybe in this court. They always hold
10 up in court, always. It's a disclaimer.

11 It says, very strongly, do your own due diligence. Do
12 your own work. Do your own study. Don't take anything from
13 this statement for granted. You could look at the statement,
14 but you must do your own analysis and due diligence.

15 Q Do you still approve of the work that Mr. McConney and
16 Mr. Weisselberg did in preparing the Statements of Financial
17 Condition between 2011 and 2017?

18 A As far as I know I do. You haven't shown me anything
19 that would change my mind.

20 Q Same thing true of the statements that came out between
21 2017 and 2021? You stand by that?

22 A I was assured of 2021, but I was President, and I was
23 not involved in any way by that. I was doing other things.

24 Q You were not aware of anything that was done that you
25 disagree with, but you are not familiar with the statements?

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1 A Probably the statements would be -- again, if there was
2 a mistake, it was nonmaterial, but even if it was material, and
3 I don't see that, and we did make some changes where they found
4 out there were mistakes, we have a disclaimer clause that says,
5 do your own diligence -- due diligence. Don't, under any
6 circumstances, count on anything here, because it was done --
7 they are done quickly. They are done -- it says -- I think it
8 says done in accordance with the owner's projections and the
9 owners, The Trump Organization's projections and everything
10 else.

11 So one of the reasons I never got too involved with
12 these statements was -- that clause is on page one, as you know
13 better than anybody. It's also throughout the statement. When
14 you read the statement, everything is disclaimed. They say go
15 out and do your own. Don't believe it. Get your own
16 appraisers, get your own accountants, do everything. And that's
17 why we shouldn't be having a case here, because we have a
18 disclaimer clause which every court in this country holds up,
19 except for this particular Judge.

20 Q Can I ask, then, is it your particular position that
21 the Statements of Financial Condition are, in fact, worthless?

22 A No, I don't think they are worthless, but I don't think
23 they are worthless at all. And -- but I think that they're -- I
24 think, frankly, with the disclaimer clause, if there is any
25 mistake, the disclaimer clause covers it. And because they

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1 haven't -- they didn't devote their entire life to this. And
2 again, most developers don't do this. They just write the name
3 of the building and the address of the building. They put some
4 number that they think it's worth. They don't have anything
5 like this.

6 What I've done is far more -- and it's also far more
7 conservative. You never mentioned the fact that we have 3,
8 \$400 million cash in these things. Very -- I mean, people don't
9 know how good a company I built. You know why? Because people
10 like you go around and try and demean me and try and hurt me.

11 Q Mr. Trump --

12 A Probably for political reasons. In her case,
13 definitely for political reasons. And I think it's hurting her.

14 MR. WALLACE: There's a lot in there that I want to
15 keep, your Honor, so I'm not going to move to strike that.

16 Q I just want to go back and clarify one thing in your
17 last answer. You said "they did not devote their entire life to
18 them." Who is the "they" you referred to?

19 A That would be Jeff and Allen. They had other things to
20 do.

21 Q Does that mean that Jeff and Allen were not being
22 careful when they prepared your statement?

23 A No, I think they were being careful. But, again, the
24 disclaimer clause says if you -- if there's a mistake, if
25 there's something, it says, "Don't rely" -- it's called a

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1 non-reliance clause, also. I mean it's a very standard thing
2 and it's allowed in every court in the United States. It's a
3 non-reliance.

4 Q You stated that.

5 A I know I'm trying to make you understand it. It's a
6 non -- non-reliance clause, and every court in the United States
7 has upheld them, and every legal scholar that I've read about
8 this case has said what's going on here? How can a thing like
9 this being going on? It's disgraceful. And in addition to
10 that, I'm worth more than the numbers in the statement.

11 MR. WALLACE: That answer I will move to strike,
12 your Honor.

13 THE COURT: As repetitive?

14 MR. WALLACE: Repetitive, nonresponsive.

15 THE COURT: Nonresponsive.

16 MR. WALLACE: He's already made that point in the
17 record.

18 MR. KISE: I'm not sure there's any basis to strike
19 -- a valid basis to strike it. It's an answer. Mr. Wallace
20 is satisfied with the answers. He is culling for these
21 narratives, and he is getting answers to the questions. And
22 this is -- this is -- this goes to the very heart of what
23 we're here about, which is intent. I mean, if -- intent is
24 subjective. And if this witness's intent is as stated here,
25 I don't see how anyone could ever prove intent under these

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1 circumstances. It's a brilliant answer to the question. So
2 Mr. Wallace can't pick and choose which narratives he likes
3 and which narratives he doesn't. We could come back here in
4 two or three weeks and go through the same charade and ask
5 the same question get it out, but as I said, it's far more
6 effective to allow this witness to explain his position and
7 explain to the court his view, what he intended, how he
8 intended it, what was happening, and how he views the
9 statements.

10 MR. WALLACE: The response is even longer than the
11 statement I asked to strike, so at this point let's leave it
12 in then.

13 THE COURT: Leave it in. There's no jury. It
14 doesn't matter.

15 MR. WALLACE: We'll, leave it in.

16 Q Mr. Trump, I think you said this in the course of your
17 answers. Let me just try to clarify this. You do not agree
18 with the position of the Office of the Attorney General that the
19 values in the Statement of Financial Condition are overstated;
20 is that correct?

21 A I think she's a political hack.

22 Q That's not the question.

23 A And I think she --

24 Q That's not the question.

25 A -- used this case to try to become Governor, and she

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1 successfully used it to become Attorney General. And I think
2 she's a political hack, and this a disgrace that a case like
3 this is going on. And all you have to do is read the legal
4 scholars and the papers and you'll see exactly what I'm saying.
5 And a lot of them didn't even know how valuable the properties
6 were. You never said Trump has three and \$400 million cash, and
7 now more than that. This is a political witch-hunt, and I think
8 she should be ashamed of herself.

9 Q You do not agree with the position of the Office of the
10 Attorney General that the values in the Statement of Financial
11 Condition are overstated; is that correct?

12 A The overall value is billions of dollars more than is
13 in these statements. So that when a bank gets them, the bank is
14 seeing a conservative statement, not a -- she tried to make you
15 believe, even yesterday, she's out there saying, "Oh, fraud.
16 Fraud. This is the opposite. Fraud."

17 The fraud is her where she says Mar-a-Lago -- she said
18 it was worth \$25 million. He said it's worth \$18 million
19 (indicating), \$18 million. She said it's \$25 million. She
20 convinced him that it was worth \$18 million. And it's worth a
21 billion dollars, or something like that.

22 Q Yes or no.

23 A It's a disgrace.

24 Q Yes or no, do you agree with the position of the Office
25 of the Attorney General that the values in the Statement of

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1 Financial Condition are overstated?

2 MS. HABBA: Asked and answered.

3 MR. WALLACE: It has not.

4 THE COURT: No, it has not been asked and answered.

5 MS. HABBA: He actually did the --

6 THE COURT: It's been asked. He hasn't answered.

7 MS. HABBA: Your Honor, I'm not screaming. All do
8 respect, your Honor, I don't appreciate when people scream.

9 The overall value is billions more was the answer.
10 That's his answer. You could read it in the record.

11 THE COURT: It's a yes or no question.

12 Q Just yes or no, Mr. Trump. Do you agree with the
13 statement, the position of the Office of the Attorney General is
14 the values are overstated?

15 A The financial statements are very conservative. The
16 overall number of value is much higher than the number in the
17 financial statements. In addition to that, you have a
18 hundred percent disclaimer clause that goes on for a page and a
19 half.

20 THE COURT: No, no, no. We are not going to hear
21 about the disclaimer clause. If you want to know --

22 A It's very important.

23 THE COURT: -- about the disclaimer clause, read my
24 opinion again, or for the first time, perhaps.

25 THE WITNESS: Well, you are wrong on the opinion.

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1 Q Mr. Trump, let's go to that then. Mr. Trump, you do
2 not agree with the determination of the Court in its summary
3 judgment decision that the Statements of Financial Condition
4 were misleading; is that correct?

5 A He ruled against me without knowing anything about me.
6 He ruled against me and he said I was a fraud before he knew
7 anything about me, nothing about me.

8 And then he said in his statement that Mar-a-Lago is
9 worth \$18 million and it's worth 50 times to 100 times more than
10 that, and everybody knows it. And everybody is watching this
11 case. He called me a fraud and he didn't know anything about
12 me.

13 Q You did not -- so I think the essence of your answer is
14 there, but I would like to get it as a yes or no. You do not
15 agree with the determination of this Court in its summary
16 judgment decision that the Statements of Financial Condition
17 were misleading; is that correct?

18 A I think it's fraudulent, the decision. I think it's
19 fraudulent. The fraud is on the Court, not on me. When you
20 rule that Mar-a-Lago is worth \$18 million, I could give you a
21 quarter of a tennis court would be worth that.

22 When you rule that Mar-a-Lago is worth \$18 million and
23 then she rules it's worth \$25 million, either people are very
24 stupid or there's a fraud. The fraud is on behalf of the Court,
25 because when the Court does that, and then they say I didn't

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1 value my property correct? Think of it, \$18 million, he said.
2 And then he -- he says that I'm a fraud because I didn't value
3 my property correctly? He is the one that didn't value the
4 property correctly.

5 Q Mr. Trump --

6 A And how do you do that? How do you rule against
7 somebody and call them a fraud, as the President of the United
8 States, who did a great job. All you have to look at is the
9 President today. What he is doing? How do you call a man a
10 fraud when you have a property that's a 50 to 100 times more
11 valuable. It's a terrible thing you did. You knew nothing
12 about me. You believed this political hack back there, and
13 that's unfortunate.

14 Q Are you done?

15 A Done.

16 Q Okay. I'll take you up on one of the invitations. You
17 are talking about the \$18 million valuation versus the higher
18 valuation of Mar-a-Lago. Which one are you paying taxes on down
19 in Florida?

20 A Which one, what?

21 Q Are you paying taxes on an \$18 million valuation of
22 Mar-a-Lago or \$1.5 billion?

23 A You know that assessments are totally different from
24 the valuation of property. An assessment -- as an example in
25 New York. You sell a building, a building was recently sold for

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1 a billion dollars. It's assessed for a tiny fraction of that.
2 Same thing in Florida. Same thing in other places. Other
3 places have full assessments. Whatever you pay, that's what the
4 assessment is, but that's not that way in Palm Beach, Florida.
5 It's not that way in New York, and it's not that way in most
6 cases.

7 Q If it was that way it would make a difference that the
8 property has been appraised --

9 A Sure.

10 Q -- at \$18 million in Florida?

11 A That would be a much different thing.

12 Q Mr. Trump, I would like to go back to the Statement of
13 Financial Condition quickly. If you could put Exhibit 730 back
14 up?

15 (Whereupon, the exhibit was displayed on the
16 screen.)

17 Q If you could go to page two, this is a paragraph we've
18 looked at before. It's the second paragraph which states,
19 "Donald J. Trump is responsible for the preparation and fair
20 presentation of the financial statements."

21 I would like to focus on the second half of the
22 sentence which says, "Donald J. Trump is responsible for
23 designing, implementing and maintaining internal control
24 relevant to the preparation and fair presentation of the
25 financial statement."

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1 I will ask an open-ended question here. What did you
2 do to meet your responsibility for designing, implementing and
3 maintaining internal control relevant to the preparation and
4 fair presentation of the financial statement?

5 A I gave two people total authority to work with a very
6 expensive accounting firm, very high-priced accounting firm who
7 charged me a lot of money for this, a lot of money. And they
8 worked with the accounting firm and they came up with a
9 statement.

10 I could've done this statement like many other
11 developers, where I just write down the building and put a
12 value. I didn't choose to do it that way. And I told them to
13 work with the accounting firm and give them what they need. And
14 that's what they did.

15 Q And so the two people, you are referring to, once
16 again, that's Mr. McConney and Mr. Weisselberg; correct?

17 A Correct.

18 Q And so you directed them to prepare the statements in
19 accordance with GAAP; is that correct?

20 A I don't know what it was. I said, "Prepare the
21 statements so that the accounting firm is happy." So they gave
22 us a statement.

23 Q The question is what steps you took to --

24 A I told you.

25 Q To design, implement, maintain internal control

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1 relevant to the fair presentation of the financial statement.

2 A I just told you.

3 Q Okay.

4 Anything else you did to -- in connection with this
5 obligation?

6 A No, but if you looked at the paragraphs, and I don't
7 know if, your Honor, if I could do this, but I have it in my
8 pocket (indicating). If you look at the paragraphs that follow
9 that -- this is a total exculpation -- and if you would like to
10 have it, I would read it, if you would like, or I don't know
11 what the procedure is, but I have -- I've taken this right out
12 of this, and it's very simple. And it says exactly how
13 important that clause is. And it's been written about by legal
14 scholars.

15 (Continued on the next page.)

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1 Q Between Mazars and the Trump Organization, who is
2 responsible for the fair presentation of the Statements of
3 Financial Condition?

4 A I think they work together.

5 Q Who was responsible?

6 A They got paid a lot of money too.

7 Q Who was responsible for making sure the statements
8 were compliant with GAAP?

9 A I don't know. I assume -- I don't know, were they
10 supposed to be compliant to GAAP, because I am not sure that
11 that's true, you know, because GAAP is defined a certain way.
12 I am not sure that's true. But certainly the accounting firm
13 which got paid millions of dollars do this work, they had to do
14 something.

15 Q Mr. Trump --

16 A They got paid a lot of money to do this work.

17 Q -- do you have an understanding of what
18 responsibilities, if any, the Trump Organization had in
19 connection with the preparation of the 2014 Statement of
20 Financial Condition?

21 A Well, I think I have answered this question about
22 five times.

23 Q What is the answer?

24 A I told two top people to work with the accounting
25 firm, give them whatever they needed, anything they needed give

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1 them so they can come up with a statement. And if the
2 accounting firm was unhappy, they would go back and they would
3 say, we need this, we need that. And they were very insistent
4 on that. Very insistent on that. But they came up with
5 statements in each of those years, so obviously they were
6 satisfied with that.

7 MR. WALLACE: Could we put up a copy of
8 Plaintiff's Exhibit 717? I think it is already in
9 evidence.

10 Q Mr. Trump, I have been handed a document that has
11 been marked as Plaintiff's Exhibit 717. This is the engagement
12 letter for the preparation of your June 30, 2014 Statement of
13 Financial Condition.

14 I will just direct your attention to the third page
15 of this document, which has a heading: Management
16 Responsibilities, and lists A through F, a series of
17 responsibilities. Do you have an understanding that the
18 responsibilities listed here were for the Trump Organization to
19 undertake in the preparation of the Statement of Financial
20 Conditions?

21 A I don't remember this, but it looks like that, yes.

22 Q So to your understanding, the Trump Organization was
23 responsible for the preparation and fair presentation of the
24 financial statements in accordance with accounting principles
25 generally accepted in the United States of America other than

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1 previously noted; is that correct?

2 A Yes, but together working with the accounting firm,
3 the very highly paid accounting firm.

4 Q The next item states that management is responsible
5 for designing, implementing and maintaining internal controls
6 relevant to the preparation and fair presentation of the
7 financial statements. That was a Trump Organization
8 responsibility, correct?

9 A Sure.

10 Q Item C: Presenting and detecting fraud. That was a
11 Trump Organization responsibility --

12 A Sure.

13 Q -- is that correct?

14 A I would imagine they all had to work on it. This was
15 the accounting firm for the company, and I would imagine they
16 all worked on that. You know you do audits and you do all of
17 the things that you would normally do, and hopefully if
18 something is wrong, you catch it.

19 Q Who within the Trump Organization was responsible for
20 preventing and detecting fraud?

21 A Everybody.

22 Q Item D. Who within the Trump Organization was
23 responsible for identifying and ensuring that the company
24 complies with the laws and regulations applicable to its
25 activities?

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1 A I would say, you know, sort of anybody who sees
2 anything wrong, they should report it. Anybody.

3 Q Is there a formal system for reporting anything
4 wrong, as you described it, within the Trump Organization?

5 A Not formal, but I say to anybody, anybody sees
6 anything going on that is not appropriate, come see me
7 directly, I don't care who you are.

8 Q Has anyone ever come to see you directly about these?

9 A Yeah people, people tell me things, yeah.

10 Q What instances do you recall?

11 A Things going on and I get the problem solved when I
12 hear it.

13 Q But I am asking if you remember any specific
14 instances of someone bringing improper activity to your
15 attention.

16 A Over the years?

17 Q Yeah.

18 A Yeah, sure. Apartments that are rented that they say
19 are vacant. Somebody is getting money. Other things, yeah, we
20 hear. I hear things. It sounds like a big deal, but it goes
21 on. Apartments empty, they put it down as empty but somebody
22 is getting money for it. And you know, generally it is the
23 person who runs the building or the management person, over the
24 years that kind of thing happens. And I take care of the
25 situation when it happens. But I want everybody to look -- I

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1 tell everybody if you see anything, come to see management or
2 come to see me directly. I don't want that going on.

3 Q And that would have been the case up until you became
4 President in 2017?

5 A That is correct.

6 Q That no longer happens from 2017 to present; is that
7 correct?

8 A Well, present is different than it was, you know,
9 prior to when I was President. Right now, unless you know
10 something I don't know, I am not President.

11 Q No, I am just asking if people still come to you with
12 problems that they identify.

13 A Yeah. Yeah.

14 Q What do you remember?

15 A I don't think they come -- I am not sure that they
16 come. I haven't remembered a thing, like, right now. So we
17 are a little new to the game because I haven't been doing this.
18 I am back a little bit in the real estate business. Right?

19 Q If you look at item E on this chart it says:
20 Selection and Application of Accounting Principles.

21 Do you know who within the Trump Organization was
22 responsible for the selection and application of accounting
23 principles?

24 A No. I would assume that the accounting firm would
25 recommend something and we would accept it.

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1 Q I am just pointing out that this is under the heading
2 management responsibilities.

3 A Right. But I would assume --

4 Q Can I finish my question?

5 A Yeah.

6 Q Do you know if anyone at the Trump Organization was
7 responsible for this on the Trump Organization side?

8 A Again, I would assume that Mazars would come and
9 recommend something and we would accept that procedure.

10 Q Item F is: Making all financial records and related
11 information available to us and for the accuracy and
12 completeness of that information.

13 Who within the Trump Organization was responsible for
14 meeting that responsibility?

15 A That would be the staff in the back. That would be
16 Jeff, Allen and the staff.

17 THE WITNESS: I would love to read this, Your
18 Honor, if I could. Am I allowed to do that?

19 THE COURT: No, not at this point.

20 THE WITNESS: I am shocked. I am shocked.

21 MR. WALLACE: Okay. We can take that down.

22 Q Mr. Trump, I would like to talk a little bit about
23 your building at 40 Wall Street.

24 A Yeah.

25 Q Have you ever inflated the operating income of 40

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1 Wall Street in order to increase a reported valuation?

2 A Not that I know.

3 Q Can we take a quick look at Plaintiff's Exhibit 719.

4 MR. WALLACE: Sorry, we need the native version.

5 I apologize.

6 And if we could go to row 118.

7 Q This is the entry for 40 Wall Street. And if we
8 scroll down to rows 137 or so, there is a valuation for 2014
9 and it states: NOI stabilized based on cash flow prepared
10 July 2014 including pending leases. Green Ivy and vacant
11 space. And it lists an NOI of \$23,873,545.

12 Do you know if that is an accurate reflection of the
13 NOI?

14 A I don't. It is a long time ago. But I don't.

15 Q Mr. Trump, I am handing up a document that has not
16 been premarked. It is a copy of an article from Forbes
17 magazine dated September 21, 2022. (sic.)

18 Now, I would just like to direct your attention to
19 the bottom of page 11 in this article.

20 There is a headline that states: A couple months
21 after securing the loan, Donald Trump was feeling good, sitting
22 at his desk in Trump Tower, speaking openly to Forbes about his
23 years' long quest to vault himself higher on the list of
24 America's richest people. An audio recording of that
25 conversation, which took place on September 21, 2015, makes it

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1 clear that Trump was not only involved in the effort to
2 misinform the world about the value of his assets, he was
3 willing to take the ruse further than anyone else, and even
4 admit his motivation for doing so: It was good for financing
5 he said.

6 I'll stop you there. Do you recall speaking to
7 Forbes on September 21, 2015?

8 A No. And who would say that? I am not saying that.
9 Forbes, they are owned by China. Now they just sold it to
10 Russia I read yesterday.

11 Q Did you tell Forbes ever that a high net worth is
12 good for financing?

13 A I mean, it is something that I would say. A high net
14 worth is good for some types of financing, not for buildings
15 and not for specific deals necessarily. But I guess having a
16 high net worth it makes -- it would be good. Do you want me to
17 say, oh, let's have a low net worth? Give me a low net worth
18 and let's get financing. No. Having a solid record -- having
19 a good net worth is a positive thing. I can't say it is not.

20 Q If we look down at the next paragraph. It states:
21 "Even though he had just reworked his mortgage at 40 Wall
22 Street, Trump couldn't resist another chance to boast about it.
23 Its a 78-story building, Trump said. Even though his firm had
24 previously marketed it as a 72-story building. And it's
25 actually just 63 stories according to documents filed with the

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1 City. It is going to throw off, would you say, 50 million
2 maybe this year? He asked, turning to Allen Weisselberg.
3 Fifty million at least, Trump concluded faster than his CFO
4 could get out of the words, "Yeah, by the end of the year."

5 We can stop there. Do you know whether or not it was
6 true that 40 Wall Street in September of 2015 would throw off
7 \$50 million by the end of that year?

8 A I don't know. But I have very little respect for
9 Forbes, so, what I say to them, you know, I deal with them very
10 quickly. And I don't even deal with them. I haven't dealt
11 with them in years.

12 Q So do you believe you were misquoted?

13 A I think they are out of business. Aren't they?

14 Q Do you believe you were misquoted in this statement?

15 A I don't know. I don't know what I said. You are
16 giving me this information. If you have the statement, let me
17 see it.

18 Q I am going to move ahead.

19 A I don't think too much about what I say to Forbes.

20 Q We'll move ahead to page 13. The lower paragraph, we
21 will start there.

22 It says: A Forbes reporter noted that the building
23 was 1.2 million square feet rounding up from its actual square
24 footage of 1,165,207. It is actually 1.3, Trump said. By the
25 way, it is 1.3 to be honest with you.

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1 The same reporter then said Forbes was estimating its
2 net operating income at 24 million, the inflated figure that
3 Jeff, apparently McConney, had shared the previous year. Where
4 did you get that from? We are going to make 64 million net,
5 net after debt service this year, at least, Trump declared.

6 Do you recall telling Forbes that 40 Wall Street
7 was going to make \$64 million in 2015 net, net after debt
8 service?

9 A No, I don't. When was this?

10 Q 2015.

11 A It is a long time ago. I don't know.

12 Q I believe Forbes published an audio clip with the
13 article of this interview. I am just going to ask if we can
14 just play that now.

15 (The audio clip was played in open court.)

16 MR. KISE: Your Honor, can anyone actually hear
17 that? It seemed relatively undecipherable.

18 THE COURT: I could not make out what was being
19 said.

20 MR. WALLACE: Let me skip using the audio. I
21 don't know if we can get it any higher.

22 Can we?

23 Q I'll just ask then generally, I know it was hard to
24 decipher, what was on that recording, does it refresh your
25 recollection that you may have spoken to Forbes in 2015?

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1 A No.

2 Q No.

3 Do you believe it would have been accurate to say
4 that 40 Wall Street was going to make \$64 million in 2015 net
5 after debt service?

6 A I don't know. You are putting me back a long time
7 ago, long past statute of limitations.

8 Q All right. Let's --

9 A I don't know.

10 Q We are going to hand you a copy of a document that is
11 already in evidence. It is Plaintiff's Exhibit 652. It is
12 very small print so it is going to be easier to see it up on
13 the screen.

14 If we could go to page two of this document. And if
15 we could zoom in on the far right column.

16 It states: 40 Wall Street income and expense
17 statement. Cash basis. Twelve-month period ended March 31,
18 2015.

19 If you look down at the bottom of the pullout here it
20 says: Total receipts for the building are \$29,906,711.

21 Do you know if that was an accurate reflection of the
22 total receipts for the 12-month period of 40 Wall Street as of
23 March 31, 2015?

24 A I don't know. I have never seen that before.

25 MR. WALLACE: If we scroll down to the bottom of

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1 this column. Actually go to the bottom of the last page,
2 please.

3 Q If we look under the 2015, March 31. Underneath Debt
4 Service In and Capital Disbursements. It states: The excess
5 cash flow or deficit for 40 Wall Street was negative
6 \$8,736,924. Do you know if 40 Wall Street in fact ran a
7 deficit of more than \$8.7 million for the 12-month period ended
8 March 31, 2015?

9 A Well, we spent millions of dollars based on that. We
10 spent millions of dollars on building improvements. We were
11 fixing the building. I spent a lot of money inside the
12 building, my own cash, to improve the building. We rebuilt the
13 lobbies. We rebuilt the elevators. We spent a lot of money,
14 and actually even more than that, I think. But the building
15 has been a successful building.

16 Q The building improvements number we can see there
17 under capital disbursements is listed as \$8.2 million; is that
18 what you are referring to?

19 A Yea, but we were doing a lot of work. We were doing
20 the elevators and lobbies, doing a lot of work, and the
21 building needed a lot of work.

22 Q I take it you don't know whether or not it is
23 accurate that in March 31, 2015 40 Wall Street had run a
24 deficit of \$8.7 million?

25 A After spending millions of dollars on fixing the

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1 building, yeah, it is possible. But then you make it up in
2 later years. You lease to good tenants and they pay you a lot
3 of rent because they like what you have done.

4 MR. WALLACE: Your Honor, I am going to pass the
5 witness a copy of the document, it is already in evidence
6 as Plaintiff's Exhibit 636.

7 Q Mr. Trump, this is an e-mail from Donna Kidder to
8 Jack Weisselberg and Allen Weisselberg with an attachment
9 entitled 40 Wall 2012 to 2014 cash flows.

10 It will be easier to see it up on the screen. Again,
11 it has very small print.

12 MR. WALLACE: Can we go to page three of five?

13 Q At the top it says 40 Wall Street LLC cash flow, year
14 ending December 31, 2014.

15 And at the bottom of this section it states: Cash
16 flow (after debt service, Capex and IT) negative \$9,904,289.

17 Do you know if 40 Wall Street, in fact, ran a deficit
18 of more than \$9.9 million for the year ending December 31,
19 2014?

20 A That's a very small number. And it doesn't include
21 all of the money that was spent in fixing the building,
22 bringing it back to good health. It also doesn't show
23 vacancies and things that are leased up. The building is now
24 actually, I think it is pretty close to being fully leased.
25 But it doesn't show vacancy and it doesn't show all of the

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1 money spent on construction.

2 Q Am I understanding then -- I am sorry to interrupt
3 you. Am I understanding that this number could be correct but
4 you think there are other expenses that aren't included in
5 here?

6 A We spent a lot of money in fixing the building up,
7 and the building is a very good building.

8 But this has nothing to -- I mean, you can show this
9 de minimus stuff or non-material stuff. This has nothing to do
10 with values. The value of 40 Wall Street is, you know,
11 hundreds of millions of dollars more than what she says it is.
12 She doesn't know what 40 Wall Street -- she doesn't even know
13 where 40 Wall Street is. And the value is hundreds of
14 millions.

15 If I was going to sell that building, because this
16 was a lawsuit that started off with value, now let's get into a
17 rent-roll of one building, big deal. This is all non-material
18 stuff. If we are fixing up a building and spending money on
19 new elevators and new escalators and new all of the things we
20 have in the building, it is going to do very well in the
21 future. You have to do this stuff.

22 Q Mr. Trump, are you familiar with what technique
23 Mr. Weisselberg and Mr. McConney used to value 40 Wall Street
24 for the 2014 Statement of Financial Condition?

25 A No. But the value of the building I am familiar

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1 with, because I would say that building -- I could look at
2 buildings and tell you what they are worth.

3 Q I would like to move on to page four of this
4 document. Which lists 40 Wall Street LLC cash flow year end of
5 December 13, 2013. We go to the bottom of this year's entry,
6 we see cash flow (after debt service Capex and IT) negative 7
7 thousand 317,370.

8 A 7 million.

9 THE COURT: I think you misspoke.

10 Q 7 million. I'll restate what it says.

11 Which is, negative \$7,317,370. Mr. Trump, do you
12 know if 40 Wall Street in fact ran a deficit of more than
13 \$7.3 million for the year ending December 31, are 2013?

14 A I don't know, but it doesn't effect the value of the
15 building. The building is the building. If a developer comes
16 along they are going to know that you have to spend money to
17 make money with a building. And they are going to know, they
18 will either fix it or see that we are doing it. It doesn't
19 affect the value of a building. You are talking about small
20 money. It is not material.

21 And this was a lawsuit based on values. And then
22 when they looked at my statement and when they looked at the
23 cash they said, oh, we are going to have to go a different way,
24 how about disgorgement. Let's take all of his properties away
25 like they do in communist China. Let's take all of his

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1 properties away because, you know.

2 Except you have one problem, I have very little debt,
3 and I have a lot of cash. And I have assets that are much
4 better than you thought. So that was a little bit of a
5 problem. But in this city today, and in this country today,
6 maybe a certain Judge would do that.

7 Q Mr. Trump, I promise we will get through this
8 particular document much more quickly if you can stop at, "I
9 don't know." And you are repeating statements you have made
10 before --

11 A I don't know.

12 Q -- so I am familiar with your position.

13 If we could go to page five of this document, please.
14 It is the 40 Wall Street LLC cash flow year ending December 31,
15 2012. If we go to the bottom, it lists (cash flow after debt
16 service Capex and IT) negative \$20,990,873.

17 Do you know if 40 Wall Street, in fact, ran a deficit
18 of more than \$20.9 million for the year ending December 31,
19 2012?

20 A It could have been for one year it did. It could
21 very well have been. But it makes a lot of money. And it
22 makes a lot of money now. It depends. You have extraordinary
23 expenses during certain periods of time with a building. You
24 have to redo things. But I can just tell you, it makes -- 40
25 Wall Street obviously makes a lot of money.

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1 And by the way, the money we borrowed is all current
2 or paid off. You know, we never -- no bank lost money. With
3 all of this stuff, not one bank lost money. Not one insurance
4 company lost money.

5 And by the way, the insurance company that you say
6 lost, they are still my insurance company. It is one of the
7 biggest, most prestigious companies in the world. They don't
8 even know what you are talking about.

9 Q Mr. Trump, do you recall making misrepresentations
10 about the appraised value of 40 Wall Street?

11 A No.

12 Q Mr. Trump, you are being handed a document that has
13 been marked as Plaintiff's Exhibit 3341. At the top of this is
14 an e-mail chain between Donald Trump Jr., Amanda Miller, Rhona
15 Graff and Jeffrey Lichtenberg.

16 If we could go down to the bottom e-mail in this
17 thread actually, and we will put it up on the screen so it is
18 easier to follow.

19 There is an e-mail from someone named Kusisto from
20 the Wall Street Journal to a series of e-mail addresses
21 including DTrump@Trumporg.com; Rhona Graff; DJTJrTrumporg.com;
22 Amanda Miller and Selma Langer. Before we get into the
23 substance of the document, I want to first ask, do you know if
24 the e-mail address DTrump@Trumporg.com was ever an actual
25 e-mail address in use?

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1 A I don't know, no.

2 Q Did you ever use an e-mail address of
3 DTrump@trumporg.com?

4 A Might be, but not that I know of.

5 Q Go to the top. It states: "Thank you both again for
6 chatting with me about 40 Wall Street. We are planning on
7 running the story tomorrow, so I wanted to make sure I sent
8 over a few facts."

9 Do you recall whether or not you and Donald Trump Jr.
10 spoke to the Wall Street Journal in or around January of 2012?

11 A No, I don't.

12 Q If you look down under the headline Value, item three
13 says: "The building is one of the Trump Organizations most
14 significant commercial holdings in Manhattan. It is now valued
15 at \$600 million according to a recent appraisal."

16 Do you know who made the representation to the Wall
17 Street Journal that the 40 Wall Street had been valued at
18 \$600 million according to a recent appraisal?

19 A The year is what year?

20 Q 2012.

21 A 2012?

22 Q Yes.

23 A No. I mean, it is probably around that number. It
24 is not that far off. I don't know. I don't know. I don't
25 know if anybody had an appraisal. But I know that number is

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1 not a very far off number. If anything, it could be worth
2 more.

3 Q I am asking about the existence of an appraisal. Do
4 you know if there was, in fact, an appraisal at the Trump
5 Organization valuing the 40 Wall Street at \$600 million as of
6 January 2012?

7 A So you are saying 12 years ago do I know whether or
8 not there is an appraisal sitting around someplace for the
9 building.

10 Q I am asking if you are aware, yes.

11 A I am not aware.

12 Q I will represent to you that we have not received an
13 appraisal from the Trump Organization discovery valuing the
14 building at \$600 million as of June 2012.

15 Mr. Trump, are you the one --

16 MR. KISE: Is Mr. Wallace testifying now?

17 MR. WALLACE: I said I am representing to him
18 what we got in discovery.

19 THE COURT: Is that part of a question though?
20 I think you can't just sort of represent.

21 MR. WALLACE: That's fine.

22 Q Mr. Trump, were you the person who told the reporter
23 at the -- I'll strike that question and start over.

24 Mr. Trump --

25 THE COURT: It is withdrawn.

D. J. Trump - by Plaintiff - Direct

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1 MR. WALLACE: Withdrawn. I apologize, Your
2 Honor.

3 Q Are you the one who told the reporter at the Wall
4 Street Journal that there is a \$600 million recent appraisal
5 for 40 Wall Street?

6 MR. KISE: Objection, asked and answered.

7 A I don't know of any such appraisal.

8 THE COURT: Overruled.

9 A We are talking 12 years ago, I don't know.

10 Q If we look at the top of this e-mail chain, there is
11 an e-mail from Donald Trump Jr. It says: Okay great, there
12 shouldn't be much additional. I don't know where she got the
13 35 number in renovations, but DJT told her the 600, so he will
14 be happy if that gets printed.

15 Are you the DJT that is being referenced here?

16 A Yes.

17 Q Does this refresh your recollection about whether or
18 not you told a reporter that there had been a \$600 million
19 appraisal of 40 Wall Street in January 2012?

20 A No. But I think the building would be worth about
21 that. I don't think \$600 million for that very, very large
22 building is a lot of money.

23 THE COURT: Five minute warning.

24 MR. WALLACE: Your Honor, I ask that Plaintiff's
25 Exhibit 3341 be entered into evidence.

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1 THE COURT: Granted.

2 MR. KISE: Objection statute of limitations and
3 relevance. I am not sure what the relevance is of a news
4 article. It doesn't have anything to do with the SOFCs.

5 THE COURT: Overruled, on both grounds.

6 (Whereupon, the document referred to was deemed
7 marked for evidence as Plaintiff's Exhibit 3341 by
8 the Court.)

9 Q So Mr. Trump, why did you have the Statement of
10 Financial Condition prepared?

11 A When?

12 Q Let's say in the period -- the period of 2011 to
13 2017, why was a Statement of Financial Condition being prepared
14 by the Trump Organization?

15 A I think we -- I don't know, I think in one form or
16 another, maybe not officially, we had Statements of Financial
17 Condition. Maybe before that, I don't know. I can't answer
18 that question, we are doing a Statement of Financial Condition.

19 Q You said you were spending a lot of money to have
20 these made, why were you spending that money?

21 A I think it is a positive thing to have. Even for
22 myself, I think it is a positive thing to have.

23 Q Did you use them to obtain financing?

24 A Because of the disclaimer clause, they were almost
25 valueless.

D. J. Trump - by Plaintiff - Direct

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1 Q That's not my question. My question is whether you
2 would actually use them to obtain financing.

3 A I would give them, but I don't think anybody paid
4 much attention to them because of the disclaimer clause, and
5 because generally that's not the way to do it.

6 Again, I have been doing it for 50 years and they
7 look at the property.

8 MR. WALLACE: I am going to hand up to the
9 witnesses a document marked as Plaintiff's Exhibit 1433.
10 It is short so you can look at it on the screen.

11 Q This is a letter dated November 15, 2011. If you
12 look down at the bottom; is that your signature, Mr. Trump?

13 A Yeah, it is.

14 Q Okay. And who is Mr. Richard Byrne?

15 A He is an executive at Deutsche Bank.

16 Q Do you know if he is in the commercial real estate
17 group at Deutsche Bank?

18 A I don't know if he is now. I think he was then.

19 Q Fair enough. I am asking as of this letter. As of
20 November of 2011, was Mr. Byrne in the commercial real estate
21 group of Deutsche Bank.

22 A Yeah, it is 12 years ago. This is so crazy.

23 Q So you sent the --

24 A This is a letter I sent, yes.

25 Q And you were interested in whether or not they might

D. J. Trump - by Plaintiff - Direct

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1 finance the Doral transaction; is that right?

2 A Right.

3 Q You did not finance the transaction through the
4 commercial real estate group at Deutsche Bank, did you?

5 A I did it through some other group, yes.

6 Q Would that have been the private wealth management
7 group at Deutsche Bank?

8 A Yes, very different people.

9 MR. WALLACE: Your Honor, I move 1433 into
10 evidence.

11 MR. KISE: Statute of limitations.

12 THE COURT: Granted. It is in.

13 (Whereupon, the document referred to was deemed
14 marked for evidence as Plaintiff's Exhibit 1433 by
15 the Court.)

16 THE COURT: Two minute warning.

17 MR. WALLACE: We can stop here then.

18 THE COURT: Okay. Okay everybody, we will take
19 a break until 2:15. Have a good lunch.

20 And I will order the witness not to discuss this
21 case or his testimony with anybody during the break.

22 (Whereupon, a luncheon recess was taken at this
23 time.)

24 (The following proceedings were stenographically
25 recorded by Senior Court Reporter Michael Ranita.)

D. J. Trump - by Plaintiff - Direct (Mr. Wallace)

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1 * * * * *

2 A F T E R N O O N S E S S I O N

3 * * * * *

4 THE COURT OFFICER: All rise. Part 37 is back in
5 session. The Honorable Judge Arthur Engoron presiding. Be
6 seated and come to order.

7 THE COURT: Let's have the witness take the stand.
8 (Whereupon, the witness stepped into the witness
9 stand.)

10 THE COURT: Mr. Wallace, please resume.

11 MR. WALLACE: Thank you, your Honor.

12 Q When we broke for lunch, Mr. Trump, we were talking
13 about the loans you took out from Deutsche Bank through the
14 Private Wealth Management Group. Do you recall who you worked
15 with at Deutsche Bank in the Private Wealth Management Group?

16 A Yes.

17 Q Who was that?

18 A Rosemary Vrablic.

19 Q Do you recall that loans through the Private Wealth
20 Management Group required you to provide a guaranty on the loan is
21 that; correct?

22 A I believe so, yes.

23 MR. WALLACE: If we could get Document 426.

24 (Whereupon, the exhibit was displayed on the
25 screen.)

D. J. Trump - by Plaintiff - Direct (Mr. Wallace)

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1 THE COURT: Are we having a technical --

2 MR. KISE: Is the witness's microphone on? I
3 wasn't sure.

4 THE WITNESS: Yes.

5 THE COURT: His is on.

6 MR. KISE: Okay.

7 THE COURT: Yours are on.

8 MR. KISE: Yes.

9 (An exhibit was handed to the witness.)

10 Q Mr. Trump, the court officer is handing you a document
11 that has been marked Plaintiff's Exhibit 426. It's very
12 extensive, so I'll just walk through it on the screen.

13 (Whereupon, the exhibit was displayed on the
14 screen.)

15 Q The cover of the document is an e-mail dated
16 January 12th, 2017, between two Deutsche Bank employees. I'm
17 going to ask you about the attachments. However, if we could go
18 to page two of Document 426?

19 (Whereupon, the exhibit was displayed on the
20 screen.)

21 Q This is the term loan agreement dated as of June 11,
22 2012, by and between Trump Endeavor 12, LLC and Deutsche Bank.

23 This is the loan agreement that relates to Doral; is
24 that correct?

25 A Yes.

D. J. Trump - by Plaintiff - Direct (Mr. Wallace)

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1 MR. WALLACE: If we could go to page 80.

2 (Whereupon, the exhibit was displayed on the
3 screen.)

4 Q Is that your signature, Mr. Trump?

5 A Yes.

6 MR. WALLACE: Your Honor, I would move Plaintiff's
7 Exhibit 426 into evidence.

8 MR. KISE: Objection. Statute of limitations.

9 THE COURT: Overruled. Granted. It's in.

10 (Plaintiff's Exhibit 426 was deemed marked and
11 admitted in evidence.)

12 MR. WALLACE: If we go to the next attachment on
13 page 105, please.

14 (Whereupon, the exhibit was displayed on the
15 screen.)

16 Q This is the guaranty that is associated with the Doral
17 loan. Do you recall signing a guaranty?

18 A I believe so, yes.

19 Q Let's take a look at page 124.

20 (Whereupon, the exhibit was displayed on the
21 screen.)

22 Q Is that your signature, Mr. Trump?

23 A Yes.

24 MR. WALLACE: If we could flip back to page 113,
25 please.

D. J. Trump - by Plaintiff - Direct (Mr. Wallace)

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1 (Whereupon, the exhibit was displayed on the
2 screen.)

3 Q This is -- I'm going to direct your attention to item
4 nine on this page. It says "Certain Representations. In order
5 to induce lender to accept this guaranty and to enter into the
6 credit agreement and the transactions thereunder, guarantor
7 hereby makes the following representations and warranties as of
8 the date hereof" -- I'll -- you see that section?

9 A Yes, yeah.

10 MR. WALLACE: If we could flip down one page to
11 page 114.

12 (Whereupon, the exhibit was displayed on the
13 screen.)

14 Q Item little Roman (viii) under this says "Financial
15 Statements." It states "The guarantor has furnished to lender
16 his prior financial statements. Such prior financial statements
17 are true and correct in all material respects." And little (i),
18 "Guarantor's Statement of Financial Condition fairly presents
19 guarantor's financial condition as of June 30, 2011."

20 Do you believe that representation was true and
21 accurate?

22 A Yeah, I do.

23 MR. WALLACE: If we could flip ahead to page 116,
24 please.

25 (Whereupon, the exhibit was displayed on the

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1 screen.)

2 Q This is item ten. It states "Certain Financial
3 Covenants. During the term hereunder, guarantor shall comply
4 with the following decisional covenants:"

5 If we look down at number one, it talks about
6 "unencumbered liquid assets." It states that "The guarantor
7 shall maintain unencumbered liquid assets of not less than
8 \$50 million, with not less than \$20 million of such unencumbered
9 liquid assets to be held in accounts with lenders or lender's
10 affiliates."

11 Were you aware that this loan required you to maintain
12 unencumbered liquid assets of \$50 million?

13 A Yeah, cash.

14 Q And if we look down lower in the sentence --

15 (Whereupon, the exhibit displayed on the screen was
16 scrolled through.)

17 MR. WALLACE: Stay on that section, sorry.

18 A Actually, it was not less than 20, but it didn't make
19 any difference.

20 Q I believe it was 50 million --

21 A Correct.

22 Q -- in liquid assets, 20 million were to be on deposit
23 with Deutsche Bank?

24 A That's correct, yes.

25 Q The last sentence in this paragraph states, "For

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1 purposes hereof" -- no -- oh, at the end of the sentence we were
2 just looking at it says that "The unencumbered liquid assets
3 will be tested by lender semiannually during the renovation
4 period" -- no I'm just totally on the wrong section.

5 MR. WALLACE: I'll withdraw that question if that's
6 okay, your Honor.

7 THE COURT: That's the right word.

8 MR. WALLACE: Thank you.

9 Q Were you aware that the covenant was to be tested and
10 certified each year based on your Statement of Financial
11 Condition?

12 A Based on my cash.

13 Q Okay.

14 As represented in your Statement of Financial
15 Condition?

16 A They want to have cash. They wanted -- weren't
17 interested in anything but cash.

18 Q Do you believe you complied with this covenant?

19 A Yeah, I had a lot of cash.

20 Q If we could go down to item three. It states, "Minimum
21 Net Worth. At all times during the term hereunder, guarantor
22 shall maintain at all times a net worth of not less than
23 \$2,500,000,000. This net worth covenant shall be tested and
24 certified to on an annual basis, based upon the Statement of
25 Financial Condition delivered to lender each year hereunder

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1 pursuant to another section."

2 Were you aware that this loan required you to maintain
3 a net worth of not less than \$2.5 billion?

4 A Yes.

5 Q And were you aware that this covenant was to be tested
6 and certified each year based upon your Statement of Financial
7 Condition?

8 A Yeah. They would look at -- they would actually come
9 in and check, not so much even the financial condition. They
10 would check the cash and what kind of cash is available. And I
11 guess at that point I had -- I think I had between three and
12 \$400 million in cash, which is more than I needed for the whole
13 job.

14 Q And --

15 A That was what they were concerned with. They always
16 wanted to make -- not because of me, because of other people.
17 They always wanted to make sure the cash was substantial,
18 because in this deal I agreed to put up the money necessary
19 above what they were putting up, the cash necessary to complete
20 the job. And I did that very easily.

21 Q When you said, "I guess at that point I had, I think,
22 between three and \$400 million", are you speaking of the time of
23 the origination of this loan in 2005?

24 A I don't know. Just around that period, over the period
25 of a year or two I had -- it goes up and down depending on

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1 whether or not you are doing a development, or whether or not
2 you maybe want to pay off debt, or whatever, but I had -- I've
3 had a lot of cash for a long time.

4 Q If we go to the next item on this page, it's item 11?

5 (Whereupon, the exhibit was displayed on the
6 screen.)

7 Q It's headed Financial Reporting and Certain Other
8 Additional Covenants. It says that "The guarantor shall comply
9 with the following additional covenants: Number one, financial
10 reporting", and it lists documents that's the guarantor shall
11 deliver to the lender or permit lender to review, and item A is,
12 "Annual Statement of Financial Condition, as soon as reasonably
13 available. And in any event, within 120 days following each
14 June 30th, guarantor's Statement of Financial Condition as of
15 June 30th, 20" -- I'll stop there.

16 Were you aware that this loan required you to submit
17 your Statement of Financial Condition on an annual basis?

18 A Yes, or a guaranty of cash.

19 Q That's not in this term, is it?

20 A Maybe not, but that's all they cared about.

21 Q Do you believe that you complied with this covenant?

22 A Yes, I did.

23 MR. WALLACE: Let me get 312.

24 Q Mr. Trump, we are handing up another lengthy document,
25 but I'll show it to you on the screen again.

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1 (An exhibit was handed to the witness.)

2 Q I mostly want to verify your signature. This is a
3 document that has been marked as Plaintiff's Exhibit 312?

4 (Whereupon, the exhibit was displayed on the
5 screen.)

6 Q Mr. Trump, this is the hotel term loan agreement with
7 Deutsche Bank for 401 North Wabash Venture LLC. Do you see
8 that?

9 A Yes, I do.

10 Q Is this the loan that relates to the Trump Chicago
11 Hotel?

12 A Yes.

13 MR. WALLACE: If we could take a look at page 86 of
14 this document.

15 (Whereupon, the exhibit was displayed on the
16 screen.)

17 Q Mr. Trump, is that your signature?

18 A Yes.

19 MR. WALLACE: Your Honor, we would ask this
20 document be entered into evidence.

21 MR. KISE: Objection. Statute of limitations.

22 THE COURT: Overruled. It's in evidence.

23 (Plaintiff's Exhibit 312 was deemed marked and
24 admitted in evidence.)

25 MR. WALLACE: I'll ask defendants, are you okay

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1 with me doing this on the screen? Do you want me to
2 handout the --

3 MR. KISE: Sure.

4 MR. WALLACE: All right.

5 MR. KISE: You know I'm old school like that.

6 (An exhibit was handed to the witness.)

7 Q Mr. Trump, you've been handed a document that has been
8 marked Plaintiff's Exhibit 310.

9 (Whereupon, the exhibit was displayed on the
10 screen.)

11 Q This is the term loan agreement "Residential" with
12 Deutsche Bank for the 401 North Wabash Venture LLC. Is this the
13 loan that relates to the Trump Chicago residential development?

14 A I believe so, yes.

15 MR. WALLACE: And if we could look at page 85.

16 Q Is this your signature, Mr. Trump?

17 A Yes, it is.

18 MR. WALLACE: Your Honor, we would move Plaintiff's
19 Exhibit 310 into evidence.

20 MR. KISE: Objection. Statute of limitations.

21 THE COURT: Overruled. That's in evidence.

22 (Plaintiff's Exhibit 310 was deemed marked and
23 admitted in evidence.)

24 Q Mr. Trump, you are being handed a document that has
25 been marked as Plaintiff's Exhibit 367.

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1 (An exhibit was handed to the witness.)

2 (Whereupon, the exhibit was displayed on the
3 screen.)

4 Q The cover of this document is an e-mail dated
5 November 8th, 2012, from Jeffrey Fried at Loeb & Loeb, to a
6 number of people at the Trump Organization, including Jason
7 Greenblatt. I would like to ask you about the two attachments.

8 A Okay.

9 Q If you look at page two.

10 (Whereupon, the exhibit was displayed on the
11 screen.)

12 Q This says it's the guaranty for the residential, dated
13 November 9, 2012. Do you see that?

14 A Yes.

15 (Whereupon, the exhibit was displayed on the
16 screen.)

17 Q If you look at page 22, is that your signature
18 Mr. Trump?

19 A Yes.

20 MR. WALLACE: If we could turn to page 49 --
21 actually, 26. Let's go 26 first.

22 (Whereupon, the exhibit was displayed on the
23 screen.)

24 Q This is the guaranty for the hotel section. And if we
25 look at page 49.

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1 (Whereupon, the exhibit was displayed on the
2 screen.)

3 Q Is that your signature, Mr. Trump?

4 A Yes.

5 MR. WALLACE: Your Honor, we would move Plaintiff's
6 Exhibit 367 into evidence.

7 MR. KISE: Objection. Statute of limitations.

8 THE COURT: Overruled. It's in.

9 (Plaintiff's Exhibit 367 was deemed marked and
10 admitted in evidence.)

11 Q Mr. Trump --

12 MR. WALLACE: If we could flip back to page ten
13 here, please.

14 (Whereupon, the exhibit was displayed on the
15 screen.)

16 Q Item nine on this page states certain representations.
17 It says "In order to induce lender to accept this guaranty and
18 to enter into the credit agreement and the transactions
19 thereunder, guarantor hereby makes the following representations
20 and warranties as of the date hereof."

21 MR. WALLACE: I would like to go down to item
22 eight, Roman numeral (viii). If you could flip over.

23 (Whereupon, the exhibit was displayed on the
24 screen.)

25 Q Again, it says "Financial statements" and it states

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1 that "The guarantor has furnished to lender his prior financial
2 statements. Such prior financial statements are true and
3 correct in all material respects." And little (i), "Guarantor's
4 Statement of Financial Condition presents fairly guarantor's
5 financial condition as of June 30, 2012." Do you believe this
6 representation was true and accurate?

7 A Yes.

8 MR. WALLACE: If we could flip ahead to page 13.

9 (Whereupon, the exhibit was displayed on the
10 screen.)

11 Q Here it states, number ten, certain financial
12 covenants. "During the term hereunder, guarantor shall comply
13 with the following additional covenants. Unencumbered liquid
14 assets at all times during the term hereunder, guarantor shall
15 maintain unencumbered liquid assets of not less than \$50
16 million, of not less than \$20 million of such unencumbered
17 liquid assets to be held in accounts with lender or lender's
18 affiliates."

19 Is this the same liquidity requirement we saw earlier?

20 A Similar, yes.

21 Q And were you aware this loan required you to maintain
22 an unencumbered liquidity of \$50 million?

23 A Yes.

24 MR. KISE: Objection.

25 THE COURT: Grounds?

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1 MR. KISE: Just, I think that there is some,
2 because of the way the question is being asked, potential to
3 mischaracterize the evidence, because the question is, this
4 loan required you to maintain, but -- and that's what I've
5 been looking for. That's why I wanted the hard copy, but I
6 haven't looked at it.

7 But as we heard testimony already in the record,
8 there's a stepdown percentage here, and at some point the
9 guaranty goes away. So I just want to make clear that when
10 he says "the loan required you to maintain it", I think that
11 may mischaracterize the actual evidence. The loan requires
12 it only to a certain point.

13 MR. WALLACE: This is instruction to the witness.
14 It's an improper objection.

15 MR. KISE: It's not an instruction to the witness.

16 MR. WALLACE: I'm not disputing the loan. The
17 agreements say what they want. If they want to ask them
18 about other aspects of this. So I'll say at the time you
19 signed this, were you aware of this requirement in the
20 guaranty.

21 A Yes.

22 Q And you are aware that this covenant was to be tested
23 and certified each year based on your Statement of Financial
24 Condition; is that correct?

25 A I think so. Again, they were focused really only on

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1 the cash.

2 Q And do you believe that you complied with this
3 covenant?

4 A Yes, I do.

5 MR. WALLACE: If we could flip ahead to page 14.

6 (Whereupon, the exhibit was displayed on the
7 screen.)

8 Q Item three, "Minimum Net Worth. At all times during
9 the term hereunder, guarantor shall maintain, at all times, a
10 net worth of not less than \$2,500,000,000. This net worth
11 covenant shall be tested and certified on an annual basis as of
12 each June 30th within 120 days following each June 30th, based
13 upon the Statement of Financial Condition delivered to lender."

14 Were you aware that this loan required you to maintain
15 a net worth of not less than \$2.5 billion?

16 A Yes.

17 MR. KISE: Objection. Same objection.

18 THE COURT: Overruled.

19 Q Were you aware this covenant was to be tested and
20 certified each year based upon your Statement of Financial
21 Condition?

22 MR. KISE: Objection. Same objection.

23 THE COURT: Overruled.

24 (Whereupon, there is a brief pause in the
25 testimony.)

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1 Q The question was, Mr. Trump, you were aware?

2 A I was waiting for the Judge.

3 Q He overruled it.

4 A Sorry.

5 THE COURT: I'll try to speak louder.

6 THE WITNESS: Sorry.

7 Q I'll restate the question.

8 Mr. Trump, you were aware that this covenant was to be
9 tested and certified each year based upon your Statement of
10 Financial Condition?

11 A Yes, which I could've done without a condition. I
12 could've just shown them a couple of assets and they would have
13 been very satisfied with that, if they wanted. They were
14 focused on cash. I could have given them just a few assets
15 which were worth much more than \$2.5 billion.

16 Q But the terms of the contract required you to actually
17 submit the Statement of Financial Condition, not some other
18 information?

19 MR. KISE: Objection.

20 A I don't know, but I think possibly.

21 MR. KISE: It mischaracterizes the evidence.

22 THE COURT: Mr. Wallace, are you mischaracterizing
23 the evidence?

24 MR. WALLACE: I don't think so, your Honor.

25 MR. KISE: Again, he is speaking of entire term of

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1 the loan as opposed to when the stepdown goes in. It
2 doesn't characterize the evidence properly.

3 During the term that this provision is in force,
4 then yes. But if the stepdown, as we've heard testimony on
5 the Chicago loan, the guaranty went away.

6 MR. WALLACE: The guaranty --

7 MR. KISE: He was here for the testimony. I'm not
8 telling the witness anything he doesn't already know.

9 A This loan was paid off in full with no default -- with
10 no problem, and the bank was thrilled. They got all their money
11 back. There was no victim. There was no anything. This loan
12 was paid off in full. It was a very successful loan as opposed
13 to other people that don't do successful loans. So the bank was
14 thrilled.

15 Again, the loan was paid off in full. You are talking
16 about a loan that was paid off in full. There was no
17 negotiation. If interest was due on a Saturday, I paid the
18 interest on a Friday, and the bank liked me very much. But this
19 loan is long since gone.

20 Q "Long since gone"? When did you pay off this loan?

21 A I don't know. Very recently, but I paid off part of it
22 a long time ago, and I think over the last fairly short period
23 of time -- the loan is paid off.

24 Q Mr. Trump, are you aware --

25 A I will check that as exactly, but I think it is paid

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1 off or very close to being paid off.

2 Q I tell you this is why if we could just go through the
3 questions I have. I was going to get to that at the end.

4 I'll ask you, are you aware that the Trump Chicago loan
5 was paid off last week?

6 A I heard it was. I don't know about last week, but I
7 know it was paid off recently; on time, on schedule. In fact,
8 I'll go a step further. I think it was paid off ahead of
9 schedule. You could tell me. I think it was paid off ahead of
10 schedule. The bank was thrilled.

11 Q And why was it paid off ahead of schedule?

12 A Because we have a lot of cash.

13 Q Who made the decision to pay it off ahead of schedule?

14 A My son recommended it and I said do what you want to
15 do. We had time left. We didn't have to pay it off. We had
16 time left. I said, the interest rate is higher than what you
17 get if you have your money in the bank, so.

18 Q Which son?

19 A Eric.

20 Q Eric. Okay.

21 The question I asked before we had the interruption, I
22 believe, was the contract actually refers to your Statement of
23 Financial Condition. You did not have an agreement with
24 Deutsche Bank where you could establish your net worth by using
25 some other set of documents, did you?

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1 A I don't know. I just -- I don't remember much. I'm
2 sure if I didn't want to put in my financial statement I could
3 have worked out a cash transaction instead. In other words,
4 guaranteed to keep a certain amount of cash in. But they knew I
5 had a financial statement, so they probably just put it down.
6 They knew I had a financial statement so they added it. I guess
7 it's in number 11, or something, financial.

8 Q So is it your testimony that you made a decision to use
9 the Statement of Financial Condition instead of a cash,
10 additional cash requirement?

11 A No, I think Deutsche Bank said, "Why don't you throw it
12 in?" I'll throw it in. It didn't mean very much to them. What
13 meant much, a lot to them, was that I had a lot of cash. That's
14 what meant. And they were paid off, as I said, in full. There
15 was no victim. There was no loss of money. They made a lot of
16 money. And everyone is trying to figure out, why are you doing
17 this for a bank that's very rich, very big, and had the best
18 lawyers in the world. Nobody understands it. Well, I
19 understand it. It's called politics.

20 Q Mr. Trump, do you believe you complied with this
21 covenant we are looking at on the screen right now?

22 A Yes.

23 Q If we go to the next paragraph, that's paragraph number
24 11. "Financial reporting and certain other additional
25 covenants." It says that "Until the earlier satisfaction in

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1 full of all guaranteed obligations and expenses are required
2 under section 25 hereunder, or why, this guaranty is earlier
3 terminated by lender or otherwise by its terms. Guarantor shall
4 comply with the following additional covenant", item one,
5 "financial reporting." (i) (A) states, "Annual Statement of
6 Financial Condition. As soon as reasonably available and in any
7 event within 120 days following each June 30th, guarantor's
8 Statement of Financial Condition as of June 30th."

9 Do you understand that this guaranty agreement required
10 you to provide an annual Statement of Financial Condition?

11 A Well, I had it, so minds well give it to them.

12 Q Is that a yes?

13 A Yeah, I had it.

14 Q Do you believe --

15 A If I didn't have it, I wouldn't have had it put in this
16 loan agreement.

17 Q Do you believe you complied with this covenant?

18 A Yeah.

19 MR. WALLACE: We are going to hand up another
20 exhibit.

21 (An exhibit was handed to the witness.)

22 Q Mr. Trump, this is the document that's been marked as
23 Plaintiff's Exhibit 307. It's an amended and restated term loan
24 agreement for 401 North Wabash Venture LLC as of June 2nd, 2014.

25 MR. WALLACE: If we could turn to page 96.

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1 (Whereupon, the exhibit was displayed on the
2 screen.)

3 Q Mr. Trump, is that your signature?

4 A Yes.

5 MR. WALLACE: Your Honor, we would ask this be
6 moved into evidence.

7 MR. KISE: Objection. Statute of limitations.

8 THE COURT: Overruled. It's in evidence.

9 (Plaintiff's Exhibit 307 was deemed marked and
10 admitted in evidence.)

11 Q We could put that one aside. If we could get
12 Plaintiff's Exhibit 1844. This is already in evidence. We have
13 a courtesy copy for the witness.

14 (The exhibit was handed to the witness.)

15 (Whereupon, the exhibit was displayed on the
16 screen.)

17 Q Mr. Trump, this a document entitled "Amended and
18 Restated Guaranty", dated June 2nd, 2014.

19 MR. WALLACE: If we could just go to page 27,
20 please.

21 (Whereupon, the exhibit was displayed on the
22 screen.)

23 Q Is that your signature, Mr. Trump?

24 A Yes.

25 MR. WALLACE: If we could go to page 13, please.

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1 (Whereupon, the exhibit was displayed on the
2 screen.)

3 Q Again, item nine, "Certain Representations." It states
4 that "In order to induce the lender to make the loan", there are
5 certain reps.

6 MR. WALLACE: If we go to item eight, it's on page
7 14.

8 (Whereupon, the exhibit was displayed on the
9 screen.)

10 Q Again, the financial statements it says, "The guarantor
11 has furnished to lender his prior financial statements. Such
12 prior financial statements are true and correct in all material
13 respects." And little (i) "Guarantor's Statement of Financial
14 Condition presents fairly guarantor's financial condition as of
15 June 30, 2013."

16 Do you believe that that representation was true and
17 accurate?

18 A Yes. And the loan, I believe was paid off.

19 Q Okay.

20 MR. WALLACE: If we could go to page 17, please.

21 (Whereupon, the exhibit was displayed on the
22 screen.)

23 Q There's, again, a listing for certain financial
24 covenants. Again, "Unencumbered liquid assets shall be
25 maintained if not less than \$50 million."

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1 Were you aware that there was a minimum net worth
2 requirement contained in this restated loan --

3 A I think so, yes.

4 Q Okay. And I will represent to you, if we go down a
5 little further.

6 (Whereupon, the exhibit was displayed on the
7 screen.)

8 Q It also contains -- the next page.

9 (Whereupon, the exhibit displayed was scrolled on
10 the screen.)

11 Q "A minimum net worth requirement of \$2.5 billion."

12 Were you aware that there is a net worth guarantee in
13 this restated guaranty?

14 A I think so. I'm not sure, but I think so. Obviously
15 there was.

16 Q Are you aware that those amounts would be tested and
17 certified by your annual Statement of Financial Condition?

18 A No. But sounds right to me.

19 Q Okay. Do you believe you complied with those
20 covenants?

21 A Yeah, I paid off the loan.

22 Q If we look down item 11, little (i), the 11 is
23 financial reporting and certain other additional covenants.
24 Little (i) says, "Guarantor covenants and agrees that he shall
25 keep and maintain complete and accurate books and records."

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1 It then says, item (A) "Annual Statement of Financial
2 Condition, as soon as reasonably available. And in any event
3 within 120 days following each June 30th, guarantor's Statement
4 of Financial Condition as of June 30th."

5 The first question, were you aware that you had to
6 maintain complete and accurate books and records pursuant to
7 this agreement?

8 A I don't know specifically, but it sounds right to me.

9 Q Do you believe you complied with that requirement?

10 A Yes.

11 Q Were you aware that under this agreement you needed to
12 submit an annual Statement of Financial Condition?

13 A Not really, but it would be okay with me.

14 Q So you don't know if this was accurate?

15 A I wasn't sure. I mean, you know, I'm seeing it here,
16 so obviously the answer to that is, yes.

17 Q Okay.

18 A No problem.

19 (An exhibit was handed to the witness.)

20 MR. WALLACE: I would like to assure everyone we
21 are making good time.

22 Q Mr. Trump, you've been handed a document that has been
23 marked Plaintiff's Exhibit 309.

24 (Whereupon, the exhibit was displayed on the
25 screen.)

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1 Q The cover of the document indicates this is a loan
2 agreement dated as of August 12th, 2014, with Trump Old Post
3 Office, LLC and Deutsche Bank.

4 Mr. Trump, is this the loan that relates to the Old
5 Post Office in Washington, D.C?

6 A Yes.

7 MR. WALLACE: If we could flip ahead to 108.

8 Q Mr. Trump, is that your signature?

9 A Yes.

10 MR. WALLACE: We ask that Plaintiff's Exhibit 309
11 be moved into evidence.

12 MR. KISE: Objection. Statute of limitations.

13 THE COURT: Overruled. It's in.

14 (Plaintiff's Exhibit 309 was deemed marked and
15 admitted in evidence.)

16 Q Mr. Trump, I'm going to hand you another document.

17 (An exhibit was handed to the witness.)

18 Q This document has been marked as Plaintiff's
19 Exhibit 305.

20 (Whereupon, the exhibit was displayed on the
21 screen.)

22 Q This is the guaranty for the OPO loan dated
23 August 12th, 2014.

24 MR. WALLACE: If we could flip ahead to page 26.

25 Q Is that your signature, Mr. Trump?

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1 A Yes.

2 MR. WALLACE: Your Honor, we move Plaintiff's
3 Exhibit 305 into evidence.

4 MR. KISE: Objection. Statute of limitations.

5 THE COURT: Overruled. It's in.

6 (Plaintiff's Exhibit 305 was deemed marked and
7 admitted in evidence.)

8 MR. WALLACE: If we could go back to page 12,
9 please.

10 (Whereupon, the exhibit was displayed on the
11 screen.)

12 Q Once again, we see item nine, "Certain
13 Representations." It states that "In order to induce lender to
14 accept this guaranty and to enter into the loan agreement and
15 the transactions thereunder, guarantor hereby makes the
16 following representations and warranties as of the date hereof."

17 MR. WALLACE: If we flip ahead two pages to page
18 14.

19 (Whereupon, the exhibit was displayed on the
20 screen.)

21 Q Again, item nine, "Financial Statements", it states
22 "The guarantor has furnished to lender his prior financial
23 statements. Such prior financial statements are true and
24 correct in all material respects." And little (i) "Guarantor's
25 Statement of Financial Condition presents fairly guarantor's

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1 financial condition as of June 30, 2013."

2 Do you believe this representation is true and
3 accurate?

4 A Yes, I think so.

5 MR. KISE: Which one? Both of them? The financial
6 -- you asked that question -- I think you skipped from page
7 -- just to make sure the record is clear, you went from page
8 12, then over to page 14 without asking a question.

9 MR. WALLACE: I'm asking him about the passage I
10 just read.

11 MR. KISE: Just that provision, not the other? Not
12 that the answer would be different. I just want to make
13 sure the record is clear.

14 THE COURT: All right. I think it's clear, now,
15 you are asking him about little (ix).

16 MR. WALLACE: I thought I was clear the first time.
17 We could keep moving. Let's turn to page 16?

18 (Whereupon, the exhibit was displayed on the
19 screen.)

20 Q It's item ten, little Roman (i) "Unencumbered liquid
21 assets."

22 Mr. Trump, were you aware that this loan required you
23 to maintain unencumbered liquid assets of \$50 million?

24 A Yes.

25 Q Were you aware that this covenant is to be tested and

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1 certified each year based upon your Statement of Financial
2 Condition?

3 A I think so, yes.

4 Q Do you believe you complied with this covenant?

5 A Yes, absolutely.

6 MR. WALLACE: If we could move on to page 17.

7 Q Little Roman (iii), "Minimum net worth." Again, it
8 says, "At all times during the term hereunder, guarantor shall
9 maintain a net worth of not less than \$2,500,000,000. This net
10 worth covenant shall be tested and certified on an annual basis
11 as of each June 30th, within 120 days following each June 30th,
12 based upon the Statement of Financial Condition delivered to
13 lender during each year hereunder pursuant to section 11 (i) (A)
14 hereof."

15 Were you aware that this loan required you to maintain
16 a net worth not less than 2.5 billion?

17 A Yes.

18 Q Were you aware that this covenant was to be tested and
19 certified each year based upon your Statement of Financial
20 Condition?

21 A No, but it would look like it would be. It's fine.

22 Q It looks like it is based on --

23 A Yeah.

24 Q -- the contract language you just read?

25 A Yes.

D. J. Trump - by Plaintiff - Direct (Mr. Wallace)

3614

1 Q Do you believe you complied with this covenant?

2 A Oh, yes, absolutely.

3 Q Let's look at the next paragraph.

4 A Again, the net worth of me was far greater than the
5 financial statements, far greater. So I don't know what you are
6 getting at, but keep going.

7 Q When you say "far greater", are you referring to the
8 brand value that you have?

9 A I'm talking about -- no, but we can add that, too. If
10 you add the brand value, which I didn't even put down on my
11 financial statements, then you are talking about a tremendous
12 difference, tremendous difference. But, no, just even without
13 it. But with it, and it should be a part of it -- brand value
14 should be a part of it. It's -- in either event, it's more.

15 Q Just --

16 A The brand value is a very substantial value.

17 Q I just want --

18 A And I didn't even include that in the financial
19 statements, but I could've if I wanted to. If I was looking to
20 build up a financial statement, I would have put it in, but I
21 wasn't looking to do that.

22 Q I'm just trying to make sure I understand that. Your
23 position is that the assets listed on your Statement of
24 Financial Condition were worth more than the prices that were on
25 those statements; is that what you are saying?

3615

1 A As a -- yes. As a total, some are much more, some may
2 have made a mistake and it was corrected. Like on the apartment
3 if they made a mistake, and of course this is way before that,
4 because you are going back into ancient history. I don't know
5 how it doesn't involve a five-year statute of limitations. It
6 seems ridiculous to me. It seems extremely unfair to me, but
7 that's okay; that's the way it's been working in this one.

8 I will tell you that the numbers are far greater than
9 the two and a half billion dollars. And if I add brand value,
10 then it's different from a different -- but in any event, the
11 numbers of my net worth are substantially more than the numbers
12 reflected on the financial statements, therefore, you have no
13 case.

14 Q Um --

15 A In addition to that -- no. In addition to that, in
16 addition to that, you have a clause that goes on forever, I
17 think a page and a half, and all throughout, and that clause, as
18 we've discussed quite a bit, tells the lender of this money to
19 go out and do your own work, do your own statement, do
20 everything your own. Go out and hire your own analysts, and all
21 of the things that, you know, that you didn't read today. You
22 read one part of it, but you didn't read the part that
23 supersedes everything else. But it says, "Do your own due
24 diligence." And I think a lot of people have figured that out
25 today.

D. J. Trump - by Plaintiff - Direct(Wallace)

3616

1 Q Well, that clause isn't the only thing goes on
2 forever.

3 Next paragraph, number 11, Financial Reporting and
4 Certain Other Additional Covenants. It says: The guarantor
5 shall comply with the following additional covenants.
6 Financial reporting.

7 It says: Guarantor covenants and agrees he shall
8 keep and maintain complete and accurate books and records.

9 Did you comply with this covenant?

10 A I assume so. I mean, the bank was very happy. They
11 got their money back. They were paid off. I assume so.

12 Did you get any questions from the bank? I don't
13 think so.

14 Q Do you know if --

15 A The bank was extremely happy.

16 Q This is from August 12, 2014. Do you know whether or
17 not you maintained complete and accurate books and records of
18 the Trump Organization from August 2014 forward?

19 A I hope so. I didn't keep them myself. I hope so.
20 But again, the bank was paid off. There was no victim.

21 Q When you say, "I hope so," you don't know one way or
22 the other?

23 A I assume so. Who knows. Do I know? I have people.
24 I pay them a lot of money. They are accountants. I assume
25 they keep good records. The bank can't be upset and the bank

D. J. Trump - by Plaintiff - Direct(Wallace)

3617

1 isn't upset, because they got their money back in full. No
2 victim.

3 Q Who was responsible for making sure that the Trump
4 Organization maintained complete and accurate books and
5 records?

6 A Primarily Mr. Weisselberg and Jeff McConney.

7 Q Item A underneath this says --

8 A And the accounting firm. And the accounting firm.

9 Q I want to make sure you are finished.

10 A I paid a lot of money to.

11 Q Item A underneath the financial reporting states:
12 Annual Statement of Financial Condition. As soon as reasonably
13 available, and in any event within 120 days following each
14 June 30, guarantor's Statement of Financial Condition as of
15 June 30.

16 A Yes.

17 Q Do you believe you complied with this covenant?

18 A Yes.

19 Q Okay. Mr. Trump, you are being handed a document
20 marked as Plaintiff's Exhibit 394. This is a certification in
21 your name dated November 11, 2014. And if we flip over to the
22 second page is that -- is that your signature, Mr. Trump?

23 A Yes.

24 MR. WALLACE: Your Honor, we move Plaintiff's
25 Exhibit 394 into evidence.

D. J. Trump - by Plaintiff - Direct(Wallace)

3618

1 MR. KISE: Objection, statute of limitations.

2 THE COURT: Overruled, it is in.

3 (Whereupon, the document referred to was deemed
4 marked for evidence as Plaintiff's Exhibit 394 by the
5 Court.)

6 Q Mr. Trump, if you look on page one, it says: The
7 undersigned guarantor hereby certifies to lender as of the date
8 hereof that as of June 30, 2014 (the reporting date) One.
9 Financial Information. And it lists attached hereto is
10 guarantor's Statement of Financial Condition as of June 30,
11 2014.

12 I am going then if you look at the bottom underneath
13 the section of financial statements it says: "The foregoing
14 presents fairly in all material respects the financial
15 condition of guarantor at the period presented."

16 So by this document you are certifying that your
17 Statement of Financial Condition as of June 30, 2014 presents
18 your financial condition fairly in all material respects. Is
19 that correct?

20 A No.

21 Q What are you -- so what are you certifying here?

22 A Because we didn't put the brand value down, and
23 that's a bigger number than any of these numbers, and they are
24 very big. But I didn't put the brand value down, so, you know,
25 so I don't know. I think that the statement could have put it

D. J. Trump - by Plaintiff - Direct(Wallace)

3619

1 down, didn't put it down. But I don't know if you consider
2 that to be a material respect. It would increase the number
3 beyond even what it is.

4 Q So is it your position that this certification is not
5 accurate?

6 A No, I think it is accurate as it is. But the only
7 thing is that we didn't include brand value. And you could
8 include it or you don't have to include it.

9 Q Setting aside the brand value issue, are you
10 certifying that the June 30, 2014 Statement of Financial
11 Condition fairly presented in all material respects your
12 financial condition as of that date?

13 A Yes.

14 Q But the 2014 statements contained an inflated value
15 for your triplex apartment; is that correct?

16 A Yeah, they -- that's right. If this is the one where
17 that's started. We reduced that substantially later.

18 Q And the statement contained an inflated valuation for
19 Seven Springs; is that correct?

20 A Seven -- I don't know. I don't know if this is the
21 one. If this is the statement. Is that the statement that we
22 discussed before?

23 Q Yes, that has Seven Springs.

24 A Then we had those and we made adjustments to them.

25 Again, compared to the overall worth or net worth,

D. J. Trump - by Plaintiff - Direct(Wallace)

3620

1 they were not material. But certainly I could say that we have
2 asked -- I asked to have them reduced and they were reduced.

3 Q You were required to submit the certificate under the
4 terms of the Doral loan agreement; is that correct?

5 A I guess so. I would think so.

6 Q And you knew that Deutsche Bank would rely on this
7 certification to determine compliance with the loan companies;
8 is that correct?

9 A Well, they have that in there, yeah. I could have
10 negotiated it out. But it didn't matter to me because we had a
11 financial statement, so I figured why not put it in.

12 Q You intended to meet your obligations under the Doral
13 loan agreement by submitting this document; is that correct?

14 A Yeah.

15 Q Mr. Trump, we are going to hand you a new document.

16 (Handing)

17 Q This document has been marked as Plaintiff's Exhibit
18 503.

19 Mr. Trump, this is an internal Deutsche Bank e-mail
20 dated May 10, 2016, but I would like to ask you about the
21 attachments. The attachment is a certification in your name
22 dated May 10, 2016.

23 And if we could flip ahead to the third page of this
24 document, is that your signature, Mr. Trump?

25 A Yes.

D. J. Trump - by Plaintiff - Direct(Wallace)

3621

1 MR. WALLACE: Your Honor, we move Plaintiff's
2 Exhibit 503 into evidence.

3 THE COURT: Granted, it is in.

4 (Whereupon, the document referred to was deemed
5 marked for evidence as Plaintiff's Exhibit 503 by the
6 Court.)

7 MR. WALLACE: I am sorry, I didn't realize there
8 was no objection. Is this in?

9 THE COURT: Yes.

10 MR. WALLACE: I apologize everyone.

11 Q If we look back at the first page of this document,
12 again, under the heading Financial Information. Mr. Trump, are
13 you certifying that your Statement of Financial Condition as of
14 June 30, 2015 presents your financial condition fairly in all
15 material respects?

16 A If this is the one we discussed before, then we told
17 them a couple of the assets you could reduce.

18 Q This is actually a different one.

19 A A different one? Then it would be fine, yeah.

20 Q Do you recall whether or not the 2015 statement had
21 corrected the valuation for your triplex apartment?

22 A I don't know. I don't know.

23 Q Do you recall whether the 2015 statement had
24 corrected the value for Seven Springs?

25 A I don't know. But it really wasn't material compared

D. J. Trump - by Plaintiff - Direct(Wallace)

3622

1 to the overall net worth. It was a rather -- it was a small
2 amount of money in comparison to the overall net worth.

3 Q Okay.

4 A I don't think it would be considered material at all.

5 Q If we could go to the top page of the document again,
6 I just want to highlight one thing for you.

7 Do you see the borrowers listed here are Trump
8 Endeavor 12 LLC; 401 North Wabash Venture LLC; and Trump Old
9 Post Office LLC. So you were required to submit this
10 certificate under the terms of all three loan agreements; is
11 that correct?

12 A I guess, yeah.

13 Q And you knew that Deutsche Bank would rely on this
14 certification to determine compliance with the covenants of
15 those loans; is that correct?

16 A No, I don't know. I don't know what they would have
17 done if I had a statement or not, but I had no problem because
18 we had a statement.

19 Q If Deutsche Bank wasn't requiring this to be
20 submitted, why would you have submitted this?

21 A No, I would have negotiated that out. They would
22 have taken cash instead.

23 Q But you did, in fact, have an obligation under those
24 loan agreements to submit this certification?

25 A Yeah, I have no problem with that.

D. J. Trump - by Plaintiff - Direct(Wallace)

3623

1 Q And you intended for the bank to rely upon this
2 certification to meet those loan requirements; isn't that
3 right?

4 A Well, it is what it says. If I didn't have the
5 statement I would have done something else. I would have given
6 them cash instead, or not borrowed the money.

7 Q Mr. Trump, we have now seen multiple loan agreements
8 requiring the submission of your Statement of Financial
9 Condition. We have seen multiple certifications that the
10 Statements of Financial Condition were accurate. Is it still
11 your position that the bank would not have considered this to
12 be an important document?

13 A I could have done different things other than a
14 financial statement.

15 Q I am actually asking under the loan agreements you
16 actually signed though, was this an important document?

17 A Yeah, because we had the document done, so we used
18 it.

19 Q Mr. Trump, we talked about this a little, not in
20 response to a question, but you have now paid off all three
21 loans to Deutsche Bank; is that correct?

22 A I think so.

23 Q You financed the Doral loan with an Axos Bank; is
24 that correct?

25 A I believe so, yes.

D. J. Trump - by Plaintiff - Direct(Wallace)

3624

1 Q And you paid off the Chicago loan recently, maybe
2 last week?

3 A With cash, yes.

4 Q And you paid off the OPO loan and you sold that
5 hotel; is that correct?

6 A Yes, we paid that off with cash.

7 Q Mr. Trump, you are being handed a document that has
8 been marked Plaintiff's Exhibit 1373. This is an e-mail from
9 Jeff McConney to Elizabeth Pettijohn and Whitley Penn with the
10 subject line: OPO proceeds spreadsheet.

11 Whitley Penn are the accountants who replaced Mazars;
12 is that correct?

13 A Yes.

14 MR. WALLACE: Your Honor, we would move this
15 document into evidence.

16 MR. KISE: Objection, relevance.

17 THE COURT: What's the relevance?

18 MR. WALLACE: The relevance it has the
19 distribution amounts for the OPO loan.

20 MR. KISE: What is the relevance of that?

21 MR. WALLACE: I think it is subject to
22 disgorgement potentially.

23 THE COURT: Overruled. It is in.

24 (Whereupon, the document referred to was deemed
25 marked for evidence as Plaintiff's Exhibit 1373 by

D. J. Trump - by Plaintiff - Direct(Wallace)

3625

1 the Court.)

2 Q Mr. Trump, if you look down at the bottom half of the
3 first page, there is an e-mail from Patrick Birney to Donna
4 Kidder and others that says: Mark, Mike, Donna, see attached
5 updated spreadsheet. Assuming we get to the \$139,404,324 from
6 the title company today, and combine it with the \$3,823 of
7 interest on the deposits that is already in the bank account,
8 the amount of the distributions should be in the amounts below
9 (listed in row 31 of the second tab).

10 MR. WALLACE: Actually, could we pull up the
11 other attachment to this, just to -- it is 1373 native.

12 I apologize.

13 Q I just wanted to state for the record, Mr. Trump,
14 this is the attachment that Mr. Birney is referring to. It is
15 a native.

16 MR. WALLACE: And just to clarify for the
17 record, we have moved in both the cover e-mail and the
18 native attachment. I just want to make sure that is
19 clear. I want to see if there is any further objection
20 from the defense.

21 THE COURT: They are both in.

22 MR. WALLACE: Thank you, Your Honor.

23 (Whereupon, the document referred to was deemed
24 marked for evidence as Plaintiff's Exhibit 1373
25 Native by the Court.)

D. J. Trump - by Plaintiff - Direct(Wallace)

3626

1 Q If we can go back to the cover e-mail. The amounts
2 listed are: DJT \$126,828,600.

3 DJT Jr. \$4,013,024.

4 IT \$4,013,024.

5 ET \$4,013,024.

6 Member Corp. \$540,475.

7 Total \$139,408,146.

8 Mr. Trump, do you know if \$126 million represents
9 your full profit on the OPO transaction?

10 A No, I don't know that.

11 Q Do you know how much profit you did earn on the OPO
12 transaction?

13 A No. Something, I don't know. Something above that I
14 think. But around. I would have to find out. I would have to
15 go check.

16 Q So you think above but around this number?

17 A Above but around that number, yes.

18 Q And do you know if one -- the \$139 million listed
19 here reflects the full profits of all of the participants in
20 the OPO sale?

21 A I don't know exactly, but it would be something
22 perhaps above that number.

23 Q Again, but around that number?

24 A Correct, yes.

25 Q Mr. Trump, I think we have covered some of this but I

D. J. Trump - by Plaintiff - Direct(Wallace)

3627

1 would like to go through it one more time. Do you believe any
2 of the Statements of Financial Condition that have been
3 prepared in your name inflated your net worth?

4 A So --

5 MS. HABBA: I am sorry, I couldn't hear you.

6 A Again, we have a very complicated, many transaction,
7 many, many, many-pages document. The overall number is
8 somewhere much higher. And some are a little bit lower or not
9 materially lower. But the overall net is that we are much,
10 much higher, much, much higher than the document -- the
11 document submitted.

12 When you add the net worth you are talking about
13 many, many millions of dollars more than that. And we didn't
14 do that. If we wanted to build up a net worth all I would have
15 had to do is add that, because that number would be very
16 substantial, very, very substantial. So I don't believe
17 that --

18 I think this case is a disgrace. I think it is a
19 disgrace for people looking to move their business into New
20 York or out of New York. Many people are leaving New York
21 because of exactly this kind of a thing. We had banks that got
22 their money back. We had insurance companies that got their
23 money back. We had no complaints. The only complainant is
24 you. And with everybody being killed on the streets and
25 murdered on the streets of New York and you have an Attorney

D. J. Trump - by Plaintiff - Direct(Wallace)

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1 General sitting here all day long watching every little move, I
2 think it is a disgrace. And people are leaving New York. And
3 they are fleeing the City. And it is a shame what is going on.

4 And we sit here all day, and it is election
5 interference because you want to keep me in this courthouse all
6 day long, and let's keep going.

7 And we have a very hostile Judge, extremely hostile
8 Judge, and it is sad.

9 I don't have a jury and I want a jury. And I don't
10 have a jury because she sued me under a statute that doesn't
11 allow a jury, and I think it is a disgrace. And other people
12 are saying the same thing. Legal scholars are saying it is the
13 most unfair witch hunt they have ever seen.

14 And you should be ashamed of yourself.

15 Go ahead.

16 Q I promise you, Mr. Trump, I am trying to get you off
17 the stand.

18 A That's great. I am sure you are.

19 THE COURT: Mr. Wallace, this morning I said I
20 am following your lead in terms of how much you want to
21 put up with this stuff.

22 MR. WALLACE: I promise you, Your Honor, we are
23 very close to the end.

24 Q And we almost got there, Mr. Trump.

25 But I believe your position is that you do not

D. J. Trump - by Plaintiff - Direct(Wallace)

3629

1 believe that any of the Statements of Financial Condition
2 inflated your net worth; is that right?

3 A I think that the Statements of Financial Condition
4 were very good, were actually somewhat conservative and in some
5 cases very conservative.

6 And they are totally protected, and so am I, and so
7 is everything in there, by a disclaimer clause which tells
8 lenders and insurance companies or anybody that saw it, to go
9 out and do your own due diligence and do your own analysis. It
10 says: Do not rely on this statement.

11 Q Do you believe that Mr. Weisselberg and Mr. McConney
12 did a good job preparing your Statements of Financial
13 Condition?

14 A I mean, I don't know, but I think so.

15 Q Did Mr. Weisselberg and Mr. McConney prepare the
16 Statements of Financial Condition in a manner that you believe
17 is appropriate?

18 A I hope so.

19 Q Did Mr. Weisselberg and Mr --

20 A Don't forget, the bank -- the banks reject them.
21 These banks are not just people that sit back and take paper
22 and put it into a file. When a bank gets a statement they go
23 out and check them very carefully. They are very
24 sophisticated. They have great lawyers, very expensive lawyers
25 working for them. The best law firms in the country. So this

D. J. Trump - by Plaintiff - Direct(Wallace)

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1 isn't just like, oh, here is a paper. The bank would check the
2 work that these people did.

3 Q So the banks would review the Statements of Financial
4 Condition?

5 A Absolutely. Absolutely.

6 Q Did Mr. Weisselberg and Mr. McConney prepare the
7 Statements of Financial Condition in a manner that you agreed
8 with?

9 A I guess so. I mean, I would have to say so. The
10 banks seemed to be happy, and Mazars seemed to be happy.

11 I had an, again, very expensive accounting firm.
12 They seemed to be happy. They didn't complain.

13 And if they did complain, they wouldn't have done the
14 statement. They did come to me on one or two occasions and
15 said they didn't like something or didn't like this or that,
16 and it was corrected before the statement was done. And if
17 they didn't like something they wouldn't have given us a
18 statement. They gave us a statement.

19 THE COURT: I am going to date myself. But I
20 feel like it is a broken record. There are old vinyl
21 records that go around and around.

22 THE WITNESS: Because he doesn't understand it,
23 Your Honor, maybe. Because he keeps asking me the same
24 questions, Your Honor, the same questions over and over
25 again.

D. J. Trump - by Plaintiff - Direct(Wallace)

3631

1 Q Let me ask you a new question then.

2 MR. KISE: He has asked the question about 50
3 different times. We sat here for almost an hour going
4 through what appears to be a breach of contract case,
5 going through provisions of documents that the bank and
6 only the bank are entitled to enforce. And they didn't.

7 And so now when the witness has a great answer,
8 it is a problem. So Mr. Wallace just keeps asking the
9 same question, he is going to get the same answer.

10 THE COURT: Only the banks are entitled to
11 enforce?

12 MR. KISE: They are. That's what a contract is
13 all about. This is a contract, and a breach of contract
14 is where one party to the contract gets to decide if a
15 term was breached.

16 For example, the net worth covenant. If the
17 bank determined -- it doesn't say in here that anybody
18 else other than the bank gets to determine whether that
19 covenant was breached.

20 THE COURT: It doesn't have to.

21 MR. KISE: If they didn't determine it was
22 breached and you heard testimony from Mr. Haigh that
23 indicates that, then yes, that's their right to do it.

24 We don't get to second guess them. The Attorney
25 General doesn't get to come in and stand in the shoes of a

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1 contractual party that isn't claiming a breach. There is
2 no provision in the law for that.

3 But if Mr. Wallace wants to continue to ask the
4 same questions in a slightly different way, he can expect
5 to get the same answers.

6 THE COURT: Well, I'll leave it at that for now.

7 MR. WALLACE: I promise everyone here I am
8 really getting as close to being done and we can get out
9 of here.

10 Let me ask a different question then. Did the
11 fact that Mr. Weisselberg pled guilty to tax fraud cause
12 you to change your opinion of any of the work he performed
13 for you?

14 A Well, it was a sad, very sad thing. People went
15 after him viciously and violently because he happened to work
16 for me. If I never ran for President and certainly if I never
17 won, convincingly, he would have been just like a lot of other
18 people. I mean, he did a good to job for me for a long time.
19 I thought it was a very sad thing.

20 The education of his grandchildren was brought up
21 because he paid for the education of his grandchildren in a
22 certain way. There was some things. So I feel very badly for
23 him.

24 Q Well, a certain way was you paid for the education of
25 his grandchildren?

D. J. Trump - by Plaintiff - Direct(Wallace)

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1 A No, the education of his grandchildren, and that is,
2 you know, going to be some kind of a breach where they want to
3 put a man in jail? It is a very sad thing.

4 Q Were you aware --

5 A He did a good job for me for a long time.

6 Q So you didn't go back and review any of the work he
7 had performed after?

8 A I didn't think about it. And frankly, if you talk
9 about these loans, there was nothing much to think about
10 because essentially they were all paid off or soon to be paid
11 off.

12 Q After Mr. Weisselberg pled guilty, did you do
13 anything to review other work that he had performed for you
14 outside of these financial statements?

15 A No, because I had no defaults. I had no problems.

16 Q Did you go through to see if Mr.-- any of the other
17 documents Mr. Weisselberg had prepared at the company were
18 accurate?

19 A I don't know. Perhaps somebody did. I really don't
20 know.

21 MS. HABBA: Your Honor, excuse me. Sorry.

22 Mr. Wallace, can you just clarify, are you
23 asking whether President Trump himself did or the company?
24 I want to make sure the record is clear. There is a
25 difference.

D. J. Trump - by Plaintiff - Direct(Wallace)

3634

1 MR. WALLACE: I am not going back to a question
2 I asked and was answered.

3 MS. HABBA: Of course not. It is inconvenient.

4 THE COURT: I took it to mean Mr. Trump
5 personally.

6 MS. HABBA: So did I.

7 A Personally? Personally no, but I think maybe the
8 company did. I don't know.

9 Q Were you aware that Mr. Weisselberg was being
10 compensated with an apartment that was paid for by the company?

11 A You mean previously?

12 Q Yes.

13 A Yeah. I mean, is there something wrong?

14 Q No, I am just asking if you knew.

15 A I mean IBM executives get apartments that are
16 compensated by IBM. And lots of other companies do. But
17 people that work for me can't be so compensated? I don't know,
18 I don't think that's a big thing. Is it? I feel very badly
19 about that whole situation.

20 Q My question is just whether Mr. Weisselberg was --
21 you ever became aware that Mr. Weisselberg was not recording
22 transactions in the books and records of the Trump Organization
23 in an accurate manner -- inaccurate manner.

24 Let me rephrase that.

25 MR. KISE: Are you talking about prior to his

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1 guilty plea or after his guilty plea?

2 MR. WALLACE: I am asking if Mr. Trump ever
3 became aware that Mr. Weisselberg was recording
4 transactions inaccurately in the books and records of the
5 Trump Organization.

6 MR. KISE: After his guilty plea I think we all
7 did.

8 THE COURT: This has come up before, Chris. He
9 is allowed to ask a question without a time limit, because
10 then it means all times, at anytime.

11 MR. KISE: Okay, but it is --

12 THE WITNESS: He wasn't making it clear.

13 MR. KISE: The record is -- most of this record
14 is very confusing, but that's particularly confusing,
15 respectfully.

16 Q The question is, did you ever become aware that
17 Mr. Weisselberg was recording transactions inaccurately in the
18 books and records of the Trump Organization?

19 A Only through the trial.

20 Q And that's the tax fraud trial?

21 A Yeah.

22 Q You are not going to make any changes to your
23 internal controls because of this lawsuit, are you?

24 MR. KISE: Objection. It is a question, number
25 one, could call for privilege and number two subsequent

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1 remedial measures.

2 A It depends.

3 THE COURT: Overruled on both grounds.

4 A It depends on what the accounting firm -- we have a
5 new accounting firm, and they are doing a very good job. And
6 it depends. If they suggest that we make changes, we would do
7 that. We asked them if they would like us to do that.

8 Q That accounting firm, is that WhitleyPenn that you
9 are referring to?

10 A Yes.

11 Q Do you think that anything needs to change at the
12 Trump Organization based on the things you have learned from
13 this lawsuit?

14 MR. KISE: Same objection, Your Honor.

15 A I don't think so.

16 THE COURT: Overruled.

17 MR. KISE: I am assuming that his question is
18 not calling for him to reveal any attorney/client
19 conversations, just asking in general.

20 THE COURT: He asked him what he intended to do.

21 MR. KISE: Certain information he may have
22 received from his lawyers.

23 MS. HABBA: Yes. I would instruct --

24 MR. KISE: And subsequent remedial.

25 THE COURT: The subsequent remedial only applies

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1 in personal injury cases, tort cases.

2 Q My question is, regardless of who is giving the
3 advice, is there a decision to make a change to the internal
4 controls of the Trump Organization.

5 A It would depend on what the accounting firm would
6 say, probably in conjunction with some lawyers that do this
7 professionally. But the company has been a very, very
8 successful company and it has had a great record.

9 Q Are you aware, as you sit here today, of any
10 changes -- let me withdraw that question.

11 As you sit here today, are you aware of any planned
12 changes to the financial reporting systems of the Trump
13 Organization?

14 A I have not heard of any, but it is possible that they
15 will recommend something. I have actually asked for a
16 recommendation, if they feel it is necessary.

17 THE COURT: So now we are getting --

18 MR. WALLACE: I am going to ask this question
19 hopefully to clarify this.

20 Q You asked for a recommendation from accountants or
21 attorneys?

22 MS. HABBA: Don't answer that question, sir.
23 Excuse me. Sorry. This is actually going to privilege.
24 And I am going to object and instruct my client, any
25 conversation where an attorney was also involved, you are

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1 not to respond.

2 MR. WALLACE: This is the foundational question
3 as to whether he has had conversations with attorneys or
4 accountants.

5 MR. KISE: Your Honor, I have one other thing to
6 add by way of objection. It may be overruled, but I think
7 it is an important objection. And that is, I think the
8 question is either unintentionally or intentionally
9 mischaracterizing the evidence that is already in the
10 record. They already had Mr. Hawthorn on the stand, and
11 Mr. Hawthorn has testified about things that the company
12 is doing.

13 So, I believe President Trump was here for that
14 testimony. So again, we are not telling him anything he
15 doesn't know. But you are not allowed to intentionally
16 mislead or unintentionally mislead, mischaracterize the
17 evidence in the record. The evidence in the record is
18 such, if he already knows the answer, he doesn't have a
19 good faith basis to ask the question.

20 THE COURT: I will totally disagree with that.
21 In fact, you are generally supposed to ask questions that
22 you do know the answer to.

23 MR. KISE: No. No. If you have a good faith
24 basis to presume that the answer is something other than
25 is already indicated in the record.

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1 MR. WALLACE: I would note then, I guess if
2 Mr. Hawthorn is recommending anything, Mr. Hawthorn is not
3 an attorney. But I'll ask the same question.

4 Q As you sit here today, are you aware of any changes
5 that are going to be made to the financial reporting system at
6 the Trump Organization?

7 A There will be recommendations made, and we will
8 perhaps let you know what those recommendations are. It
9 wouldn't bother me to let you know about it. But we have asked
10 and we will see whether or not anything will come of it.

11 Q Are the recommendations you are referring to coming
12 from accountants or lawyers?

13 A I would say accountants and I would also say lawyers
14 working with accountants, yes.

15 Q Have you spoken to any accountants about potential
16 changes to the financial reporting system at the Trump
17 Organization?

18 A Through the company, not me personally, but through
19 the company.

20 Q Who have you spoken to at the company?

21 A Eric Trump.

22 Q Do you have any plans to hire a Chief Compliance
23 Officer at this time at the Trump Organization?

24 A It hasn't been recommended.

25 Q Have you hired a new Chief Financial Officer at the

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1 Trump Organization?

2 A I don't know. I would have to ask one of my sons,
3 one of my two sons.

4 Q As you sit here today, you don't know who the Chief
5 Financial Officer is?

6 A We have some very good people. I don't know if we
7 are making that permanent or not or if we are going to go
8 outside.

9 MR. WALLACE: Your Honor, I have nothing further
10 at this time for this witness.

11 THE COURT: Will there be any cross examination?

12 MR. KISE: No, Your Honor. Not at this time.

13 MR. WALLACE: Your Honor, the next witness we
14 have is --

15 THE COURT: We will excuse this witness.

16 Thank you.

17 MR. WALLACE: I apologize, Your Honor.

18 (The witness stepped down from the witness
19 stand.)

20 THE COURT: We can keep going, at least for a
21 while. Would you like to call your next witness?

22 MR. WALLACE: The only additional witness we
23 have, Your Honor, is Ivanka Trump, who is appearing on
24 Wednesday. So at this point I think that's it for us.

25 I don't know if Mr. Kise wanted to cover any of

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3641

1 the housekeeping items.

2 MR. KISE: Just briefly, Your Honor.

3 THE COURT: Go ahead.

4 MR. KISE: And I appreciate the communication
5 over the weekend.

6 I just want to make sure, because the way we
7 have operated, and I am going to take whatever direction
8 you provide here, but the way we have operated through the
9 course certainly of the trial are, in limine motions are
10 either done here on the record or there is letters.

11 And so by way of example, an evidentiary motion
12 wouldn't be something we would do by notice of motion and
13 have a return date. The same would be true for any sort
14 of mistrial motion or directed verdict motion. Mr. Robert
15 is the CPLR expert, but certainly in my experience those
16 wouldn't be done -- you wouldn't do a directed verdict
17 motion by notice of motion, so that it would be heard a
18 week later; or a mistrial motion --

19 THE COURT: Right.

20 MR. KISE: -- or evidentiary motion or those
21 things. So I just want to comply fully with Your Honor's
22 order. I want to make sure that I understand how we are
23 supposed to manage that, to the extent that we have such
24 motions.

25 Same would be true with respect to any appeal we

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1 filed, or any other thing we filed. I assume if -- I
2 think it is fair to presume based on the colloquy we had
3 on Friday, that should any of the matters that have come
4 up that are the subject of the gag order, be the -- become
5 the subject of an appeal, that we would be free to
6 reference them on appeal. There wouldn't be any
7 restriction on that.

8 THE COURT: Yes, true, agree.

9 MR. KISE: And we will take your direction. I
10 am not putting you on the spot. You can give us your
11 direction this evening. But I just want to -- it just
12 seemed very foreign to me, and Mr. Robert can speak to
13 this, that if we were to have a directed verdict motion or
14 mistrial motion or evidentiary motion or anything to do
15 with the subject matter of the gag order that would
16 include that, those wouldn't be by way of notice of motion
17 ordinarily.

18 I just don't know how we would do that, because
19 we would be asking the Court to rule on something days
20 hence that are more immediate.

21 Mr. Robert can speak to the CPLR.

22 MR. ROBERT: I think Mr. Kise said it succinctly
23 and well. When and if the plaintiff rests their case,
24 there will be certain motions I presume we will make. And
25 at that time there would be oral motions. And some of the

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1 issues contained within your gag order of Friday may be
2 items that need to be referenced in that application. We
3 just wanted to make sure under your order, since there
4 will be no written motion papers with those, that we are
5 free to address those on the record with the Court at that
6 time. Because there is really no -- there is no other
7 mechanism that I am aware of in New York to be able to
8 bring that up to you.

9 MR. KISE: Or would you prefer us to submit a
10 letter and only make the oral presentation brief?
11 Whatever Your Honor's pleasure is there. But we want to
12 understand what the limits are because the order as
13 written, and I appreciate the clarification over the
14 weekend, but as written it is restrictive.

15 (The following proceedings were stenographically
16 recorded by Senior Court Reporter Michael Ranita.)
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Proceedings

3644

1 THE COURT: Yes, I'm restricting you not bringing
2 up my confidential communications. You could do anything
3 else. I don't think the gag order referred to anything
4 else.

5 MR. KISE: But in terms of a motion, if we file a
6 motion that is directed to that particular relief, like, for
7 example, a motion for reconsideration, or anything like
8 that, we have to reference the subject matter in whatever we
9 are filing, whether we are viewing it on the record here or
10 whether we are submitting it by letter, but by notice of
11 motion; there's not a procedural mechanism to do that.

12 THE COURT: If we are just talking about motions,
13 requests, decisions about my confidential communications,
14 I'm prohibiting you from mentioning that. Okay, you could
15 appeal it, but I am 1,000 percent convinced, and you don't
16 have any right or reason to complain about my confidential
17 communications. You could appeal that.

18 MR. KISE: But, your Honor, so let me just be
19 clear. So if we have matters that you may not be aware of
20 that relate to that subject matter, it doesn't relate to
21 the, necessarily, the communications themselves, it's not
22 the notes.

23 MS. HABBA: Not the notes, your Honor.

24 MR. KISE: But to the issues surrounding that
25 procedure, are you saying that you have already decided

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1 before we make the motion that you will deny it without
2 having seen it? I just -- because I can't make them -- I
3 just need to know, because ordinarily I would either include
4 it in some sort of motion for your Honor so that at least
5 you could see the basis for it and then make your
6 determination; that's all.

7 THE COURT: I'll take you up on your kind offer to
8 think about this, take this under advisement. Obviously I
9 think these other things that I think you are referring to,
10 that's a different story.

11 MR. KISE: Right. It would just be with respect to
12 the implications. It's not referring anymore to -- I
13 understand the record that you've established, you said that
14 we've established, and I understand your order in that
15 regard, but with respect to appeal, I understand you clearly
16 on that, that we have the right to do that. And with
17 respect to anything we file here, it would only be
18 referencing those issues in the context of a motion directed
19 at relief with specific arguments that are related to that,
20 not to do with the content of the notes themselves, at all.

21 THE COURT: No, it's not even the content. I am
22 prohibiting you, or I have already, from referencing my
23 confidential communications. Sorry to keep repeating that
24 phrase. But I feel it's important for the safety of my
25 staff and the orderly progression of this case.

Proceedings

3646

1 MR. KISE: Of course. But if we were, for example,
2 to move for a mistrial based on the implications of that, we
3 would need to at least reference the subject matter in order
4 to file that motion. There's no way to file that motion
5 without referencing the subject matter. We don't --

6 THE COURT: Don't file that motion, Chris.

7 MR. KISE: Well, again, so we can't file the motion
8 that you haven't seen that couldn't be considered. You may
9 not know what it is that is our position, because I don't
10 think our position has -- I certainly haven't said it
11 anywhere out loud, and I don't intend to.

12 THE COURT: Appreciate that.

13 MR. KISE: But I think there's something that
14 warrants the Court's attention with respect to the
15 implications of these issues. And you are free, then, to
16 adjudicate them. But I would think we can't be respectfully
17 precluded from raising the issue in the first instance; that
18 would seem to put us in a position where we are not entitled
19 to advance our client's due process rights.

20 If there is something that we think implicates the
21 proceeding, we have to at least put it in the record for the
22 Court to consider. And if you consider it and reject it,
23 that's fine. But you can't, respectfully, reject it before
24 you've seen it. Because you haven't heard it from me either
25 on the record or otherwise.

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1 THE COURT: I'm, in some ways, at a disadvantage in
2 this discussion, because I don't know what you are going to
3 bring up.

4 MR. KISE: Correct.

5 THE COURT: I told you what not to bring up.
6 Anything else you want to bring up.

7 MR. ROBERT: For clarification purposes, then, is
8 it the direction and order of this Court that if we were to
9 move for a mistrial based on the grounds that are subject to
10 the gag order, that we are directed not to make such a
11 motion.

12 THE COURT: Can you repeat that.

13 (Whereupon, the requested testimony was read back
14 by the court reporter.)

15 THE COURT: Yes. I'm directing you not to make
16 such a motion because I'm entitled to do what you're
17 referring to, the only subject matter of the gag order.

18 MR. KISE: But that --

19 THE COURT: I'm going to protect my staff.

20 MS. HABBA: Your Honor --

21 MR. KISE: I understand that, your Honor, but that
22 would -- the fact that it is taking place is not necessarily
23 the subject of the motion.

24 MS. HABBA: Okay. I'll be more clear, if I may. I
25 think they are being extremely careful, and it's causing

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1 confusion, your Honor, so don't sanction me. I'm doing this
2 in the most delicate way possible.

3 I personally -- we know that we, obviously, are
4 going to be moving for a mistrial. There's no, you know,
5 that is part of the plan. We do not want to put anyone at
6 risk, which is what they are trying to get at.

7 I -- outside in the way I read your order, which is
8 different than they do, I think that you are specifically
9 speaking about the contents of your notes being
10 confidential, and that is what we are not to talk about; is
11 that correct?

12 THE COURT: Not just the contents of the notes,
13 which I assume you don't know, but the fact that they exist.

14 MS. HABBA: Okay.

15 THE COURT: That's my business, not yours.

16 MS. HABBA: So outside of the notes, your Honor,
17 other issues have come to our attention. Are we allowed to
18 address anything outside of the notes? Because they haven't
19 been addressed with the Court, and I think that's the
20 clearest way to ask your Honor, what we are asking, which is
21 we need to have an opportunity to be heard on those things
22 that have not been yet heard.

23 THE COURT: Give me a second to have a confidential
24 communication.

25 MS. HABBA: That's fine, your Honor. That's fine.

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1 (Laughing.)

2 THE COURT: Okay. How's this: I think this is
3 fair, and I understand your concerns. You can make that
4 motion, Ms. Habba.

5 MS. HABBA: Thank you.

6 THE COURT: And I'm sorry I yelled at you before.

7 MS. HABBA: We will do it in a very delicate
8 manner.

9 THE COURT: Okay. But it has to be in writing. I
10 don't want to hear it in front of hundreds of people --

11 MS. HABBA: All right.

12 THE COURT: -- at this point. Later on we could
13 see, but yeah, you could make that motion.

14 MS. HABBA: Thank you.

15 MR. KISE: So we should submit that just by letter
16 then, because notice of motion for a mistrial doesn't
17 function that way.

18 THE COURT: Yeah. Do it by order to show cause,
19 please. You could make it as quick as you can.

20 MR. KISE: We could do that.

21 MS. HABBA: That's great.

22 MR. KISE: Mr. Robert --

23 MR. ROBERT: I've never seen an application for a
24 mistrial done by order to show cause on paper like that, but
25 as long as the order to show cause is signed by the Court, I

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1 don't see a problem with it.

2 THE COURT: I'm not sure that that -- I guess
3 that --

4 (Whereupon, there is a brief pause in the
5 proceedings.)

6 THE COURT: Submit an OS -- proposed OSC. It's not
7 an order until the judge signs it. Mr. Robert knows that.
8 Submit a proposed OSC to me and I'll get right to it and
9 make a quick return.

10 MS. HABBA: Okay.

11 MR. KISE: And we can include in there the
12 rationale for the Court.

13 THE COURT: Yes.

14 MS. HABBA: Thank you.

15 MR. ROBERT: Thank you, Judge.

16 THE COURT: See. I knew it would be a lovefest.

17 MR. KISE: Thank you, Judge.

18 THE COURT: I've used that line before, but some of
19 you haven't heard it yet.

20 Anything the plaintiff wants to say?

21 MR. WALLACE: I guess it would be helpful for the
22 people to clarify the rest of the week. We have Ivanka
23 Trump testifying on Tuesday -- Wednesday after the Tuesday
24 holiday. I imagine it could be 3:00 or it could be the full
25 day, but I imagine that means the defendants are calling

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1 witnesses on Thursday and Friday, and so it would be
2 helpful --

3 MR. KISE: We are off Friday.

4 THE COURT: We are off Friday.

5 MR. WALLACE: May I say, witnesses will be called
6 next by the defendants starting on Thursday, and it would be
7 helpful to know what the order would be. I understand it
8 may be Donald Trump, Jr. and Eric Trump, but I don't know if
9 they are going Thursday or --

10 MR. KISE: So we had held -- again, we'll do --
11 I'll take the Court's direction. So we had held Thursday,
12 as a spillover day, in the event that President Trump needed
13 to come back, as agreed, or in the event it's possible that
14 Ivanka Trump was hold over. We are certainly going to ask
15 her questions, to the extent we have questions. We are
16 trying to get that done now so as to minimize the
17 interference in her life to not have to come back again.
18 And then thereafter we would likely be making certain
19 motions on Thursday.

20 So we had planned to -- because of that, to ask the
21 Court that we would just -- to keep this organized, to begin
22 our case in chief on Monday, that way we are not starting a
23 case with an hour left on Thursday or two hours left on
24 Thursday, to just begin our case in chief on Monday.

25 We do have -- this may -- it certainly was pleasant

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1 news for me. We do have a schedule now that has us
2 completing our case, right now, by December 15th.

3 THE COURT: A week early.

4 MR. KISE: A week early. I don't want to hold to
5 that, because nothing ever gets done on time here, but I'm
6 offering that because we could still stay in the Court's
7 parameters, if not sooner, even if we start on Monday. So
8 that -- we can start on Thursday, but then that would be a
9 different witness. That's likely to be a witness different
10 than Don Jr. or Eric, and that's what I meant in my
11 communications with Mr. Wallace over the weekend, which we
12 had been communicating about witness order.

13 If we are going to start on Thursday, particularly
14 Thursday afternoon, we are gonna to have to see availability
15 and we could tell them. It would be certainly among the
16 handful of witnesses that we have at the top, and I could
17 give more clarity on that this evening, but I would just ask
18 the Court that for efficiency purposes, and given this is a
19 long trial, that we just start -- so we don't run into the
20 train wreck of spillover and motions going on, that we just
21 start on Monday.

22 THE COURT: You know, you said in a certain
23 context, "nothing ever finishes on time", or something.
24 I've been meaning to thank and congratulate all the lawyers
25 for the fact that we managed to start this trial on

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1 October 2nd, come hell or high water, written in stone, and
2 you did a Herculean job to get this ready. I hope you
3 think, although you are rushed, although you were pressed,
4 you had enough time and there was no deprivation of due
5 process, shall we say.

6 And same thing for the plaintiff's attorneys. It
7 was an amazing job to get as far as we've gotten in the time
8 we have.

9 All right. Let's try to figure out exactly what we
10 are going to do.

11 MR. WALLACE: I -- your Honor, I would just ask
12 Chris, if you could, and we won't hold you to it, but give
13 us that lineup that gets you to the finish line of your case
14 by December 15th.

15 MR. KISE: I can.

16 MR. WALLACE: We would appreciate that. I don't
17 know if we are going to have a rebuttal case. I don't know
18 what is going to go on, so do we finish by December 22nd, we
19 do, we will, but --

20 MR. KISE: It would be on them, not me.

21 MR. WALLACE: If they could just provide us with
22 the order of witnesses that they think gets --

23 MR. KISE: We could provide a tentative order, but,
24 again, with all your case as well, witnesses change and
25 schedules change. We could provide a tentative order that

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1 would get us to that place, and even starting on the Monday.

2 THE COURT: Let's be very exact here. With
3 basically through today, once we finish this discussion, all
4 right, what's going to happen Wednesday morning?

5 MR. WALLACE: Wednesday morning the People will
6 call Ivanka Trump.

7 THE COURT: Right. How long -- I'm asking both
8 sides. How long will her total testimony, at this point,
9 take? A day? A day and a half? Less than a day?

10 MR. WALLACE: Two to three in the afternoon we
11 would expect to be completed with her examination, your
12 Honor.

13 MR. KISE: If that's the case, then we will almost
14 certainly go to at least through the morning on Thursday, on
15 the next day.

16 THE COURT: Okay.

17 MR. KISE: At least we'll have an hour plus another
18 two hours in the morning. So we would -- depending on what
19 they ask it may go longer than that; it may not. But we'll
20 at least be moving well into Thursday, as it stand now based
21 on their representation. And then we would have motions in
22 the afternoon.

23 THE COURT: And how long do you think the motions
24 will take?

25 MR. KISE: That could take --

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1 THE COURT: That could take a long time?

2 MR. KISE: That could take the balance of the
3 afternoon, yes.

4 THE COURT: Plaintiff, does that sound reasonable
5 to you?

6 MR. WALLACE: I'm having a hard time imagining
7 meritorious motions that would require that much time to
8 discuss.

9 MR. KISE: Of course.

10 MR. WALLACE: But that's fine, I think, from our
11 perspective.

12 THE COURT: The question isn't whether they are
13 meritorious. The question is how long they'll take.

14 MR. WALLACE: I know.

15 THE COURT: Mr. Kise, I think your schedule makes
16 sense.

17 MR. KISE: Thank you, Judge.

18 THE COURT: Make your motions Thursday after
19 Ivanka is finished, and you'll be ready to go the following
20 Monday.

21 MR. KISE: Yes, your Honor. We'll provide them
22 maybe as soon as this evening. In fact, probably this
23 evening, that tentative schedule.

24 THE COURT: We would like a copy of that list, too.

25 MR. KISE: Okay, yes. We could provide that to the

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1 court, your Honor. Again, not holding us to it, because
2 things change and witness's schedules come and go.

3 THE COURT: Of course.

4 MR. KISE: But we could at least provide something.
5 And I would like to not file that on the record. We could
6 provide it to the Court, but not have that out there,
7 because this --

8 THE COURT: Let's assume that, but possibly
9 revisit. I'm still waiting for you to say that your motion
10 or motions on Thursday might be granted. You might not have
11 to put on a defense.

12 MR. KISE: Well, I certainly hope so.

13 MS. HABBA: So do I, your Honor.

14 MR. KISE: I think there is a basis for it, and we
15 would all be happier for it. Almost all of us.

16 MS. HABBA: I could make my application now for you
17 to dismiss this entire case.

18 THE COURT: Save it for Thursday.

19 MR. KISE: My family certainly would be happy. I
20 could assure you of that.

21 MR. WALLACE: Procedurally, we haven't rested, so
22 they can't make the motion for a directed verdict yet.

23 THE COURT: Everybody have a great Election Day and
24 don't forget to vote.

25 MR. KISE: Thank you, Judge.

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THE COURT OFFICER: Everybody remain seated.
(The case on trial was adjourned to Wednesday,
November 8, 2023 at 10:00 a.m.)

	\$400 (4) 3553:8;3556:6; 3592:12,22	above (5) 3592:19;3626:13, 16,17,22	3523:2;3536:21; 3539:21;3540:1; 3569:12;3573:3,21; 3574:23;3589:21; 3598:6;3607:17; 3608:25;3609:6,14; 3612:3;3616:8,17; 3617:4;3619:5,6; 3623:10;3633:18; 3634:23	3640:22 address (8) 3472:1;3492:6; 3553:3;3579:24,25; 3580:2;3643:5; 3648:18
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\$1.5 (1) 3559:22	\$405,362,123 (1) 3530:13	absolutely (9) 3488:14;3498:5,23; 3505:13;3509:10; 3613:5;3614:2; 3630:5,5	3574:23;3589:21; 3598:6;3607:17; 3608:25;3609:6,14; 3612:3;3616:8,17; 3617:4;3619:5,6; 3623:10;3633:18; 3634:23	addressed (1) 3648:19
\$116 (1) 3525:13	\$435,562,426 (1) 3541:19	academy (1) 3539:14	3608:25;3609:6,14; 3612:3;3616:8,17; 3617:4;3619:5,6; 3623:10;3633:18; 3634:23	addresses (1) 3579:20
\$126 (1) 3626:8	\$50 (7) 3571:7;3590:8,12; 3598:15,22;3607:25; 3612:23	accept (5) 3567:25;3568:9; 3589:5;3597:17; 3611:14	3612:3;3616:8,17; 3617:4;3619:5,6; 3623:10;3633:18; 3634:23	adjoined (1) 3657:2
\$126,828,600 (1) 3626:2	\$500 (3) 3500:1,6,13	accepted (6) 3482:8;3483:6; 3513:6,8,11;3564:25	3612:3;3616:8,17; 3617:4;3619:5,6; 3623:10;3633:18; 3634:23	adjudicate (1) 3646:16
\$139 (1) 3626:18	\$540,475 (1) 3626:6	acceptable (1) 3536:13	3612:3;3616:8,17; 3617:4;3619:5,6; 3623:10;3633:18; 3634:23	adjustments (1) 3619:24
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In The Matter Of:
NYS Attorney General v.
Donald J. Trump

November 8, 2023

Ny Supreme Court- Civil

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1 SUPREME COURT OF THE STATE OF NEW YORK
 2 COUNTY OF NEW YORK : CIVIL TERM : Part 37
 -----X
 3
 4 PEOPLE OF THE STATE OF NEW YORK, BY LETITIA
 JAMES, ATTORNEY GENERAL OF THE STATE OF NEW
 YORK,
 5 Index: 452564/2022
 Plaintiff,
 6
 -against-
 7
 8 DONALD J. TRUMP; DONALD TRUMP, JR.; ERIC TRUMP;
 IVANKA TRUMP; ALLEN WEISSELBERG; JEFFREY
 McCONNERY; THE DONALD J. TRUMP REVOCABLE TRUST;
 9 THE TRUMP ORGANIZATION, INC.; TRUMP ORGANIZATION,
 LLC; DJT HOLDINGS, LLC; DJT HOLDINGS MANAGING
 10 MEMBER; TRUMP ENDEAVOR 12, LLC; 401 NORTH WAGASH
 VENTURE, LLC; TRUMP OLD POST OFFICE, LLC; 40 WALL
 11 STREET, LLC; AND SEVEN SPRINGS, LLC,
 12 Defendants.
 -----X
 13
 14 60 Centre Street
 New York, New York 10007
 November 8, 2023
 15
 B E F O R E: HONORABLE ARTHUR F. ENGORON, Supreme Court Justice
 16
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 23
 24
 25

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Proceedings

1 THE COURT OFFICER: All rise. Part 37 is now in
 2 session. The Honorable Judge Arthur Engoron presiding.
 3 Make sure all cell phones are on silent. Laptops and cell
 4 phones will be permitted, but only to the members of the
 5 press. There absolutely no recording or photography of any
 6 kind allowed in the courtroom. Now be seated and come to
 7 order.
 8 THE COURT: Plaintiff, would you like to call your
 9 next witness?
 10 MR. SOLOMON: Yes. Good morning, your Honor. The
 11 people call Ivanka Trump.
 12 THE COURT: Who's she?
 13 MR. KISE: You know, while we're waiting, I could
 14 get used to this every other day thing.
 15 THE COURT: I think you are speaking for all of us.
 16 Are you going to go back down to Florida the Wednesday
 17 before Thanksgiving?
 18 MR. KISE: Not enough to do that, but still, having
 19 the every other day.
 20 THE COURT: But your day off, do you work or do you
 21 play?
 22 MR. KISE: Unfortunately, looking outside of
 23 yesterday's weather, yeah. I stayed in the window.
 24 THE COURT OFFICER: Witness entering.
 25 (Whereupon, the witness stepped into the witness

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 2
 3
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 17
 18
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 20
 21
 22
 23
 24 Michael Ranita
 Michele Panteloukas
 25 Senior Court Reporters

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I. Trump - by Plaintiff - Direct (Mr. Solomon)

1 stand.)
 2 THE COURT OFFICER: Please raise your right hand.
 3 (The witness complied.)
 4 THE COURT OFFICER: Do you solemnly swear or affirm
 5 that any testimony you give will be the truth, the whole
 6 truth and nothing but the truth?
 7 THE WITNESS: I do.
 8 THE COURT OFFICER: Please have a seat.
 9 THE WITNESS: Thank you.
 10 I V A N K A T R U M P, called by and on behalf of the
 11 Plaintiff, having been first duly sworn, was examined and
 12 testified as follows:
 13 THE COURT OFFICER: Please state your name and
 14 either home or business address for the record.
 15 THE WITNESS: Good morning. Thank you.
 16 Ivanka Trump, and it's 36 Indian Creek, Indian
 17 Creek Village, Florida 33154.
 18 THE COURT: Mr. Solomon, please proceed.
 19 MR. SOLOMON: Thank you, your Honor.
 20 DIRECT EXAMINATION
 21 BY MR. SOLOMON:
 22 Q Good morning.
 23 A Good morning.
 24 Q I would like to start by briefly going through your
 25 background. Did you graduate from Wharton in 2004?

I. Trump - by Plaintiff - Direct (Mr. Solomon) Page 3662

1 A I did.

2 Q And did you receive a bachelor of arts in real estate

3 and finance?

4 A I did.

5 Q Do you have any postcollege formal education?

6 A I had some licensures in the real estate business, a

7 salesperson's license. And at one point a gaming license in the

8 state of Nevada, or in the state of New Jersey, sorry.

9 Q Thank you.

10 After graduation, did you start working at Forest City

11 Ratner?

12 A I did.

13 Q And for how long did you work there?

14 A I worked there a little over a year.

15 Q Okay.

16 And after you left Forest City, did you start working

17 for The Trump Organization?

18 A I did.

19 Q At some -- so this was approximately the 2006 time

20 period?

21 A It was.

22 THE COURT: Hold on. Let me just ask the witness.

23 Good morning, by the way.

24 THE WITNESS: Good morning.

25 THE COURT: These microphones are very

I. Trump - by Plaintiff - Direct (Mr. Solomon) Page 3663

1 temperamental. You have to speak right into them loudly. I

2 think they probably heard everything except maybe that last

3 answer.

4 THE WITNESS: Thank you.

5 THE COURT: Great. Please continue.

6 Q At some point in time did you become an executive vice

7 president at the Trump Organization?

8 A I did.

9 Q And did you continue working for The Trump Organization

10 until approximately January 2017?

11 A That's correct, yes.

12 Q From let's say until 2011, until the time you left,

13 what were your responsibilities at the Trump Organization?

14 A Well, they varied and evolved as my experience grew.

15 When I first started in the company I was just shortly out of

16 college. I had worked as, you had mentioned, for Forest City

17 Ratner, another developer, for a year or so, um, helping them on

18 construction related projects, specifically a project in

19 Yonkers.

20 When I joined our family business, I initially started

21 -- probably spent most of my time under Andy Weiss, who was,

22 then, our head of development and construction, but I moved

23 around within the organization to cut my teeth on various

24 elements of the business.

25 So over time, as I had more experience under my belt

I. Trump - by Plaintiff - Direct (Mr. Solomon) Page 3664

1 and I -- and I proved myself within the context of the

2 organization, I was given more responsibilities.

3 Q I would like to focus, though, on the period roughly

4 2011 until the time you left?

5 A Okay.

6 Q What were your specific responsibilities in the

7 organization?

8 A Well, alongside my brothers, we worked on various

9 components of the business at the Trump Organization, some of it

10 administrative, others -- for me, specifically, I was very

11 focused on the redevelopment of the old Post Office building on

12 Pennsylvania Avenue, and Trump Doral in Florida. And I spent an

13 enormous amount of my time shepherding those two projects

14 through their redevelopment. And obviously there were license

15 deals that were happening at the time I was at the Trump

16 Organization and -- during the time period you reference, um,

17 and miscellaneous other things. But the majority of my time was

18 spent in those areas.

19 Q You mentioned Doral; that's the golf course down in

20 Florida?

21 A Correct, yes.

22 Q When The Trump Organization purchased Doral, was it

23 something that is known as a transitional asset?

24 A When we purchased Doral, it was, um, part of a

25 collection of properties that had fallen into disrepair. The

I. Trump - by Plaintiff - Direct (Mr. Solomon) Page 3665

1 portfolio was in bankruptcy and we purchased it out of

2 bankruptcy. Um, it was in rather poor condition. We invested

3 an enormous amount of money in repositioning the asset and

4 redeveloping it, so we were transitioning it in that regard from

5 a, um, really three-star golf resort and property to a much more

6 elevated experience for the guests.

7 Q Do you know what the term "transitional asset" means in

8 the real estate world?

9 A Um, did he have -- I can guess what it would mean, but

10 we were -- it was transitioning from what it was under its prior

11 ownership owned by Marriott to what our vision was for the

12 property.

13 Q I was asking more generally, not necessarily specific

14 to Doral.

15 Have you heard the term transitional asset in your

16 experience?

17 A Yes, I have.

18 Q What do you understand that to be?

19 A What I just described we did for Doral.

20 Q All right.

21 Are you familiar with GAAP, Generally Accepted

22 Accounting Principles?

23 A I'm generally familiar with GAAP, yes.

24 Q What is your understanding of GAAP?

25 A You had asked me with that when we had met a little

I. Trump - by Plaintiff - Direct (Mr. Solomon) Page 3666

1 over a year and a half ago. What I told you then is true now,
 2 that I hadn't thought about GAAP as much since college. So, um,
 3 it's -- my understanding is very general. I'm not an
 4 accountant, but I recall being exposed to this idea when I was
 5 in university.
 6 Q Okay.
 7 Other than any accounting classes you may have taken
 8 back in university, had you had experience with GAAP in your
 9 professional career?
 10 A You had showed me one document that referenced GAAP,
 11 GAAP principles, but no, not that I can recall beyond that.
 12 Q Have you performed any work for The Trump Organization
 13 since 2017?
 14 A I don't believe so, no.
 15 Q Between January 2017 and the present, did you have any
 16 financial interest in the old post office in Washington, D.C.?
 17 A Between when?
 18 Q January 2017 and the present?
 19 A Yes.
 20 Q Could you please describe that financial interest?
 21 A I had a profit participation in the project.
 22 Q What do you mean by "participation in the project"?
 23 A What I just said. I had a profit participation in the
 24 project in the event of a sale, all of which was disclosed when
 25 I entered government.

I. Trump - by Plaintiff - Direct (Mr. Solomon) Page 3667

1 THE COURT: Hold on. I think the trick may be to
 2 move the microphone closer to you, because I know you can't
 3 get that close to the table.
 4 THE WITNESS: I'm sorry. I wonder if I could make
 5 the cord longer. Thank you.
 6 THE COURT: And obviously keep your voice up.
 7 THE WITNESS: Let me know if it's better.
 8 THE COURT: Please continue.
 9 Q Thank you, your Honor.
 10 Between January 2017 and present, have you had any
 11 financial interest in TTT Consulting?
 12 A TTT? Um --
 13 MR. KISE: Objection. Relevance.
 14 MR. SOLOMON: Payments by the defendant
 15 organization can go to show witness bias, your Honor.
 16 THE COURT: Overruled.
 17 A Yeah, I had an interest in that consulting agreement,
 18 but I don't think that there have been any recent payments from
 19 it.
 20 Q Do you recall any payments between January 2017 and the
 21 present as a result of your interest in TTT Consulting?
 22 A I recall that when I went into government, in
 23 consultation, at the suggestion of the Office of Government
 24 Ethics, I had to resign from many assets and entities, put
 25 others into trust, and as it pertained to that one, convert it,

I. Trump - by Plaintiff - Direct (Mr. Solomon) Page 3668

1 um, from a variable stream of income, based on how the assets
 2 performed, to a fixed income, which I did at their suggestion.
 3 And, you know, that's the last I know.
 4 Q Other than -- excuse me, between January 2017 and the
 5 present, have you received any other payment from The Trump
 6 Organization, other than what you've described with respect to
 7 the Old Post Office and TTT Consulting?
 8 A No, I don't believe so.
 9 Q I would like to talk about the Trump Organization's
 10 relationship with Deutsche Bank. Are you familiar with Deutsche
 11 Bank?
 12 A I am, yes.
 13 Q Prior to 2011, was Deutsche Bank a lender on any of the
 14 Trump Organization's projects?
 15 A Yes. I believe that they had done the initial
 16 construction loan on Trump Chicago, that that predated my
 17 involvement of the company.
 18 Q So that's the property, the Trump International Hotel
 19 and Towers in Chicago?
 20 A Correct, yes.
 21 Q And was that relationship through the Commercial Real
 22 Estate Group at Deutsche Bank?
 23 A You identified for me, um, a year ago when we met that
 24 it was.
 25 MR. KISE: Your Honor, I just want to put on the

I. Trump - by Plaintiff - Direct (Mr. Solomon) Page 3669

1 record, as we do with other witnesses, a standing objection
 2 to these questions that predate the statute of limitations.
 3 THE COURT: Understand. Overruled.
 4 Q Okay.
 5 When we met in August of 2022 for your testimonial
 6 session --
 7 A Yes.
 8 Q -- I had shown you some documents. Do you recall that?
 9 A Yes, I do.
 10 Q Based upon those documents, did you understand that the
 11 relationship that The Trump Organization had prior to 2011 with
 12 Deutsche Bank was through the Commercial Real Estate Group?
 13 A I did, yes.
 14 Q Okay.
 15 And were those loans secured by a mortgage on the
 16 underlying real property in Chicago?
 17 A I believe so, yes.
 18 Q To your knowledge, was there any guaranty provided on
 19 those loans for the Chicago property?
 20 A I don't know.
 21 Q Are you aware of any?
 22 A I'm not sure.
 23 Q You are not sure if you are aware of any?
 24 A No, I'm not sure if there was -- I was answering your
 25 question. I'm not sure if there was a guaranty that predated my

I. Trump - by Plaintiff - Direct (Mr. Solomon) Page 3670

1 involvement in the company, those loans.
 2 Q I understand. As you sit here today, do you have any
 3 knowledge about any guaranty on the Chicago loan prior to 2011?
 4 A No, I have no knowledge.
 5 Q Did there come a time that you were introduced to
 6 someone in the Private Wealth Management Group at Deutsche Bank?
 7 A Yes.
 8 Q Was that Rosemary Vrablic?
 9 A It was, yes.
 10 Q Who made that introduction?
 11 A My husband, Jared.
 12 Q When was that?
 13 A Roughly 2010 or 2011.
 14 Q Was that during the time that the Trump Organization
 15 was seeking financing for the Doral loan?
 16 A It was, yes.
 17 Q At that time, what benefit, if any, did you understand
 18 that the Private Wealth Management Group could provide to the
 19 Trump Organization as compared to its existing relationship with
 20 the Commercial Real Estate Group?
 21 A I don't think I ever made that comparison. I didn't
 22 have an existing relationship with the Commercial Real Estate
 23 Group, and I had heard that Rosemary was a very formidable
 24 banker with a lot of experience and a great person to have a
 25 relationship with, and I was excited to show her an opportunity

I. Trump - by Plaintiff - Direct (Mr. Solomon) Page 3671

1 that we were very passionate about, um, to explore working
 2 together on the project.
 3 Q Did you understand that the Private Wealth Management
 4 Group could provide different loan terms than the Commercial
 5 Real Estate Group?
 6 A I don't know that I thought about that. This was the
 7 first time I had been introduced with Rosemary so, I showed her
 8 the project. I didn't make assumptions about what her terms
 9 would be, but when she sent us her proposal we obviously decided
 10 to proceed with her moving forward.
 11 Q Do you recall if her proposal was any different than
 12 any proposal you had received from the Commercial Real Estate
 13 Group?
 14 A I'm not sure that we did receive a proposal from the
 15 Commercial Real Estate Group. You showed me a document, roughly
 16 a year and a half ago, that showed a proposal that I don't know
 17 if it was ever actually sent to us at the company. I was not
 18 familiar with it.
 19 Q Okay.
 20 Let's talk about Doral specifically. You mentioned
 21 about the bankruptcy. So let's go through that, if we can, just
 22 briefly.
 23 A Sure.
 24 Q Did there come a time that the Trump Organization was
 25 selected as the stalking horse bidder for the Doral property?

I. Trump - by Plaintiff - Direct (Mr. Solomon) Page 3672

1 A Yes.
 2 Q Could you explain what a "stalking horse bidder" is?
 3 A We were afforded the opportunity, within a finite time
 4 period, to put forth a bid for the property. The portfolio, I
 5 believe it was four other assets, including Doral, five, was
 6 going through a restructuring, and part of the plan of
 7 reorganization was to sell one of the assets and create some
 8 liquidity for, I guess, the portfolio.
 9 So I got a call under -- I believe it was the ninth
 10 month of pregnancy with my now oldest child, my daughter
 11 Arabella, so over 12 years ago saying that we had an opportunity
 12 to be the stalking horse bidder if we could move quickly.
 13 Q Okay.
 14 After that selection, did you, on behalf of the Trump
 15 Organization, attempt to obtain financing for the potential
 16 purchase of Doral?
 17 A Yes, we did.
 18 Q Was it The Trump Organization's intention, at that
 19 time, to renovate Doral if they were successful in obtaining
 20 financing?
 21 A Well, I think it was or intention, regardless, to
 22 renovate Doral. At one point we had explored doing the project
 23 with just available cash on hand at the company rather than have
 24 any financing, but the reason we bought the property was because
 25 we believed in its potential to be something better than it was

I. Trump - by Plaintiff - Direct (Mr. Solomon) Page 3673

1 under current ownership. Um, and to rebrand it, to reflag it.
 2 It was currently being run by Marriott under a management
 3 contract.
 4 We took over the management of the hotel operations,
 5 and our goal was to reposition it as a luxury golf resort in
 6 south Florida.
 7 Q In connection with potential financing, did you contact
 8 Andy Beal of Beal Bank?
 9 A Yes, I recall that.
 10 MR. SOLOMON: If I could hand up PX-1266.
 11 (Whereupon, the exhibit was displayed on the
 12 screen.)
 13 (The exhibit was handed to the witness.)
 14 A Thank you.
 15 Q You've been handed, and also up on the screen, is
 16 what's been marked as PX-1266 for identification. If you look
 17 at the bottom e-mail that's from you to Andy Beal. Do you see
 18 that?
 19 A Yes, I do.
 20 Q And further up the chain you forward it to
 21 Mr. Weisselberg, Mr. Glick, Mr. Orowitz, and Mr. Greenblatt. Do
 22 you see that?
 23 A I do, yes.
 24 Q Do you recognize this e-mail?
 25 A I recall you having showed it to me a year ago, yes.

I. Trump - by Plaintiff - Direct (Mr. Solomon) Page 3674

1 MR. SOLOMON: We offer PX-1266 in evidence.
 2 MR. KISE: Objection.
 3 MR. ROBERT: Objection. Statute of limitations.
 4 THE COURT: Overruled. It's in.
 5 Q If you look at the last sentence in the first paragraph
 6 of your e-mail, "My father will also send you his most recent
 7 financial statement by hard mail." Do you see that?
 8 A I do, yes.
 9 Q Was that a request made by Mr. Beal for the financial
 10 statement, or were you volunteering it?
 11 A I have no recollection of this e-mail beyond you having
 12 showed it to me last year, so I'm not sure.
 13 Q Putting to one side the e-mail, do you recall that
 14 Mr. Beal actually requested a copy of Donald Trump's financial
 15 statement, or did you volunteer it?
 16 A I don't recall.
 17 Q Do you recall that Beal Bank, in connection with any
 18 potential financing, had wanted an equity interest in Doral?
 19 A I don't remember that, no. I recall -- and these were
 20 very brief conversations. We never reached a term sheet stage.
 21 We just generally showed them the opportunity, but I think as we
 22 discussed last year, two names that came to mind; one was Beal
 23 Bank. And we knew Andy Beal quite well. And another was
 24 Inbursa. My recollection is Inbursa had suggested being a
 25 partner with us in Doral, not Beal Bank, but I may be mistaken.

I. Trump - by Plaintiff - Direct (Mr. Solomon) Page 3675

1 There may have been -- it may have been the opposite way.
 2 Q Let's leave Inbursa off to the side for a moment --
 3 A Sure.
 4 Q -- and stay focused on Beal Bank.
 5 Are you aware of any relation -- any relationship
 6 between Beal Bank and CSG Investments?
 7 A CSG Investments? Um, that -- that acronym sounds
 8 familiar, but I don't recall what it is.
 9 Q Let me show you a document it's already in evidence, so
 10 I have a copy to hand up to the witness, PX-3232?
 11 (Whereupon, the exhibit was displayed on the
 12 screen.)
 13 (The exhibit was handed to the witness.)
 14 THE WITNESS: Thank you.
 15 Q And this is an e-mail from Steve Harvey, to you, dated
 16 November 15th, 2011.
 17 A Mm-hmm.
 18 Q Did you receive this e-mail in or about November of
 19 2011?
 20 A I don't recall this e-mail, no.
 21 Q Do you have any reason to believe you did not receive
 22 it?
 23 A No, I don't.
 24 MR. SOLOMON: We offer it in evidence, your Honor.
 25 MR. KISE: Objection.

I. Trump - by Plaintiff - Direct (Mr. Solomon) Page 3676

1 MR. SOLOMON: I'm sorry, it's already in evidence.
 2 MR. KISE: I think it's already in evidence, but I
 3 just want to note, as we are going down this path, relevance
 4 again.
 5 None of this relates to any of the claims actually
 6 at issue. There are no loans prior to 2014 that are the
 7 subject matter. This is a non-party witness. I'm not sure
 8 of the purpose of going through all of these.
 9 What is going to be, I'm sure, a series of
 10 documents between 2011 and 2014 that predates the statute of
 11 limitations, it can't possibly have any bearing on any claim
 12 actually at issue.
 13 THE COURT: I disagree. It remains in evidence.
 14 MR. SOLOMON: Thank you, your Honor.
 15 Q If you take a look at Mr. Harvey's cover e-mail, he
 16 states that it is a redraft of the term sheet based on our
 17 conversation today. Do you see that?
 18 A I do, yes.
 19 Q Do you have any reason to doubt that you had a
 20 conversation with him on or about November 15th, 2011?
 21 A No, I don't.
 22 Q If you look at the second page of this exhibit.
 23 (Whereupon, the exhibit was displayed on the
 24 screen.)
 25 Q The interest rate is LIBOR plus 5.5 percent. Do you

I. Trump - by Plaintiff - Direct (Mr. Solomon) Page 3677

1 see that?
 2 A I do, yes.
 3 Q Do you recall if that was the rate you had discussed
 4 with Mr. Harvey?
 5 A No, I don't recall.
 6 Q Do you have any reason to believe this term sheet does
 7 not accurately reflect your conversation with Mr. Harvey?
 8 A Well, I don't recall my conversation with Mr. Harvey,
 9 so I don't know one way or the other. I have no reason to
 10 believe it doesn't reflect it.
 11 Q Okay.
 12 MR. SOLOMON: I'm going to hand to the witness
 13 PX-3247, which is already in evidence.
 14 (Whereupon, the exhibit was displayed on the
 15 screen.)
 16 (The exhibit was handed to the witness.)
 17 THE WITNESS: Thank you.
 18 Q This is an e-mail chain between you and Ronnie Levine
 19 and Ralph Herzka. Do you see that?
 20 A No. I think --
 21 Q I think I may have a different exhibit.
 22 MR. SOLOMON: I'm on the wrong one.
 23 Q You have the right one, ma'am. This is an e-mail
 24 between you, at the bottom, and Enrique E. Morelos Zaragoza
 25 Borbolla. I apologize if I mangled the pronunciation.

I. Trump - by Plaintiff - Direct (Mr. Solomon) Page 3678

1 Is this the potential transaction you were discussing
2 with Inbursa?
3 A Yes. This is with Inbursa.
4 Q If you look at the bottom of the first page, second
5 paragraph, "Attached for your review is a markup of your term
6 sheet."
7 Do you see that?
8 A I do, yes.
9 Q And if you turn, beginning on the third page --
10 (Whereupon, the exhibit was displayed on the
11 screen.)
12 Q -- there appears to be a markup of an Inbursa term
13 sheet?
14 A Yes.
15 Q Is that your markup of his term sheet as reflected in
16 the cover e-mail?
17 A I don't recall, sitting here today, any of these terms
18 from 2011. We didn't move forward with the deal with them, so I
19 have no reason to believe it's not. But I don't remember having
20 these conversations other than very high level.
21 Q If you look on the third page of the exhibit, which is
22 the first page of the term sheet, "Indicative Rates, one month
23 LIBOR plus 550 basis points."
24 Do you see that?
25 A Which page were you on?

I. Trump - by Plaintiff - Direct (Mr. Solomon) Page 3679

1 Q The third page of the exhibit, page three of 14?
2 A Okay.
3 Q Under "Indicative Rates."
4 A Yes.
5 Q It's highlighted on the screen. That is something I
6 did not strike; correct?
7 A It's not struck here, no.
8 THE COURT: Let me just suggest. It's often easier
9 to see it on the screen because they highlight what they
10 want you to look at.
11 THE WITNESS: Thank you. I appreciate it.
12 THE COURT: But either way. What were you --
13 nothing. Go ahead.
14 Q At this time, were you also communicating with Meridian
15 Capital as a potential broker for the financing of the Doral
16 acquisition?
17 A I recall you having asked me about Meridian when we
18 met, and I had forgotten that we had conversations with them. I
19 don't believe we had ever engaged them. I don't recall having
20 done that. But it wasn't uncommon for us to ask people in the
21 market what their thoughts were as we were looking at things.
22 But I don't recall that we actually formerly engaged them.
23 Q But you had conversations with them; correct?
24 A Yeah, you reminded me of that, yes.
25 Q Okay.

I. Trump - by Plaintiff - Direct (Mr. Solomon) Page 3680

1 MR. SOLOMON: If we could hand to the witness
2 PX-3243 which is already in evidence.
3 (Whereupon, the exhibit was displayed on the
4 screen.)
5 (The exhibit was handed to the witness.)
6 Q And I was on the wrong page earlier, now on the right
7 page. This is an e-mail chain between you and Ronnie Levine and
8 Ralph Herzka; do you see that?
9 A I do, yeah.
10 Q They were with Meridian Capital or were with Meridian
11 Capital at that time; correct?
12 A I hadn't remembered Ronnie Levine, but you had reminded
13 me that he worked at Meridian. Ralph I remember.
14 Q Do you see the first sentence in your e-mail on the
15 very top from November 1st, 2011? You state, "I actually spoke
16 to Tom Harrison at Colony today." And then it goes on. Do you
17 see that?
18 A I do, yes.
19 Q Do you recall speaking with anyone at Colony in
20 potential financing for Doral?
21 A There was a point in time when Colony was going to be
22 our equity partner in the project, not on the debt side, but as
23 our partner in -- actually, you know what, that was OPO, so this
24 was -- I don't recall, because there was also Tom Harrison, but
25 I don't recall having spoken to him about Doral. But I do

I. Trump - by Plaintiff - Direct (Mr. Solomon) Page 3681

1 recall having spoken to him about the Old Post Office, and we
2 actually had explored it collectively for some time, so. They
3 were happening kind of around the same time, so apologies for
4 the confusion. But no, I didn't remember speaking to him about
5 Doral.
6 Q Okay.
7 Second sentence reads, "He said that we wouldn't want
8 to do a deal with them on the debt side as they are too
9 expensive for what we'd be looking for (low teens.)"
10 A Mm-hmm.
11 Q Do you have any reason to believe that you reported the
12 conversation inaccurately to Mr. Levine and Mr. Herzka?
13 A No.
14 MR. SOLOMON: I'm going to hand up PX-1289, which
15 is not in evidence, so it's marked for identification.
16 (Whereupon, the exhibit was displayed on the
17 screen.)
18 (The exhibit was handed to the witness.)
19 THE WITNESS: Thank you.
20 (Continued on the next page.)
21
22
23
24
25

I. Trump - by Plaintiff - Direct(Solomon) Page 3682

1 Q This is an e-mail from Ronny Levine to you; do you
2 see that?
3 A I do, yes.
4 Q November 7, 2011, correct?
5 A That's what it says, yes.
6 Q And it attaches a finance memo that, according to
7 this e-mail, you discussed with him last week?
8 A It appears that way, yes.
9 MR. SOLOMON: Your Honor, we offer PX 1829 in
10 evidence.
11 MR. KISE: Objection, statute of limitations,
12 relevance. Is this going to be connected up at some point
13 to claims that are at issue?
14 THE COURT: We have been battling, shall I say,
15 over relevance in terms of the statute of limitations, for
16 example. First of all, this is not going to be a
17 comprehensive list:
18 There is no jury, so there is no prejudice.
19 This apparently will be the plaintiff's last
20 witness on their case-in-chief, right?
21 MR. SOLOMON: I believe that to be true, Your
22 Honor, but depending on what happens, we reserve the
23 right.
24 THE COURT: Of course.
25 And these documents, these discussions, I would

I. Trump - by Plaintiff - Direct(Solomon) Page 3683

1 just like to get the whole picture, not just blind myself.
2 I am very aware of the Appellate Division's
3 statute of limitations cutoff.
4 And finally, I think that a lot of this is
5 arguably, possibly, relevant to the injunctive relief that
6 the plaintiff is requesting.
7 So that's my response to both relevance and
8 statute of limitations. So overruled.
9 That was a request to put this in evidence.
10 MR. SOLOMON: Yes, Your Honor.
11 THE COURT: I almost forgot after all of the
12 talking I did.
13 Granted, it is in evidence.
14 (Whereupon, the document referred to was deemed
15 marked for evidence as Plaintiff's Exhibit 1829 by
16 the Court.)
17 Q If you could turn to the financing memo?
18 A Yes.
19 Q Mr. Levine starts by telling you that they have
20 spoken with a wide variety of lenders regarding acquisition and
21 renovation, financing for the Doral Resort and Spa; do you see
22 that?
23 A I do, yes.
24 Q At the end of the first paragraph he goes on to
25 analyze certain information from a recent Deutsche Bank

I. Trump - by Plaintiff - Direct(Solomon) Page 3684

1 securitization; do you see that?
2 A I do, yes.
3 Q And on the next page, based upon the information they
4 have, towards the end of the carry-over paragraph, he notes
5 that a 9 percent debt yield is "an aggressive assumption and
6 the lowest indicated of the deals above." Do you see that?
7 A I do, yes.
8 Q Do you recall in or about November of 2011 having an
9 understanding that a 9 percent debt yield is an aggressive
10 assumption with respect to potential Doral financing?
11 A No.
12 Q Do you have any reason to doubt, as stated by
13 Mr. Levine, that a 9 percent debt yield was an aggressive
14 assumption at that time?
15 A I think it would be hard for me to answer that
16 question sitting here today, all of these many years removed.
17 But just looking at the document, it appears that the example
18 he is using is a mezzanine position. This was debt not mezz,
19 so I am not sure if it is -- this is an apples to apple
20 comparison. But it says what it says. I don't remember it and
21 I don't believe we used them to secure financing.
22 Q I understand you didn't use them to secure financing.
23 Let's go back though. It is the second paragraph on the first
24 page that speaks about mezz financing, correct?
25 A The 92 million mezzanine position on the standard

I. Trump - by Plaintiff - Direct(Solomon) Page 3685

1 hotel, yes.
2 Q Which was sold for 80 cents on the dollar, correct?
3 A That's what it says here, yes.
4 Q Is it your understanding that the securitized portion
5 that is reflected in the chart above was also mezzanine
6 financing?
7 A I don't have an understanding beyond what I am seeing
8 here today.
9 Q Well, you testified that the 9 percent debt yield
10 related to mezz financing, and I am trying to understand where
11 you drew that from?
12 A I am just reading the document realtime, so I told
13 you that I hadn't recalled seeing it prior.
14 Q So you don't know then if the securitized portion
15 that is reflected in the chart on the first page is debt or
16 mezzanine financing, do you?
17 A No, I don't.
18 Q Did there come a time that you and Donald Trump spoke
19 with Richard Byrne, the CEO of Deutsche Bank Securities, about
20 potentially providing a loan to purchase and renovate Doral?
21 A I recall you reminding me of that discussion, but
22 I -- I didn't recall it prior.
23 Q Do you recall it now?
24 A No. I recall you showed me, I think, a letter from
25 my father to Mr. Byrne. I don't know. You just showed me a

I. Trump - by Plaintiff - Direct(Solomon) Page 3686

1 document the last time we were together.
 2 Q I am going to show you what has been marked and
 3 already entered into evidence as PX 1433.
 4 A Thank you.
 5 (Handing)
 6 Q Is that the letter you were referring to, ma'am?
 7 A Yes, I believe I was copied on it.
 8 Q Okay. If you look at the first sentence there is a
 9 reference to Donald J. Trump's recently completed financial
 10 statement. Do you see that?
 11 A I do, yes.
 12 Q And you are cced on this letter, right?
 13 A I see that, yes.
 14 Q Any reason to believe you did not receive this in or
 15 about November -- on or about November 15, 2011?
 16 A No.
 17 MR. SOLOMON: I am going to ask to mark as PX
 18 1067 for identification.
 19 (Handing)
 20 THE WITNESS: Thank you.
 21 Q This is an e-mail from you to Richard Byrne the next
 22 day, November 16, 2011; do you see that?
 23 A I do, yes.
 24 Q Does that refresh your recollection that you had
 25 conversations with Mr. Byrne about potentially financing Doral?

I. Trump - by Plaintiff - Direct(Solomon) Page 3687

1 A I remembered it when you brought it to my attention.
 2 But I think they were very high level discussions and the
 3 conversations didn't go anywhere. So, I don't remember the
 4 details of it now.
 5 Q Okay. But you did send this e-mail to Mr. Byrne on
 6 or about November 16, 2011, correct?
 7 A It appears that way, yes.
 8 MR. SOLOMON: We offer this in evidence.
 9 MR. KISE: Objection, statute of limitations and
 10 relevance.
 11 THE COURT: Overruled on both grounds.
 12 Now I understand, particularly from Mr. Robert,
 13 that you feel that you have to object every time there is
 14 a document introduced --
 15 MR. KISE: We do.
 16 THE COURT: -- on statute of limitations ground.
 17 Also on relevance?
 18 MR. KISE: Since I am going to talk about
 19 statute of limitations, I might as well just mention
 20 relevance while we are at it.
 21 I hope that the Court when we start our case
 22 though, I will say this, next week, offers us this
 23 extraordinary latitude in the introduction of evidence. I
 24 want to put that on the record. Because this is,
 25 respectfully, an extraordinary latitude on bringing in

I. Trump - by Plaintiff - Direct(Solomon) Page 3688

1 things from years ago.
 2 THE COURT: What is our favorite saying: Sauce
 3 for the goose is sauce for the gander?
 4 Okay.
 5 Q Do you recall that before you were dealing with
 6 Rosemary Vrablic at Deutsche Bank that the commercial real
 7 estate group had proposed certain terms for the financing of
 8 the purchase of Doral?
 9 A I didn't recall that proposal, no.
 10 MR. SOLOMON: I am going to mark as PX 369 for
 11 identification.
 12 (Handing)
 13 THE WITNESS: Thank you.
 14 Q This is a Deutsche Bank document from November 21,
 15 2011. If you look at page five, there is a summary of
 16 indicative terms; do you see that?
 17 A Okay.
 18 Q It identifies the borrowers; do you see that?
 19 A I do, yes.
 20 Q Guaranties. The guaranties will be by the company
 21 and each of its direct and indirect subsidiaries; do you see
 22 that?
 23 A I do.
 24 Q There is no personal guaranty indicated there, is
 25 there?

I. Trump - by Plaintiff - Direct(Solomon) Page 3689

1 A I don't see one.
 2 Q If you look at "facility," do you understand facility
 3 to be the loan?
 4 A I do, yes.
 5 Q The amount, loan amount is 130 million correct?
 6 A I see that.
 7 Q And the spread is L plus 800 bps; do you understand
 8 that to be LIBOR plus 800 basis points?
 9 A I do.
 10 Q Does this refresh your recollection that the
 11 commercial real estate group initially proposed terms that were
 12 substantially different from those that were eventually
 13 accepted by the Trump Organization through the private wealth
 14 management group?
 15 A No, I don't, I don't recall having seen this.
 16 Q I understand you don't recall having seen this. My
 17 question was a little bit different. Does this refresh your
 18 recollection that the commercial real estate group had proposed
 19 terms that were different than those ultimately agreed to by
 20 the Trump Organization through the private wealth management
 21 group?
 22 A No.
 23 MR. SOLOMON: I am going to ask to mark PX 315
 24 for identification.
 25 (Handing)

I. Trump - by Plaintiff - Direct(Solomon) Page 3690

1 THE WITNESS: Thank you.

2 Q This is a cover e-mail from you to Rosemary Vrablic

3 and Dominic Scalzi with a cc to Jared Kushner, December 6,

4 2011. Do you see that?

5 A I do, yes.

6 Q And it attaches what you described as: Our

7 investment memo, as well as basic information on our golf and

8 hotel portfolios. Do you see that?

9 A I do, yes.

10 Q Did you send this to Ms. Vrablic and Mr. Scalzi on or

11 about December 6, 2011?

12 A I don't recall it, but I have no reason to believe I

13 didn't.

14 MR. SOLOMON: We offer this in evidence, Your

15 Honor.

16 MR. KISE: Objection, statute of limitations and

17 relevance.

18 THE COURT: Overruled.

19 Q This e-mails refers to a meeting the next day

20 involving you, Ms. Vrablic and Donald Trump; do you see that?

21 A I do, yes.

22 Q Did you, in fact, meet with Ms. Vrablic and

23 Mr. Scalzi the next day?

24 A I don't recall this particular meeting, but over the

25 years I did meet with both Rosemary and Dominic periodically.

I. Trump - by Plaintiff - Direct(Solomon) Page 3691

1 Q But you have no specific recollection of meeting to

2 discuss the investment memo or the basic information on your

3 golf and hotel portfolios?

4 A Not that specific meeting, but I recall more

5 generally us meeting to discuss, whether it was in-person or

6 telephonically, Doral.

7 Q Did there come a time that Ms. Vrablic provided a

8 summary of potential loan terms for the Doral loan?

9 A Can you repeat the question?

10 Q Sure.

11 A Did there come a time when --

12 MR. SOLOMON: Your Honor, may I have a read

13 back?

14 THE COURT: Read back, please.

15 (Whereupon, the record was read back by the

16 court reporter.)

17 A Yes.

18 MR. SOLOMON: I am going to ask to mark for

19 identification PX 319.

20 (Handing)

21 THE WITNESS: Thank you.

22 Q PX 319 is an e-mail from Ms. Vrablic to you: Ivanka,

23 as we discussed, please find attached our summary terms for the

24 proposed acquisition for the Doral resort. Do you see that?

25 A I do, yes.

I. Trump - by Plaintiff - Direct(Solomon) Page 3692

1 Q Did you receive this on or about December 15, 2011?

2 A I recall right around that time having received high

3 level terms. But I don't recall this particular -- this

4 particular note and e-mail. But around that time we would have

5 received -- we would have received what their proposal was,

6 yes.

7 MR. SOLOMON: Your Honor, we offer this in

8 evidence.

9 MR. KISE: Objection, statute of limitations,

10 relevance and the attachments are hearsay. For what

11 purpose is that page being offered; it is purely hearsay?

12 THE COURT: Is it more than just the first page?

13 MS. HABBA: The document we have is three pages,

14 Your Honor.

15 THE COURT: Are you asking to introduce more

16 than the page that is on the screen here?

17 MR. SOLOMON: Yes, the entire exhibit, Your

18 Honor.

19 THE COURT: And what is the relevance of the

20 second and third page?

21 MR. SOLOMON: The relevance are the terms that

22 were proposed by Deutsche Bank in connection with the

23 potential loan on Doral.

24 MR. KISE: The document itself is hearsay. Is

25 he proposing notice as the exception that it comes in?

I. Trump - by Plaintiff - Direct(Solomon) Page 3693

1 THE COURT: I assume notice.

2 MR. SOLOMON: Notice and the witness's

3 understanding of what the potential terms were with

4 respect to the proposal from Deutsche Bank.

5 MR. KISE: But not for the fact of the terms

6 themselves. This witness hasn't done anything to identify

7 that these, in fact, were the terms that were received.

8 MR. SOLOMON: With respect, the witness said she

9 received term sheets from Deutsche Bank, this is one of

10 the term sheets. And she stated she has reason to believe

11 that she did not receive this particular one.

12 THE COURT: Also it is questionable or

13 problematic whether an offer is being introduced to prove

14 the truth of its contents. But anyway, it is in at least

15 for notice.

16 (Whereupon, the document referred to was marked

17 for evidence as Plaintiff's Exhibit 319 by the

18 Court.)

19 THE COURT: That's not necessarily the only

20 reason. But if you want to push, go ahead.

21 Q Do you see on the page two of three there is pricing,

22 renovation period: LIBOR plus 2.25 percent over prime. And

23 then during the amortization period: LIBOR plus 2 percent or

24 the prime rate minus .25 percent. Do you see that?

25 A I see that, yes.

I. Trump - by Plaintiff - Direct(Solomon) Page 3694

1 Q Do you recall that Deutsche Bank had proposed
2 different interest rates for the renovation period and the
3 amortization period?
4 A I do, yes.
5 Q Do you have an understanding as to why those pricings
6 are different during the two periods?
7 A Well, I believe that once we had invested a
8 tremendous amount of capital into the asset, the pricing
9 adjusted accordingly. I don't believe that this is the
10 financial proposal though.
11 Q I did not represent that it was.
12 A Because these terms are not consistent with my
13 recollection.
14 Q But there was a negotiation back and forth with
15 Deutsche Bank prior to signing loan agreements, correct?
16 A There was, yes.
17 Q Okay. Do you see there was a guarantor identified
18 here? Donald J. Trump?
19 A I see that, yes.
20 Q Do you see that the guaranty is described on this
21 sheet as a full and unconditional guaranty of (i) principal and
22 interest due under the facility; and (ii) operating expenses of
23 the resort? Do you see that?
24 A I do, yes.
25 Q Did you understand that at some point during the

I. Trump - by Plaintiff - Direct(Solomon) Page 3695

1 negotiations Deutsche Bank had wanted a guaranty from Donald J.
2 Trump of the principal and interest and operating expenses?
3 A Yes.
4 Q If you look under covenants, and I direct your
5 attention to the bottom (ii), at the very bottom: Guarantor
6 shall maintain a minimum net worth of 3 billion including any
7 value related to the guarantor's brand value. Do you see that?
8 A I see that, yes.
9 Q Okay. Do you recall in the negotiations between the
10 Trump Organization and Deutsche Bank discussions about a
11 minimum net worth requirement for the guarantor?
12 A No, I don't. You had mentioned this to me. I think
13 you had shown me one of the term sheets, I am not sure this
14 one, but one of the term sheets that had circulated when we
15 last met and identified that for me. But I didn't
16 independently recall it.
17 Q And this doesn't refresh your recollection that a
18 minimum net worth requirement for the guarantor was one of the
19 terms proposed by Deutsche Bank?
20 A No, it doesn't.
21 Q You thought this was a great proposal, didn't you?
22 A I don't recall this proposal.
23 MR. SOLOMON: I am going to ask to mark PX 1251
24 for identification.
25 (Handing)

I. Trump - by Plaintiff - Direct(Solomon) Page 3696

1 Q Keeping in mind, PX 319 was sent to you on
2 December 15, 2011 at 11:13 a.m., in looking at this exhibit,
3 PX1251, the second page, which is the first e-mail, is a copy
4 of that e-mail from Ms. Vrablic, correct?
5 A If you stipulate that it is.
6 Q I am asking you, same date and time?
7 A It appears to be, yes.
8 Q Yes. And you forward that e-mail on, including the
9 term sheet, to Mr. Weisselberg, Mr. Greenblatt and Mr. Orowitz;
10 do you see that?
11 A I see that, yes.
12 Q And you state: "It doesn't get better than this.
13 Let's discuss ASAP."
14 Do you see that?
15 A I do, yes.
16 Q Does that refresh your recollection that you thought
17 that was a good proposal for the Trump Organization?
18 A No.
19 Q Do you have any reason to believe you did not write
20 that on or about December 15, 2011?
21 A No.
22 MR. SOLOMON: Your Honor, we offer this in
23 evidence.
24 MS. HABBA: I am going to state an objection on
25 the record on this. If you actually look at the e-mail,

I. Trump - by Plaintiff - Direct(Solomon) Page 3697

1 it was never sent. Jason Greenblatt there is no "to."
2 MR. SOLOMON: The bottom of the first page,
3 Ivanka Trump, and then carries over to Allen Weisselberg,
4 Jason Greenblatt and David Orowitz.
5 MS. HABBA: Do you see the top of the first
6 page, at least on the exhibit I have, there is no "to."
7 MR. KISE: Your Honor, also in addition to my
8 initial statute and limitations and relevance objections,
9 I don't think the witness has testified about the top
10 portion.
11 MS. HABBA: That's what I am saying.
12 MR. KISE: I think that's what Ms. Habba is
13 referencing. Lower portions perhaps, but the top portion
14 here I don't think there is any testimony about that or
15 whether she, in fact, received that at all.
16 The lower portions that have her in the "to" or
17 "from" category, I believe that's where she is testifying.
18 Mr. Solomon, I am sure, can clear that up. But the top
19 portion is not. That would be something --
20 MR. SOLOMON: Your Honor, I will note --
21 MR. KISE: -- I don't know what that is.
22 THE COURT: But he is asking about the bottom
23 portion.
24 MR. SOLOMON: Your Honor, I will note this was
25 produced to us by the Trump Organization. So it is a

I. Trump - by Plaintiff - Direct(Solomon) Page 3698

1 Trump Organization document. It is an admission against
2 interest. It comes in on many grounds.
3 MS. HABBA: With all due respect, your questions
4 to the witness are whether it was sent and whether those
5 were sentiments. It was not sent.
6 And I would just say, Your Honor, this will go a
7 lot faster and I don't think we will have as many
8 objections if they could cut their exhibits into the
9 portions that they would like to show, as opposed to a
10 string of e-mails, some of which were never even sent to
11 anybody. That's going to be my standing objection on
12 this. I just think that is what the issue is.
13 MR. SOLOMON: Notwithstanding your suggestion,
14 we are not going to alter documents before presenting them
15 to the Court. We are going to present them as they were
16 produced to us.
17 MS. HABBA: Then you should ask --
18 MR. SOLOMON: Please let me finish, ma'am. I
19 didn't interrupt you.
20 THE COURT: Mr. Solomon, then Ms. Habba, and
21 then let's get back to the witness.
22 MR. SOLOMON: Very simply, Your Honor, we can
23 exclude the top portion. Ms. Habba keeps saying it wasn't
24 sent, it wasn't sent, the one I am asking about, the one
25 from Ivanka Trump was, in fact, sent.

I. Trump - by Plaintiff - Direct(Solomon) Page 3699

1 The one from Jason Greenblatt, right above that
2 at 11:54 a.m. does in fact indicate "to" Ivanka Trump,
3 David Weisselberg, David Orowitz, confirming that it was
4 sent and received. Ms. Trump responds ten minutes later
5 at 12:04 p.m., so they were, in fact, sent. The document
6 itself provides evidence that it was sent, received
7 reviewed and commented upon.
8 THE COURT: Can we eliminate the first?
9 MR. SOLOMON: We would do that, yes, Your Honor.
10 We would agree to remove the top portion for the present
11 time with respect to Mr. Greenblatt, reserving our rights
12 with respect to dealing with that at a later time.
13 THE COURT: All right. Mr. Kise's underlying
14 objection is overruled. And everything is in except the
15 first section, which may or may not have been sent, I
16 don't know.
17 MR. KISE: I am not sure, just to clarify,
18 because our understanding is this is their last witness,
19 as you said, I am not sure what later time they are
20 planning on doing that. When their case closes?
21 MR. WALLACE: Your Honor, sorry to interrupt
22 Mr. Solomon. This is their document. This has been used
23 in testimony. This now -- we will go to the metadata, but
24 this is their document. To stand up and say it looks
25 funny, so I don't think it was sent is -- is a new

I. Trump - by Plaintiff - Direct(Solomon) Page 3700

1 creation from defendants. But we will go back and look at
2 the metadata.
3 MS. HABBA: Nobody said that. I am being very
4 clear and we all have to make the record clear. When you
5 show a witness a document and say, "was this sent." It
6 was not sent. And I think you probably didn't realize
7 that until now, which is fine. So let's just take that
8 portion out that was not sent. That was not -- yes, it
9 was produced, but it is irrelevant. That's not what you
10 asked the witness about. So just I think that
11 streamlines, Your Honor, so we don't have to do this all day.
12 MR. SOLOMON: I asked the witness about the
13 portion she sent, received and commented on.
14 MR. KISE: I think we are all in agreement, so
15 we will just move on.
16 THE COURT: The record is clear. Let's move on.
17 Q So let's go back and reset if we can.
18 A Okay.
19 Q Your response or your reaction to the proposal on
20 December 15 at 11:50 a.m. that you sent to Alan Weisselberg,
21 Jason Greenblatt and David Orowitz is: "It doesn't get better
22 than this." Do you see that?
23 A I do, yes.
24 Q Does that refresh your recollection that you thought
25 this was a good proposal for the Trump Organization?

I. Trump - by Plaintiff - Direct(Solomon) Page 3701

1 A Well, we ended up doing the deal with Deutsche Bank,
2 so.
3 THE COURT: That's a yes or no question.
4 THE WITNESS: Oh.
5 A Not this particular proposal, because I think what we
6 ended up doing was slightly different. As I stated earlier, I
7 didn't remember this particular document. But yes, I thought
8 generally the deal terms with Deutsche Bank for Doral were
9 positive and we proceeded forward.
10 Q Okay.
11 THE COURT: That could have been a simple "yes."
12 Q You see that Mr. Greenblatt responds to you only four
13 minutes later?
14 A Okay.
15 Q Do you see that at 11:54 a.m. he wastes no time in
16 telling you: "I will review, but not immediately, that this is
17 a full principal and interest and operating expense personal
18 DJT guaranty."
19 Is that a typo? But "note" as opposed to but "not;"
20 is that your understanding?
21 A It is what it says.
22 Q Okay. Then it goes on, "Is DJT willing to do that?
23 Also, the net worth covenants and DJT indebtedness
24 limitation -- limitations would seem to me to be a problem."
25 Do you see that?

I. Trump - by Plaintiff - Direct(Solomon) Page 3702

1 A I do, yes.

2 Q When you received this, did you have an understanding

3 as to why the net worth covenant would be a problem?

4 A I don't remember having received this.

5 Q Do you recall the net worth covenant was 3 billion?

6 A No, I think I said earlier that I didn't recall that

7 there was a net worth.

8 Q In the term sheet that you forwarded on?

9 A Yes.

10 Q The net worth covenant was 3 billion?

11 A Yes. And what is here I see that it says 3 billion,

12 or in the earlier exhibit.

13 MR. SOLOMON: Could we show on the screen

14 PX-787?

15 Q And that is Donald J. Trump's June 30, 2011 Statement

16 of Financial Condition. Do you see that?

17 A I do, yes.

18 MR. SOLOMON: Can we go to page five of the

19 document?

20 Q Liabilities and net worth.

21 MR. SOLOMON: If you scroll down.

22 Q Net worth. \$4,261,590,000. Do you see that?

23 A I see that is what it says, yes.

24 Q Were you aware that in his Statement of Financial

25 Condition as of June 30, 2011, Donald Trump had represented

I. Trump - by Plaintiff - Direct(Solomon) Page 3704

1 Q This is an e-mail from you to Ms. Vrablic and

2 Mr. Scalzi with a copy to Mr. Weisselberg and Mr. Orowitz:

3 "Greetings from Florida. Attached is a clean version of our

4 marked up LOI." Do you see that?

5 A Yes, if you don't mind just giving me a moment to

6 read it?

7 Q Please.

8 A Thank you.

9 (The following proceedings were stenographically

10 recorded by Senior Court Reporter Michael Ranita.)

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I. Trump - by Plaintiff - Direct(Solomon) Page 3703

1 that his net worth was more than 4 billion?

2 A No.

3 Q Let's turn back to PX-1251.

4 You respond to Mr. Greenblatt: "That we have known

5 from day one. We wanted to get a great rate and the only way

6 to get proceeds/term and principal where we want them is

7 guarantee the deal." Do you see that?

8 A I do.

9 Q Do you recall writing that?

10 A No, I don't.

11 Q On or about December 15, 2011?

12 A No.

13 Q Do you have any reason to believe that is not an

14 accurate statement of your view at that time?

15 A No, I don't.

16 Q Did there come a time that you responded to Deutsche

17 Bank and proposed different terms?

18 A As I said earlier, I don't believe this was the final

19 deal we did. I think the rate was slightly different. So,

20 there must have been subsequent discussions.

21 Q Okay.

22 MR. SOLOMON: I am going to hand up PX-332 which

23 is already in evidence.

24 (Handing)

25 THE WITNESS: Thank you.

I. Trump - by Plaintiff - Direct (Mr. Solomon) Page 3705

1 A Okay. Thank you.

2 Q Do you see that the first paragraph states, "Attached

3 is a clean version of our marked up LOI"?

4 A Yes, I do see that.

5 Q Is LOI short for letter of intent?

6 A It is.

7 Q If you look at the third page of the exhibit.

8 (Whereupon, the exhibit was displayed on the

9 screen.)

10 Q The very bottom, "Guarantor shall maintain a minimum

11 net worth of 2 billion, excluding any value related to the

12 guarantor's brand value, as reflected in the Statement of

13 Financial Condition."

14 Do you see that?

15 A I do, yes.

16 Q So at this time, although Mr. Trump's prior Statement

17 of Financial Condition represented a purported net worth of more

18 than \$4 million, you rejected a net worth covenant of 3 billion

19 and proposed a covenant of only 2 billion; correct?

20 A Well, it says what it says here in the term sheet. I

21 didn't, um --

22 Q Well, the other term sheet we saw this had they 3

23 billion?

24 A Yes.

25 Q Your proposal rejects that an counteroffers 2 billion;

I. Trump - by Plaintiff - Direct (Mr. Solomon) Page 3706

1 correct?

2 A It appears so, yes.

3 Q Did The Trump Organization ultimately enter into

4 commitment committing and fee letters with Deutsche Bank for the

5 Doral loan?

6 A It did, yes.

7 MR. SOLOMON: I'm going to mark as PX-320 for

8 identification.

9 (Plaintiff's Exhibit 320 was deemed marked for

10 identification.)

11 (The exhibit was handed to the witness.)

12 (Whereupon, the exhibit was displayed on the

13 screen.)

14 THE WITNESS: Thank you.

15 Q Tom Sullivan is at Deutsche Bank; correct. Or was in

16 or about January of 2012; correct?

17 A I don't really remember Tom, but.

18 Q Okay.

19 Did you receive this e-mail in or about January of 2012

20 from Deutsche Bank attaching fully executed Commitment and Fee

21 Letters?

22 A I don't recall this particular e-mail, but I see it

23 right here, so.

24 Q Do you have any reason to believe you did not receive

25 this?

I. Trump - by Plaintiff - Direct (Mr. Solomon) Page 3707

1 A No, I don't.

2 Q If you turn to page four of the exhibit --

3 (Whereupon, the exhibit displayed on the screen was

4 scrolled through.)

5 Q -- do you recognize Donald J. Trump's signature?

6 A I do, yes.

7 Q If you turn to page nine of the exhibit --

8 (Whereupon, the exhibit was displayed on the

9 screen.)

10 Q -- do you recognize Donald J. Trump's signature?

11 A I believe so, yes.

12 MR. SOLOMON: Your Honor, we offer this in

13 evidence.

14 MR. KISE: Objection. Statute of limitations,

15 relevance, and one other thing, your Honor. This witness

16 has been subpoenaed here on behalf of, I believe, three

17 corporate entities, so I just want to note a standing

18 objection, as well, that none of this has anything to do

19 with those three corporate entities.

20 THE COURT: I don't think that matters.

21 MR. KISE: It does, because that is ostensibly,

22 ostensibly the basis upon which this non-party non-resident

23 witness was summoned here to testify. That's the reason

24 that she was summoned here to testify. That's the reason we

25 dragged her from her home here to testify.

I. Trump - by Plaintiff - Direct (Mr. Solomon) Page 3708

1 So we are not asking her about things that are

2 within the parameters of those entities. The argument from

3 the Attorney General was we must have her here because only

4 she can speak for those corporate entities, and so we

5 haven't had any questions about those corporate entities, or

6 even about the OPO loan which, maybe theoretically, or

7 arguably, would have something to do with one of those three

8 entities. None of this has to do with any of that.

9 So it's just a standing objection. That's all,

10 your Honor.

11 THE COURT: Well it's an interesting question. To

12 what extent the questioning has to be limited to the grounds

13 of the subpoena. They would have to list every single thing

14 that they might want to ask. Also, the law is entitled to

15 every person's evidence.

16 Mr. Robert, what is your opinion on that

17 interesting question?

18 MR. ROBERT: They clearly are limited to the

19 corporate representative of those three entities. We had a

20 whole debate two weeks ago as to they didn't have the

21 ability to serve a personal subpoena, so they did it under

22 the guise of these corporate entities.

23 So so far -- typically you would actually have the

24 topic attached to it, which they didn't. So so far in the

25 last hour, none of these questions come even close to the

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1 basis of those three subpoenas.

2 THE COURT: Plaintiff, would you like to respond?

3 MR. SOLOMON: We would disagree, your Honor. The

4 witness is -- obviously. The witness is here. She could

5 testify about these transactions she was involved in. She

6 is receiving e-mails. She is sending e-mails. She is

7 commenting upon term sheets. She is negotiating the deal

8 from top to bottom, from interest rates to amounts of a net

9 worth covenant, which is one of the critical issues in this

10 case, as your Honor knows and already ruled upon.

11 MS. HABBA: Your Honor, briefly --

12 MR. KISE: Your Honor, none of that has anything to

13 do with those corporate entities.

14 THE COURT: And you see that point.

15 MS. HABBA: She is no longer a defendant in this

16 case, so you cannot take full range just because she's here.

17 MR. WALLACE: I'm not aware of that.

18 THE COURT: You know, the subpoena -- the ruling on

19 enforcing the subpoena was minimum, not a maximum. So,

20 anyway, overruled.

21 Let's continue.

22 MR. SOLOMON: Your Honor, we had offered this in

23 evidence. I don't know if there was a ruling.

24 THE COURT: There wasn't. Granted.

25 (Plaintiff's Exhibit 320 was deemed marked and

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1 admitted in evidence.)
 2 Q If you could turn to page 15 of 26.
 3 (Whereupon, the exhibit was displayed on the
 4 screen.)
 5 A Would you like me to read the whole document, or just
 6 turn to the page?
 7 Q If you need to read anything to answer my question,
 8 feel free to, but I will focus you on specific areas.
 9 A Okay.
 10 Q I'm just going to ask if what was agreed upon under
 11 "Covenants", beginning on the bottom of page 15, carrying you
 12 over to 16. You'll see there is a bullet point that says
 13 "Guarantor shall maintain minimum net worth of 2.5 billion,
 14 excluding the value related to the guarantor's brand value (as
 15 such minimum net worth is reflected in the guarantor's Statement
 16 of Financial Condition prepared by guarantor in substantially
 17 the form prepared by guarantor as of June 30, 2011, a copy of
 18 which has been delivered to lender.)"
 19 Do you see that?
 20 A I see that, yes.
 21 Q Does that your refresh your recollection that the final
 22 net worth covenant was 2.5 billion?
 23 A No. As I said before, I didn't recall a net worth
 24 covenant.
 25 Q Did there come a time in 2016 that The Trump

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1 Organization sought to increase the loan on Doral through
 2 Deutsche Bank?
 3 A There may have been, but I don't specifically recall
 4 that. You may have mentioned something to that effect to me
 5 when we were together last, but --
 6 MR. SOLOMON: I'm going to ask to mark as PX-352
 7 for identification.
 8 (Plaintiff's Exhibit 352 was deemed marked for
 9 identification.)
 10 (The exhibit was handed to the witness.)
 11 THE WITNESS: Thank you.
 12 (Whereupon, the exhibit was displayed on the
 13 screen.)
 14 THE COURT: While we have a moment, I'm trying to
 15 remember back to first year civil procedure. Basically, I
 16 think that the three corporations were necessary for the
 17 power to bring her here. I don't think that limited the
 18 testimony. And that's my ruling anyway.
 19 MR. KISE: Again, for the record, I would
 20 respectfully disagree, because all the corporate subpoenas
 21 are limited in scope to particular testimony when you bring
 22 in a corporate representative.
 23 This isn't a question of whether or not there is
 24 sufficient minimum context jurisdiction to add someone as a
 25 party to the case. That's an entirely and extraordinarily

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1 different analysis.
 2 MR. SOLOMON: We are not talking about adding
 3 Ms. Trump to the case, your Honor. That's not the standard
 4 that applies in this context.
 5 Q Ms. Trump, PX-352 had been put in front of you. You
 6 see this is an e-mail from Ms. Vrablic to you, February 11,
 7 2016, subject "Doral. Hi, it was great speaking to you today.
 8 I spoke to the credit team on the \$50 million request, and we
 9 are thrilled to consider it for you."
 10 Does that refresh your recollection that you sought, on
 11 behalf of The Trump Organization, to increase the loan with
 12 Doral by \$50 million in 2016?
 13 A No.
 14 Q Any reason to believe that this is inaccurate?
 15 A I just don't recall this.
 16 Q Is that a no?
 17 A That's a no.
 18 Q Okay.
 19 MR. SOLOMON: Your Honor, we offer PX-352.
 20 MR. KISE: Objection. Statute of limitations,
 21 relevance and hearsay.
 22 THE COURT: Overruled.
 23 (Plaintiff's Exhibit 352 was deemed marked and
 24 admitted in evidence.)
 25 Q Did you also explore, in 2016, the possibility of an

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1 unsecured loan for Donald Trump from Deutsche Bank?
 2 A I don't recall.
 3 MR. SOLOMON: I'm going to ask to mark as PX-355
 4 for identification.
 5 (Whereupon, Plaintiff's Exhibit 355 was deemed
 6 marked for identification.)
 7 (The exhibit was handed to the witness.)
 8 THE WITNESS: Thank you.
 9 Q For the record, this is an e-mail from Ms. Vrablic to
 10 you from February 16, 2016. Did you receive this on or about
 11 February 16, 2016?
 12 A Sorry. Just give me a moment to read it so I could
 13 have some context.
 14 (Whereupon, there is a brief pause in the
 15 testimony.)
 16 A Okay. Thank you.
 17 MR. SOLOMON: May I ask for a read back of my
 18 question, your Honor.
 19 THE COURT: Can we have a read back of the last
 20 question.
 21 Q Does this refresh your recollection that you were
 22 seeking an unsecured loan on behalf of Donald Trump in or about
 23 February of 2016?
 24 A No.
 25 Q Do you recall receiving this e-mail, the top one, from

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1 Ms. Vrablic, on or about February 16, 2016?
2 A No, I don't recall.
3 Q If you turn to the second page, the very top, it's an
4 e-mail from you to Ms. Vrablic. "Thank you, Rosemary. Just to
5 be clear, based on the note from Dave Williams below, an
6 unsecured facility would not require an appraisal."
7 Do you see that?
8 A I do see that.
9 Q Does that refresh your recollection that you were
10 seeking an unsecured loan on behalf of Donald Trump in or about
11 February of 2016?
12 A No.
13 Q Do you have any reason to believe that you did not send
14 and receive these e-mails on PX-355?
15 A No.
16 MR. SOLOMON: Your Honor, we offer it in evidence.
17 MR. KISE: Objection. Relevance.
18 I think we are passed the statute of limitations,
19 so we'll give you that one.
20 THE COURT: I'll take what I can get. Overruled.
21 (Plaintiff's Exhibit 355 was deemed marked and
22 admitted in evidence.)
23 Q Do you recall, if you don't necessarily recall the
24 discussions relating to the amount of either the secured or
25 unsecured facility here, questions raised by Deutsche Bank as to

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1 the purpose or use of the proceeds of any potential loan in
2 2016?
3 A No, I don't. I don't think this transpired, so I have
4 no recollection of this discussion or this e-mail.
5 Q Okay.
6 And do you recall that it did not transpire because
7 Deutsche Bank refused to do this transaction?
8 A No.
9 MR. SOLOMON: Mark as PX-558 for identification.
10 (Plaintiff's Exhibit 558 was deemed marked for
11 identification.)
12 (The exhibit was handed to the witness.)
13 THE WITNESS: Thank you.
14 Q This is an e-mail from Ms. Vrablic to you on April 8th,
15 2016. Do you see that?
16 A I do.
17 Q She's giving you an update, correct?
18 A It appears that way, yes.
19 Q Did you receive it on or about April 8th, 2016?
20 A I don't recall this e-mail, but I -- if I may just have
21 a moment to read it.
22 THE COURT: I'll give you a five-minute warning at
23 11:25.
24 A Okay. Thank you.
25 Q Do you have you any reason to believe you did not

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1 receive this e-mail on or about April 8th, 2016?
2 A No.
3 MR. SOLOMON: We offer it in evidence, your Honor.
4 THE COURT: Definitely too late for statute of
5 limitations. Overruled. Well, there's no objection.
6 MR. KISE: Other than the relevance, which is a
7 standing objection, you know where we are on that.
8 THE COURT: It's a Pavlovian reaction on my part by
9 now.
10 It's in evidence.
11 (Plaintiff's Exhibit 558 was deemed marked and
12 admitted in evidence.)
13 Q Do you see the first paragraph, "Hi, as you know, we
14 heard the final answer yesterday, with Dominic speaking with
15 Dave, outlining the bank's review/decision of the request."
16 Continues on the next paragraph, "Needless to say, we
17 are disappointed that the bank couldn't make the exception in
18 this case."
19 Does that refresh your recollection that the bank
20 declined the request for the loan in or about 2016?
21 A No, I think I had said prior that I didn't think
22 anything had culminated in around that time frame, so that's
23 consistent with what appears to be this e-mail.
24 Q Does this refresh your recollection that it was the
25 bank's decision not to move forward though?

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1 A No.
2 Q Do you recall entering into a lease for unit Penthouse
3 28 at Trump Park Avenue?
4 A Yes.
5 Q Is that also a street address of 502 Park Avenue?
6 A It is, yes.
7 Q Did that lease have an option for you to purchase
8 Penthouse 28 for \$8.5 million?
9 A It did.
10 Q To your knowledge, did Donald Trump's Statements of
11 Financial Condition take into account this option in valuing
12 this unit?
13 A As I had told you a year and a half ago when we spoke,
14 I wasn't involved in his Statement of Financial Condition, so I
15 can't say what it took into account or did take into account.
16 Q Did there come a time that you entered into a lease for
17 Penthouse 20 at Trump Park Avenue?
18 A Yes.
19 MR. SOLOMON: I'm going to ask to mark, as PX-623,
20 a series of documents, including lease, second amendment,
21 assignment and assumption, and first amendment.
22 (Plaintiff's Exhibit 623 was deemed marked for
23 identification.)
24 (The exhibit was handed to the witness.)
25 THE WITNESS: Thank you.

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1 (Whereupon, the exhibit was displayed on the
2 screen.)
3 Q Do you recognize these documents?
4 A They appear to be copies of a second amendment to the
5 lease with 502 Park Avenue, of Penthouse 20, yes.
6 Q In addition, on page four is an assignment and
7 assumption of lease. Do you see that?
8 A On page?
9 Q Four of 22.
10 A Four -- I do see that, yes.
11 (Whereupon, the exhibit was displayed on the
12 screen.)
13 Q And then page eight of 22 is a first amendment to
14 lease. Do you see that?
15 A I do see that, yes.
16 Q And then page 11 of 22 is the actual lease of a
17 condominium unit. Do you see that?
18 (Whereupon, the exhibit was displayed on the
19 screen.)
20 A Yes, I do.
21 Q Is that your signature on page six of this document?
22 (Whereupon, the exhibit was displayed on the
23 screen.)
24 A That is my signature, yes.
25 Q And is that your signature on page ten of this

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1 document?
2 (Whereupon, the exhibit was displayed on the
3 screen.)
4 A It is, yes.
5 Q And is that your signature on page 22 of this document?
6 (Whereupon, the exhibit was displayed on the
7 screen.)
8 A It is, yes.
9 MR. SOLOMON: Your Honor, we offer this in
10 evidence.
11 THE COURT: Granted. It's in.
12 (Plaintiff's Exhibit 623 was deemed marked and
13 admitted in evidence.)
14 Q If you turn to page 14.
15 (Whereupon, the exhibit was displayed on the
16 screen.)
17 Q Paragraph 49(d), did you understand that you had the
18 exclusive right to purchase the unit, Penthouse 20, for
19 \$14,264,000 during the term of this lease?
20 A That's consistent with my memory of our -- of the
21 option price, yes.
22 Q Do you know if any filings that were required under the
23 Martin Act or New York Condominium Law disclosed the existence
24 of this option?
25 A I don't know.

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1 Q Do you know if any of your -- of Donald Trump's
2 Statements of Financial Condition, between the time of execution
3 of this lease and your departure from The Trump Organization in
4 2017, took into account the existence of this option in valuing
5 this unit?
6 A I don't know.
7 Q We talked about Donald Trump's Statements of Financial
8 Condition in passing. Just so the record is clear, between 2011
9 and prior to your departure from The Trump Organization in 2017,
10 were you aware that Donald Trump had personal Statements of
11 Financial Condition?
12 A As we discussed, I -- roughly a year and a half ago, I
13 would assume he would have personal financial statements that he
14 would work on with his own accountants, but those weren't things
15 that I was privy to.
16 You showed me a few documents and e-mails and
17 correspondence which reference financial statements generally,
18 but it was not something that I was involved in.
19 Q I understand you may not have been involved in it, and
20 you, in your answer, you used the word "assume."
21 Did you know whether he had personal financial
22 statements, Donald J. Trump?
23 A Yes. I said to you then, and I say to you now, I'm not
24 involved with his personal financial statements. I worked at
25 the company, so I knew about company statements, periodically,

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1 asset statements, but I didn't know about his personal
2 statements, per se, other than what you've shown me.
3 Q So, then, is it fair to say that you had no role in
4 preparing any of Donald Trump's Statements of Financial
5 Condition?
6 MS. HABBA: Your Honor, asked and answered.
7 THE COURT: You used different language before, so
8 I'll allow it.
9 Let's, again, be clear between the generic
10 financial statements and the specific Statements of
11 Financial Condition, so.
12 MR. SOLOMON: I'll rephrase my question, your
13 Honor.
14 Q Did you have any role in preparing Donald J. Trump's
15 Statements of Financial Condition?
16 A Not that I'm aware of, no.
17 Q To your knowledge, did you ever provide valuations for
18 any of the assets reflected on Donald J. Trump's Statements of
19 Financial Condition?
20 A Not that I can recall, no.
21 Q Did you ever review any of Donald J. Trump's Statements
22 of Financial Condition before they were finalized?
23 A I don't recall that, no.
24 THE COURT: Six-minute warning.
25 MR. SOLOMON: I can go onto another area or --

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1 THE COURT: Break now?
 2 MR. SOLOMON: Whatever the Court's preference.
 3 THE COURT: We could take a vote, but let's take a
 4 break now. So 15 minutes. So be back here at 11:40.
 5 MR. SOLOMON: Your Honor, an admonition to the
 6 witness, please.
 7 THE COURT: I will direct the witness not to
 8 discuss your testimony or this case, or anything about them,
 9 while you are still a witness.
 10 THE WITNESS: Thank you.
 11 THE COURT: Sure.
 12 (Whereupon, a 15-minute break was agreed upon and
 13 taken by all parties.)
 14 (Continued on the next page.)
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1 MR. KISE: Your Honor, can we approach for one
 2 second?
 3 THE COURT: Yes. I go up the stairs faster
 4 after a day off. So come on up.
 5 (Whereupon, there was an off the record
 6 discussion at the bench between the Court and
 7 counsels.)
 8 THE COURT: Mr. Solomon, go ahead.
 9 MR. SOLOMON: Before we bring the witness in I
 10 have one housekeeping matter to bring up on a document.
 11 Can we please pull up 3226, which has already
 12 been admitted into evidence.
 13 And just so the Court is aware, this is the same
 14 e-mail chain we were arguing about earlier. And if you
 15 see the top, it is from Jason Greenblatt, and it has "to
 16 Ivanka Trump, Allen Weisselberg David Orowitz," so I think
 17 that removes any objection defense counsel may have had.
 18 MR. KISE: It removes that objection.
 19 MS. HABBA: Not the other objections.
 20 THE COURT: The other objections are overruled.
 21 That objection is withdrawn, since it is from or to
 22 Ivanka.
 23 COURT OFFICER: Ready for the witness?
 24 THE COURT: Yes, ready.
 25 (Whereupon the witness resumed the stand.)

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1 THE COURT: Mr. Solomon, please proceed.
 2 MR. SOLOMON: Thank you, Your Honor.
 3 Q Let's talk about the Trump Hotel Tower in Chicago.
 4 A Okay.
 5 Q Did there come a time that the Trump Organization
 6 sought to refinance the debt on that property?
 7 A Yes. Prior to my leaving the company, yes.
 8 Q Yes, prior to your leaving the Trump Organization,
 9 did there come a time that the Trump Organization sought to
 10 refinance the debt on the Chicago property?
 11 A Yes.
 12 Q Okay. Did you reach out to CSG Investments to gauge
 13 their interest in refinancing the debt?
 14 A I don't recall whether I did or didn't.
 15 Q Sure.
 16 MR. SOLOMON: I am going to ask to hand to the
 17 witness PX-3236, which is already in evidence.
 18 (Hanging)
 19 THE WITNESS: Thank you.
 20 Q And this is an e-mail chain. The top is you
 21 forwarding to David Orowitz an e-mail you received from Jacob
 22 Cherner at CSG Investments. Do you see that?
 23 A I do, yes.
 24 Q If you look at the e-mail you received from
 25 Mr. Cherner, did you understand that for refinancing Chicago,

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1 in or about 2012, the baseline rate would be around LIBOR plus
 2 500 basis points?
 3 A I don't recall the specifics of the transaction. I
 4 don't remember this e-mail.
 5 Q Do you have any reason to believe it is not accurate?
 6 A No.
 7 MR. SOLOMON: I am going to ask to be handed to
 8 the witness PX-3239, which is already in evidence.
 9 (Hanging)
 10 THE WITNESS: Thank you.
 11 Q This is an e-mail chain, the top one is from you to
 12 Jared Kushner@observer.com, TIHT Chicago Refi. Do you see
 13 that?
 14 A I do, yes.
 15 Q And you are forwarding on an e-mail you had received
 16 from David Goodman, correct?
 17 A It appears that way, yes.
 18 Q And Mr. Goodman is at Deutsche Bank or was at
 19 Deutsche Bank at that time, correct?
 20 A I don't remember David Goodman. I recall Rosemary,
 21 obviously, we spoke about her earlier. And she is, I see that
 22 she is copied on this e-mail.
 23 Q But you don't recall David Goodman at all?
 24 A Only, I think, in documents you have shown me. But I
 25 don't think I worked extensively with David.

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1 Q David -- was David in the commercial real estate
2 group?
3 A I don't -- I don't recall.
4 Q You will see on this e-mail, excuse me.
5 You will see on this e-mail Mr. Goodman attaches term
6 sheets for hotel and condo financing. Do you see that?
7 A It appears that way, yes.
8 Q And so we all understand, the Chicago property had
9 two parts to it, correct?
10 A Could you be more specific?
11 Q Sure. It had a commercial portion, yes?
12 A There was a hotel, hotel condo, residences, and a
13 retail component.
14 Q Retail component being commercial?
15 A Sure.
16 Q Or do you refer to that as a retail component?
17 A You can refer to it as either.
18 Q So it had two components, correct?
19 A Sure.
20 Q Okay. If you look at the first term sheet which
21 starts on page two, term sheet which starts on page two, Trump
22 International Hotel and Tower, and it uses the term commercial;
23 do you see that?
24 A Yes, I do.
25 Q If you turn to the tenth page of this document, the

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1 proposed interest rate.
2 A Which page?
3 Q Page ten of 27, which is schedule A for the
4 commercial refi term sheet. Do you see that?
5 A I do, yes.
6 Q And the interest, the proposed interest rate is 345
7 basis points above the yield on the ten year on-the-run swap
8 rate. But in no event less than 5.28 percent. Do you see
9 that?
10 A I do, yes.
11 Q Now let's turn to the condo term sheet. That's the
12 hotel and condo portion that you were referring to, right? You
13 will see that begins on page 15 of 27. It says "condo" across
14 the top.
15 A I see that.
16 Q Okay. Turn to page 22.
17 The interest the proposed interest rate for this
18 portion of the refi is the sum of the benchmark and the spread.
19 Do you see that?
20 A Yes.
21 Q And the spread is 800 basis points, do you see that?
22 A I do, yes.
23 Q And the benchmark is the one month LIBOR as reflected
24 on telerate or in certain instances an average of London
25 Interbank Offered Rates ("LIBOR") for dollar deposits in an

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1 amount equal to \$1 million offered in the London Interbank
2 Euro-dollar market for a term of one month. Do you see that?
3 A I do.
4 Q Did the Trump Organization go forward with the
5 refinancing of the Chicago property on these terms?
6 A I don't believe so.
7 Q I am going to hand up what we have marked PX-477 for
8 identification.
9 (Handing)
10 Q You will see this is an e-mail from Emily Schroeder
11 to you and others at the Trump Organization with ccs to people
12 at Deutsche Bank and Loeb and Loeb. Do you see that?
13 A I do, yes.
14 Q "Ivanka, we are pleased to present you with the
15 agreed upon summary of terms and expense coverage letter for
16 the refinancing of the Trump --
17 THE COURT: It doesn't say "refinancing" it says
18 "financing."
19 MR. SOLOMON: Excuse me, you are right, Your
20 Honor.
21 Q "For the financing," excuse me, of the Trump
22 International Hotel and Tower in Chicago. Do you see that?
23 A I do.
24 Q Who is Emily Schroeder?
25 A I recall her having worked with Rosemary on her team,

I. Trump - by Plaintiff - Direct(Solomon) Page 3729

1 Rosemary and Dominic.
2 Q At Deutsche Bank private wealth management group,
3 correct?
4 A Correct.
5 Q And she attaches the summary of the terms, correct?
6 A It appears that way, yes.
7 Q Do you recognize this document?
8 A I don't.
9 Q Do you have any reason to believe you did not receive
10 this on or about September 19, 2012?
11 A I don't.
12 MR. SOLOMON: Your Honor, we offer it in
13 evidence.
14 MR. KISE: Objection, statute of limitations,
15 relevance and hearsay.
16 THE COURT: Overruled on all three grounds. It
17 is in.
18 (Whereupon, the document referred to was deemed
19 marked for evidence as Plaintiff's Exhibit 477 by the
20 Court.)
21 Q If you turn to page five of seven of this exhibit,
22 you will see it is now described, it is broken into two
23 portions: Facility note A; and facility note B. Do you see
24 that?
25 A I do.

I. Trump - by Plaintiff - Direct(Solomon) Page 3730

1 Q And facility note A is for the residential component,
2 if you look to the right of where it says property.
3 A I see that, yes.
4 Q So note A is for the residential portion; and note B
5 is for the commercial component if you go further over to the
6 right. Do you see that?
7 A I see that, yes.
8 Q And so the residential component would be the condos
9 we had talked about earlier, correct?
10 A I am reviewing this for the first time in years. It
11 appears to say that. I haven't read the whole document, of
12 course.
13 Q Under property, the residential component
14 ("residential come point incident") of the property consisting
15 of unsold (a) residential condominium units (b) deeded parking
16 spaces (c) storage spaces and (d) associated common areas.
17 A That's what it says, yes.
18 Q And facility note B is the commercial component. Do
19 you see that?
20 A Mm-Hm.
21 Q Okay.
22 THE COURT: You can't say mm-hm, you have to say
23 yes or no.
24 THE WITNESS: Yes. Yes. Sorry.
25 Q If you look at pricing spread for the residential

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1 component it is L plus 3.35 percent. Do you see that?
2 A I do, yes.
3 Q And do you understand that to be LIBOR plus
4 3.35 percent?
5 A Yes.
6 Q And the pricing for note B is LIBOR plus 2.5 percent
7 with a note underneath. "Borrower will have a fixed rate
8 option through the execution of a five-year swap with
9 indicative fixed rate of 3.42 percent as of September 4, 2012.
10 Do you see that?
11 A I do, yes.
12 Q If you look under guarantor, note A has Donald J.
13 Trump 100 percent of principal interest and operating expenses
14 of facility note A's collateral. Do you see that?
15 A I do.
16 Q And it also has Donald J. Trump guaranteeing under
17 note B, 100 percent of principal interest and operating
18 expenses of facility note B's collateral. Do you see that?
19 A I do.
20 MR. SOLOMON: I am going to ask to mark as
21 PX-365 for identification.
22 (Handing)
23 THE WITNESS: Thank you.
24 Q This is an e-mail chain between you and Rosemary
25 Vrablic. Subject is: Pricing update.

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1 A Give me one moment to review this document. Thank
2 you.
3 (Pause)
4 A Thank you.
5 Q This is an e-mail chain between you and Ms. Vrablic,
6 correct?
7 A Yes.
8 Q And on the first e-mail, which if you turn to page
9 two of three, Ms. Vrablic advises you that given the facts that
10 you had discussed with her at that morning's meeting, she is
11 offering revised pricing. Do you see that?
12 A I don't recall this e-mail, but I see what it says
13 here.
14 Q Do you have any reason to believe Ms. Vrablic
15 misstated your meeting or discussions in any way, shape or
16 form?
17 A No.
18 Q She offers revised pricing for the hotel, the
19 original rate was LIBOR plus 2.5. She can drop it to LIBOR
20 plus 2.25. Do you see that?
21 A I do.
22 Q She is able to drop the origination fee by a quarter
23 of a point. Do you see that?
24 A I do.
25 Q For the condos, with the assumption of a \$62 million

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1 loan, she is able to drop the origination fee by one eighth of
2 a point. Do you see that? .75 to .625?
3 A Yes, I see that.
4 Q And you respond, if we go further up on page two, you
5 respond: "You are the best, Rosemary. Thank you." And you
6 ask for a clarification. Do you see that?
7 A I do.
8 Q And if you turn to the first page, Ms. Vrablic tells
9 you that your clarification is correct. And you respond to
10 her: "Thanks Rosemary, we all appreciate it." Do you see
11 that?
12 A I do.
13 MR. SOLOMON: Your Honor we offer PX-365 in
14 evidence.
15 MR. KISE: Objection, statute of limitations and
16 relevance.
17 THE COURT: Overruled. It is in.
18 (Whereupon, the document referred to was deemed
19 marked for evidence as Plaintiff's Exhibit 365 by the
20 Court.)
21 Q Did you understand that in dealing with the private
22 wealth management group at Deutsche Bank you were able to
23 save -- withdrawn.
24 Did you understand that the Trump Organization, by
25 dealing with the private equity management group at Deutsche

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1 Bank was able to obtain a lower interest rate and lower
2 origination fees than if they had dealt with the commercial
3 real estate group?
4 A I don't think I ever thought about it in that
5 context. I dealt with Rosemary on a couple of deals,
6 tangentially Chicago, but really more Doral and the Old Post
7 Office. So it was, to the best of my recollection, those were
8 the only financings I had done involving the company. So those
9 were the deals that I had worked on.
10 MR. SOLOMON: Your Honor, could I have a read
11 back of my question? I thought it was a yes or no.
12 THE COURT: I think so to.
13 (Whereupon, the record was read back by the
14 court reporter.)
15 THE COURT: That's a yes or no question.
16 A Well, I had contextualized it only to the extent that
17 I don't think I ever thought about it in comparison to another.
18 I had only dealt with Rosemary and her group in any substantive
19 way.
20 THE COURT: Is the answer yes or no?
21 THE WITNESS: No.
22 Q Let's talk about the Old Post Office in Washington
23 DC.
24 Did there come a time that the Trump Organization
25 submitted a proposal in response to a request for proposal from

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1 the General Services Administration?
2 A Yes.
3 Q Can we refer to Request for Proposal as RFP; and
4 General Service Administration as GSA?
5 A Yes.
6 MR. SOLOMON: I am going to ask to hand to the
7 witness PX-1164, which is already in evidence.
8 (Handing)
9 THE WITNESS: Thank you.
10 Q It is a long document. Take your time if you need to
11 look at it.
12 A Thank you.
13 Q Do you recognize --
14 A This brings back a lot of memories.
15 Q I think you said that to me a year and a half ago as
16 well.
17 A Yeah.
18 Q Do you recognize that document?
19 A I believe this is our response to the request for
20 proposal from the GSA.
21 Q If you look at the second page of the exhibit, is
22 that your signature on the cover letter?
23 A Yes, it is.
24 Q If you could turn to page 144, it is Section III of
25 the Trump Organization's proposal: Developers financial

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1 capacity and capability. Do you see that?
2 Let me know when you get to the page.
3 A Yes, I see that.
4 Q Do you understand that the developers financial
5 capacity and capability was a required section in responding to
6 the RFP?
7 A Yes.
8 Q Do you see there is an asterisk at the end of the
9 title for that section?
10 A I do, yes.
11 Q And if you go to the bottom it states: "Trump's
12 financial statements have been provided under separate cover,
13 along with each binder." Do you see that?
14 A I do.
15 Q Was that an accurate statement?
16 A That Trump's financial statements had been provided
17 under separate cover along with each -- I have no reason to
18 believe not. I assume so.
19 Q You don't have any?
20 A I don't remember.
21 Q You don't have a recollection?
22 A No, I don't remember every word of the document, no,
23 of course not. I assume everything is accurate.
24 Q Because you were very careful not to submit
25 inaccurate information to the GSA, right?

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1 A I always endeavor to be careful.
2 Q At the time of submission of this proposal, was the
3 Trump Organization contemplating partnering with Colony Capital
4 on this deal?
5 A We were, yes.
6 Q And at the time of submission of this proposal, had
7 the Trump --
8 A I believe -- I believe it -- at some point we
9 proceeded forward without Colony. But I believe they were
10 still our partner at the time we submitted the original
11 proposal. So, yes, I think so.
12 Q Okay.
13 Had the Trump Organization at the time of submission
14 of the proposal executed a letter of intent with Colony Capital
15 for this project? And when I say, "this project," I am
16 referring to the Old Post Office or OPO project.
17 A Understood.
18 I can't recall if we had done that prior.
19 Q Okay. Please turn to page 185.
20 A Okay.
21 Q Letter of interest from equity partner. Do you see
22 that?
23 A I do, yes.
24 Q "Trump has executed a detail LOI with Colony Capital
25 to provide equity financing for the redevelopment of the Old

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1 Post Office building." Do you see that?
 2 A I do. Yes.
 3 Q Does that refresh your recollection that there was a
 4 letter of interest, at least, between the Trump Organization
 5 and Colony Capital at the time of submission of the proposal?
 6 A It doesn't reflect -- refresh my recollection. I
 7 have no reason to believe it is not accurate.
 8 MR. KISE: Your Honor --
 9 THE COURT: Yes, go ahead.
 10 MR. KISE: Is there some point at which there is
 11 a limit on where we are headed here today?
 12 THE COURT: Yes, 4:30 today.
 13 MR. KISE: But this is, like, Colony Capital
 14 2011, it is just highly irrelevant. Did we really call
 15 this witness here to waste this time; dragged her all of
 16 the way from Florida to talk about Colony Capital from
 17 2011, on a deal that is clearly and obviously outside of
 18 the statute of limitations? This contract was awarded
 19 years before the limitations period.
 20 THE COURT: Mr. Solomon, do we need to excuse
 21 the witness for you to explain the relevance, or no?
 22 MR. SOLOMON: If we can, Your Honor, I would
 23 appreciate that, that we not have this in front of the
 24 witness.
 25 THE COURT: May I ask the witness to step behind

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1 the courtroom.
 2 (Whereupon, the witness stepped down from the
 3 stand and exited the courtroom.)
 4 THE COURT: Let me just add, I think
 5 significantly, I hope significantly, to my reasonings for
 6 overruling the statute of limitations objections to
 7 pre-2014 and/or pre-2016 deals. Because these deals, I
 8 don't think all of them necessarily, but at least some of
 9 them had requirements for updated financials year after
 10 year after year. And although defendants seem to want to
 11 discount them or ignore them or something, to me they are
 12 very much a part of this case. So it doesn't make sense
 13 to talk about the follow-up documentation without
 14 establishing the original loan.
 15 Go ahead.
 16 MR. KISE: I would respectfully disagree
 17 entirely with that, Your Honor. Because the only thing
 18 that is at issue now, according to the government, are the
 19 actual certifications themselves. Those certifications
 20 could not have -- those are the wrongful acts. I mean
 21 other than the things that are within the statute of
 22 limitations. If there are things that are post-2014 or
 23 post-2016. But seven of the ten transactions, including
 24 this transaction, fall well outside of limitations period.
 25 So nothing that was done by way of a certification, to the

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1 extent even one was required here in 2015, '16, '17, '18,
 2 would have any impact whatsoever on a decision that was
 3 made years before the statute of limitations period
 4 expired. I mean, there is no possible connectivity
 5 between a decision that was made in 2011 or '12 and a
 6 certification later. If they want to contend that the
 7 certification in 2016 was false in some way, okay, contend
 8 that. But it is not going to alter. It is theoretically
 9 impossible -- it is beyond implausible to argue that some
 10 event that took place in 2016 would have changed the
 11 course of events in 2011 or 2012 or 2013. The individuals
 12 in 2011, 2012, 2013 and all the way up to 2014, middle of
 13 2014, could not possibly have been impacted by a
 14 certification that was submitted in 2015, 2016 or 2017.
 15 So while there is some contextual latitude, I
 16 just would, again, submit we got this witness here, we are
 17 asking about things that are well far afield. If there is
 18 some specific issue with respect to OPO that falls within
 19 the limitations period, then okay. But I just -- I am
 20 just noting for the record, and I didn't mean to tie up
 21 this much time, but you asked. I don't see the
 22 connectivity here.
 23 This is true of all of these loans other than
 24 the ones that are actually within the limitations period.
 25 Because the certifications for the loans, it is the same

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1 issue. A certification to Deutsche Bank in 2015 or '16 or
 2 '17 could not possibly, even theoretically, arguably,
 3 plausibly, have any impact on a decision that bankers made
 4 in 2011 or 2012 or 2013 or up to '14. It is just not
 5 possible.
 6 So while I get that there has to be some
 7 context, we are spending an awful lot of time with a
 8 witness who has come an awful long way, who is a
 9 non-party, going over what appears to be context.
 10 THE COURT: Well, I agree with your logic that a
 11 certification, we will agree to that term, in 2017,
 12 doesn't affect the -- anything directly about the original
 13 loan, how it was negotiated, how it was finalized.
 14 However, just to be clear to everybody, these loans some
 15 of the loans at issue here, and I believe this one, I
 16 could be wrong, but I am speaking generically, required,
 17 as a condition of the loan for the Trump Organization or
 18 whomever, perhaps one of the individual defendants,
 19 certify certain things in the future. I believe that
 20 those certifications are at issue.
 21 Let me ask directly. Are those certifications
 22 at issue?
 23 (The following proceedings were stenographically
 24 recorded by Senior Court Reporter Michael Ranita.)
 25

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1 MR. SOLOMON: Yes, your Honor.
 2 THE COURT: Is that something that was in the
 3 complaint?
 4 MR. SOLOMON: Yes, your Honor.
 5 THE COURT: Do you want to say anything else?
 6 MR. SOLOMON: I want to be guided by the Court. I
 7 learned that if the Court is about to rule in my favor, to
 8 sit down and be quiet, so. Let us know if you need to hear
 9 from us further, but there are many reasons why this is
 10 relevant, and that's why we excused the witness. The deal
 11 with Colony Capital is relevant. If you look at the
 12 document and understand the document in detail, Colony
 13 Capital goes through a description of what an appropriate
 14 interest rate would be for this type of project based upon
 15 their financing and 25 years in the business. And Colony
 16 Capital, according to this submission, is one of top equity
 17 partners in the country. And it goes on and on, your Honor,
 18 as compared to the financing that they did obtain at a lower
 19 rate by using false and fraudulent financial statements to
 20 induce Deutsche Bank to make loans that they should not have
 21 made at those rates.
 22 THE COURT: Well, I'll give Mr. Kise the last word,
 23 but you are misquoting me a little bit. It's not if I'm
 24 about to rule in your favor, be quiet. It's if I'm arguing
 25 for you, you don't have to argue for you.

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1 Mr. Kise.
 2 MR. KISE: So first I'm sure, just as an aside,
 3 that Mr. Barrack will be very pleased to know that the
 4 Attorney General of New York has such a high opinion of him.
 5 Setting that aside, I don't see that what Mr. Solomon
 6 said -- I mean, he's making my point for me. Which is that
 7 he's talking about obtaining loans. There's no issue with
 8 obtaining loans with respect to those that are prior to the
 9 statute of limitations. That decision has come and gone.
 10 The ship has gone. The tide has come in and gone out,
 11 however, you want to frame it. There's no --
 12 THE COURT: The ship has sailed, I think.
 13 MR. KISE: The ship has sailed. There's been no
 14 order at issue. The issue is, number one, whether
 15 certifications were false or not, and there's all sorts of
 16 issues with intent and materiality, which we are not going
 17 to discuss at the moment, but whether the certifications
 18 were false and what the consequences of certifications
 19 standing by themselves. As you know, originally, and we
 20 believe the First Department agrees with us, we will wait
 21 and find that out at some point, but they originally framed
 22 all of those as continuing wrongs. Post the decision in the
 23 First Department, they framed them as freestanding wrongs.
 24 Either way, either way, if they are now freestanding wrongs,
 25 then that's what's at issue. And that means that in 2015,

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1 or 2016, or 2017, but you can't unring the bell with a
 2 subsequent certification. You can't say, in 2017, if I
 3 submitted a piece of paper in 2017 that was false, that
 4 somehow or another that impacted a decision that was made in
 5 2012. That's --
 6 THE COURT: They are not arguing that.
 7 MR. KISE: Well, that's what Mr. McCarty -- that's
 8 what you let him testify to. Respectfully, that's exactly
 9 what he is arguing, those, the interest rates carry forward.
 10 Those decisions were made before the statute of limitations.
 11 Now, if your Honor, if you are clear with us that
 12 in fact those calculations are baseless because of that,
 13 that's fine. But I haven't heard that. They certainly not
 14 conceding that.
 15 So here we are arguing about, and going over issues
 16 -- this isn't even the loan document. Let's remember, we
 17 are looking at GSA documents. The GSA decision was made
 18 years before the statute of limitations ran.
 19 The GSA is thrilled with the Old Post Office
 20 renovation. There's no question here that they transformed
 21 a hulking relic into a world class facility.
 22 THE COURT: You are starting to sound like your
 23 client.
 24 MR. KISE: He makes a point on this, that that's
 25 what happened. So I'm not sure why we are debating -- I'm

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1 not sure of a lot of things here, certainly, but this one
 2 goes really steps well beyond. We are talking about the
 3 underlying contract and whether or not prevailing interest
 4 rates in 2011 or 2012 has no bearing on whether a
 5 certification in 2016 -- '15, '16, '17, and going forward,
 6 was false or fraudulent, or what impact or conclusion is to
 7 be drawn from that.
 8 THE COURT: I know I keep adding other reasons why
 9 I'm making the relevancy rulings I am. It may also be
 10 relevant to disgorgement. It may. I haven't decided the
 11 case.
 12 MR. KISE: It can't be. That's exactly our point,
 13 because --
 14 THE COURT: Put it in your posttrial brief.
 15 MR. KISE: The die was cast when the loans were
 16 made; that we believe was the point of the First Department
 17 and why they considered these to be continuing effects as
 18 opposed to be continuing wrongs, but that's for another day.
 19 But certainly, even under the Attorney General's
 20 current theory of the case, you can't go backwards in time
 21 and suggest that a certification that occurred years
 22 subsequent to a decision had some impact on that prior
 23 decision.
 24 THE COURT: Okay. So, Plaintiff, don't do that.
 25 MR. SOLOMON: Your Honor, may I make just two quick

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1 points? First, so the record is clear, the Attorney General
2 takes no position with respect to Colony Capital. My
3 description is what is contained in the response to the
4 request for proposal about Colony.
5 Second, the OPO loan is within the statute of
6 limitations as determined by the Appellate Division, so it's
7 relevant.
8 MR. KISE: The loan, the loan is within 2014, was a
9 month past the 2014 cut off. I mean, we still have a debate
10 over the other issue --
11 THE COURT: I understand.
12 MR. KISE: -- but this isn't a loan document. This
13 is a procurement document. That's why we are having this
14 discussion; two completely disconnected points. The only
15 way -- I'm just going to explain to your Honor. The only
16 reason they want this in is because they are going to argue,
17 that's the reason they asked President Trump on Monday about
18 the distributions from The Old Post Office sale transaction.
19 They are going to argue to you that somehow or another those
20 distributions should be disgorged, because the contract
21 itself was procured using some false financial statement;
22 that's clearly where they are headed. I mean, I'm not
23 telegraphing anything that they haven't already thought of,
24 and so they can't do that. I mean, it's just no room for
25 even making that argument in a case where this decision was

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1 made in 2011, '12 or '13. It's just not -- it's not even
2 possible to make that argument.
3 THE COURT: I disagree. Overruled.
4 Let's get the witness back and not spend more time.
5 (Whereupon, the witness stepped into the witness
6 stand.)
7 THE COURT: Sorry to sort of kept you in the dark.
8 Let's continue.
9 THE WITNESS: Thank you.
10 MR. SOLOMON: Your Honor, I guess it would be
11 improper for me to ask for my last question and answer, so I
12 think I'll start a new.
13 THE COURT: Good idea.
14 MR. SOLOMON: If I repeat a question, I do
15 apologize.
16 (Whereupon, the exhibit was displayed on the
17 screen.)
18 Q I think we were talking about the letter of interest
19 with Colony Capital. If you look at page 185 of 204 I think
20 that's where we were. Do you see that?
21 A That's this document (indicating).
22 THE COURT: I think it was Monday I complimented
23 all the attorneys for getting us where we are and in a
24 reasonable time. Today I'm going to compliment the
25 technical people on both sides, right and left. It's just

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1 amazing. It's like they could read his mind, read the
2 attorney's mind when they get these documents up and
3 highlight things.
4 I'll just suggest one more time, it's so easy to
5 follow on the screen, and you have two, one right in front
6 of you. And then you could see all the highlighting.
7 As far as I know, they've never misrepresented what
8 the larger document is, so you could trust them. But if you
9 show -- if you feel --
10 THE WITNESS: I compliment them as well. It's very
11 impressive. Thank you.
12 THE COURT: This is not your first rodeo, I
13 realize.
14 THE WITNESS: Like this, yes.
15 Q Does this refresh your recollection that there was a
16 letter of interest between The Trump Organization and Colony
17 Capital?
18 A I believe I had said before that at some point there
19 was some form of letter of interest between us. I haven't
20 recalled the timing of it though.
21 Q Okay.
22 MR. SOLOMON: If you could turn to page 193.
23 (Whereupon, the exhibit was displayed on the
24 screen.)
25 A Okay.

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1 Q Second sentence of this paragraph -- if you need to
2 turn back to see where this is from, this is a description of
3 central financing. "Through daily participation in the capital
4 markets, Trump and Colony know that construction financing is
5 currently available in top ten coastal MSA's (NYC, DC, San
6 Francisco, Los Angeles) for strong sponsorship, at approximately
7 six percent to seven percent (L plus 500 BPS to plus 600 BPS,
8 with a one percent LIBOR floor) for approximately 55 to 65
9 percent LTC financing."
10 Do you see that?
11 A I see that, yes.
12 Q When you submitted this, what did you understand "LTC
13 financing" to mean?
14 A I would be guessing, now, what I understood that to be.
15 I don't normally use that acronym. It seems a little further
16 down it was a reference to construction financing, loan to
17 construction. I'm not sure.
18 Q You just don't know?
19 A I can't recall.
20 Q But the interest rate is approximately six percent to
21 seven percent; correct?
22 A That's what it says here, yes.
23 Q In the document that you submitted to the GSA?
24 A That's what it says, yes.
25 Q Did you believe that was an accurate statement at the

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1 time of submission of proposal?
 2 A I don't recall this section of the document, so I can't
 3 say with clarity, but certainly I wouldn't submit something
 4 inaccurate.
 5 Q Did there come a time that the GSA identified certain
 6 deficiencies in the Trump Organization's proposal?
 7 A I recall you having shown me a document asking for
 8 clarifications, and -- I think it was just a general GSA
 9 document with questions relating to the proposal. Yes, I recall
 10 that.
 11 MR. SOLOMON: I'm going to ask to put in front of
 12 the witness PX-1288, which is already in evidence.
 13 (Whereupon, the exhibit was displayed on the
 14 screen.)
 15 THE COURT: Music to my ears.
 16 (The exhibit was handed to the witness.)
 17 THE WITNESS: Thank you.
 18 Q This exhibit is a cover e-mail from Mr. Orowitz to
 19 Patricia Moore, with cc's including you. And attached beginning
 20 on page three is a letter from the GSA dated December 13th,
 21 2011. Do you see that?
 22 A I do, yes.
 23 Q And there appears to be a letter dated September 21st,
 24 2011, beginning on page eight, addressed to Mr. Kevin Terry. He
 25 is the senior contracting officer on the OPO transaction;

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1 correct?
 2 A He was, yes.
 3 Q And on page 14 of 19, is that your signature on that
 4 letter?
 5 (Whereupon, the exhibit was displayed on the
 6 screen.)
 7 A It is, yes.
 8 Q And then at the end, beginning on page 15 is the draft
 9 of a proposed response circulated by Mr. Orowitz. Do you see
 10 that?
 11 (Whereupon, the exhibit was displayed on the
 12 screen.)
 13 A I do, yes.
 14 Q Let's focus, if we can, on the GSA letter from
 15 December 13th, because that appears to be what Mr. Orowitz is
 16 proposing to respond to. Do you see that?
 17 (Whereupon, the exhibit was displayed on the
 18 screen.)
 19 A Yes.
 20 Q Mr. Terry is raising certain questions on factor three
 21 about Donald J. Trump's financial statements; correct?
 22 A Which -- which page are you on?
 23 Q Sure. Page four of 19, factor three?
 24 A Thank you. Yes, I see that.
 25 Q Financial statements appear to have multiple GAAP

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1 departures, including but not limited to, not including
 2 separately held entity financials, no provisions for income tax,
 3 and the PV of the deposits not reflected." Did you understand
 4 "PV" to mean present value?
 5 MR. KISE: Objection. Foundation.
 6 MR. SOLOMON: I'm asking the witness's
 7 understanding on a letter she received and was proposing to
 8 respond to the GSA on a deal that she had a primary
 9 responsibility.
 10 MR. KISE: That wasn't the question, but in all
 11 events.
 12 THE COURT: Withdrawn or overruled?
 13 MR. KISE: It's up to you.
 14 THE COURT: Overruled. Only you could withdraw.
 15 Only I could overrule.
 16 MR. KISE: I thought you were asking him if he was
 17 going to withdraw the question.
 18 THE COURT: I was asking if you wanted to withdraw
 19 the objection.
 20 Overruled.
 21 Q Did you have an understanding that "PV" meant present
 22 value when you received this letter?
 23 A I can deduce that sitting here today, but I don't
 24 recall my understanding of what it was back then, or the
 25 specifics of this letter, no.

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1 THE COURT: Please remember to speak close to the
 2 microphone.
 3 THE WITNESS: Sorry. Thank you.
 4 Q If you turn to page 18?
 5 (Whereupon, the exhibit was displayed on the
 6 screen.)
 7 Q Did you understand that this is Mr. Orowitz's proposed
 8 response to the issue we just looked at relating to the
 9 financial statements?
 10 A You said that it was, but I don't -- I don't know.
 11 Q Well, let's look at the cover e-mail. David Orowitz
 12 states "All, I have started brain storming how we can approach
 13 the letter."
 14 A Okay.
 15 Q "In preparation for our call. Please try to review the
 16 letter from the GSA thoroughly." That's the letter attached
 17 dated December 13th; correct?
 18 A Yes.
 19 Q "In addition, read what I have attached and come
 20 prepared with viewpoints on how we can create the content that
 21 we need and how it should be incorporated into the 30 page
 22 presentation, slides, and our verbal scripts."
 23 Do you see that?
 24 A I do, yes.
 25 Q So if you go through this e-mail and the attachments,

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1 beginning on page 15.
 2 (Whereupon, the exhibit was displayed on the
 3 screen.)
 4 Q Do you understand that to be Mr. Orowitz's proposed
 5 responses for discussion among The Trump Organization group?
 6 MR. KISE: Objection. Then or now? Same
 7 foundation. Objection.
 8 A It appears to be --
 9 THE COURT: It looks like she could answer it.
 10 Overruled.
 11 A No, I.
 12 MR. KISE: She is answering, "it appears to be",
 13 exactly the point. Then or now? She knew it then, and
 14 that's what she understood it to be then, or is she saying
 15 that's what it looks like now? If that's the case, then
 16 there's no foundation.
 17 THE COURT: I'm not sure I agree, there's no
 18 foundation. Are you asking her knowledge then or now?
 19 MR. SOLOMON: I'll ask both, your Honor.
 20 THE COURT: Okay.
 21 Q At the time you received this e-mail, did you
 22 understand that Mr. Orowitz was proposing potential responses to
 23 the GSA deficiency letter?
 24 A I don't recall having received Dave Orowitz's e-mail on
 25 this topic.

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1 Q Do you recall having received any -- in any e-mail from
 2 anyone on this topic?
 3 A Well, I mean, we spent years working on the response to
 4 the request for proposals, so there were many, many e-mails,
 5 many conversations, many of them with Dave. So I just don't --
 6 I don't have a recollection, sitting here all these years later,
 7 over a decade, of this particular e-mail.
 8 Q But this is not -- I didn't ask about this particular
 9 e-mail. That's why I made it broader. This is not a response
 10 to a request for proposal. This is in response to a deficiency
 11 letter received by The Trump Organization after the proposal was
 12 submitted; correct?
 13 A That's what it appears to be.
 14 Q Okay.
 15 And even with that information, you have no
 16 recollection of working with The Trump Organization people to
 17 try and respond to the deficiencies raised by the GSA?
 18 A I didn't say that. I generally remember that the GSA
 19 came back to us and asked for clarification on several items,
 20 and we endeavored to get them answers. So they had construction
 21 related questions. They had operations related questions. They
 22 had all sorts of questions. And I would speak to the various
 23 department heads in charge of those elements, or more often I
 24 would speak to Dave, and he would speak to those individuals,
 25 and, um, endeavor to provide them with the information they were

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1 seeking on any points of clarification.
 2 Q And do you recall that one of the deficiencies related
 3 to Donald J. Trump's financial statements that were submitted in
 4 connection with the original response to the request for
 5 proposal?
 6 A I don't recall that independent of sitting here today
 7 or -- I believe you may have asked me about this a year ago.
 8 So, no, independently -- independent of that, no.
 9 Q Okay. Other than what we may have discussed when we
 10 took your testimony in August of 2022. You have no
 11 recollection, as you sit here today, of any questions raised by
 12 the GSA in connection with the proposal relating to your --
 13 Donald J. Trump's Statement of Financial Condition; is that your
 14 testimony?
 15 MR. KISE: Objection. Argumentative.
 16 MS. HABBA: Objection.
 17 MR. KISE: Mischaracterizes the testimony.
 18 THE COURT: Overruled. Her answer is what her
 19 answer is.
 20 A I think I answered that already. I don't recall that
 21 specifically. I recall them coming back to us with a series of
 22 questions on all sorts of elements relating to our proposal.
 23 And I recall going to Washington, and there was a presentation,
 24 and we endeavored to respond to those questions. Whether we did
 25 so in writing prior, or in person in Washington, I don't know.

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1 Q Okay.
 2 In your answer you said you don't recall specifically.
 3 How about generally?
 4 A No, just -- I recall them asking questions many months.
 5 It could've been longer than months. After we submitted our RFP
 6 about the RFP, about different components of it.
 7 Q But you don't recall that one of components related to
 8 Donald J. Trump's Statements of Financial Condition?
 9 MS. HABBA: Objection. Asked and answered.
 10 THE COURT: Overruled.
 11 A Outside of what you've shown me, um, in a year and a
 12 half ago, and now, no.
 13 Q Okay.
 14 MR. SOLOMON: Could we mark as PX-1431. I'm not
 15 sure if it's for identification or evidence -- it's in
 16 evidence.
 17 (The exhibit was handed to the witness.)
 18 A Thank you.
 19 (Whereupon, the exhibit was displayed on the
 20 screen.)
 21 Q This document is an e-mail from Mr. Orowitz to you,
 22 dated December 17, 2011, attaching "2011 12 17 OPO presentation
 23 handout-final-small size.pdf." Do you see that?
 24 A Yes, I do.
 25 Q Did you receive this on or about December 17, 2011?

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1 A I don't recall having received this specific e-mail,
2 no.
3 Q Do you have any reason to believe you did not receive
4 it?
5 A No.
6 Q Did you understand that -- I'm sorry, have you had a
7 chance to review the handout?
8 A It's many pages, so. Would you like -- maybe why don't
9 you ask your question and then I'll see if I need more time to
10 review it.
11 Q Did you understand that this handout was intended to
12 respond to the issues raised in Mr. Terry's December 13th
13 deficiency letter?
14 A As I mentioned, I don't recall this e-mail, so I can
15 only see what it says here. Which I'm happy to read for you,
16 but I don't have an independent recollection of it from Dave to
17 me.
18 Q As you sit here today, do you understand that this
19 handout was intended to respond to the December 13th deficiency
20 letter?
21 A I don't have an understanding either way. I don't
22 recall it.
23 Q Do you recall attending a meeting in Washington, D.C.
24 with Mr. Terry in December of 2011?
25 A I don't remember what the date was, but, um, that

I. Trump - by Plaintiff - Direct (Mr. Solomon) Page 3759

1 sounds about -- that sounds about right. It would have been
2 roughly that time frame.
3 Q Okay.
4 And was there a presentation made to the GSA at this
5 meeting by The Trump Organization?
6 A There was, yes.
7 Q And your -- and Mr. Trump, Donald J. Trump attended
8 that meeting?
9 A He did.
10 Q And he spoke at that meeting?
11 A I believe he spoke at that meeting.
12 Q You spoke at that meeting?
13 A I did, yes.
14 Q As did other representatives of the Trump Organization?
15 A Correct.
16 Q And one of the items they discussed was Donald J.
17 Trump's financial statements; correct?
18 A I don't recall them having discussed financial
19 statements specifically. I recall that it was -- the whole
20 meeting was mainly about our vision for the project, and
21 presenting it. We had or architect, Arthur Cotton Moore, who
22 was present with us, um, he presented. Andy Weiss, on
23 construction, presented. We talked about our vision for the
24 redevelopment of the project. And I recall spending a good
25 amount of time talking about our experience developing, or

I. Trump - by Plaintiff - Direct (Mr. Solomon) Page 3760

1 redeveloping, I should say, historic assets, many of them during
2 a time that preceded my involvement at the company. And I
3 believe that's what my father spoke about as well.
4 Specifically, I remember him talking about redeveloping the
5 iconic Plaza Hotel, which was quite similar to this asset, um,
6 in its scale and in its, quite frankly, even in the time frame
7 in which it was built.
8 So it was a general presentation. So I don't recall,
9 with specificity, any discussion over financial statements.
10 MR. SOLOMON: Your Honor, I would move to strike
11 any portion of that answer other than the last sentence,
12 which related to financial statements, which was my
13 question.
14 MR. KISE: Your Honor, I think the witness is just
15 trying to move this along, as I have been trying to, because
16 he's asking a bunch of questions about what you remember
17 from 12 years ago.
18 She's testified repeatedly she doesn't have a
19 present recollection. He's not satisfied with that --
20 THE COURT: Wait, she remembers the meeting.
21 MR. SOLOMON: Your Honor, she doesn't have a
22 present recollection? She just spent three minutes
23 describing the Plaza Hotel and how it's similar to this --
24 MR. KISE: He --
25 MR. SOLOMON: May I finish?

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1 MR. KISE: You may.
2 MR. SOLOMON: Describing the Plaza Hotel how it's
3 similar to this, how her father spoke about this, how people
4 speak about that, but she has no recollection when I ask her
5 a question, or giving me a direct answer to my questions.
6 So the witness does have a recollection, your Honor.
7 A I do.
8 THE COURT: Mr. Kise, overruled. I don't think
9 it's good to discuss this with the witness here.
10 MR. KISE: Fair enough. Fair enough.
11 THE COURT: Why don't you --
12 MR. SOLOMON: Your Honor, I'm moving to strike the
13 portion --
14 THE COURT: Granted, because it was not responsive.
15 Q The question was just simply, do you recall, at that
16 meeting, discussing Donald J. Trump's financial statements in
17 any way, shape or form?
18 MR. KISE: Are we still arguing?
19 A I don't recall that.
20 THE COURT: We are not still arguing.
21 MS. HABBA: She did answer that.
22 THE COURT: After she gave a whole speech.
23 MS. HABBA: It was in the beginning.
24 A The caveat would be the intention of the meeting was to
25 talk about our vision for the project, so that's what I recall

I. Trump - by Plaintiff - Direct (Mr. Solomon) Page 3762

1 having worked so hard on and having brought to light in that
 2 conversation.
 3 Q Are you conflating the initial meeting with the GSA
 4 with the meeting that occurred in December of 2011?
 5 A I believe there was only one meeting. I don't recall
 6 there being two separate meetings. I recall it was -- we were
 7 called once to share our vision for the property. I don't
 8 recall there being two separate meetings.
 9 THE COURT: Can you represent, as an officer of the
 10 court, that there were two meetings.
 11 MR. SOLOMON: I cannot, your Honor; that's why I
 12 was asking.
 13 THE COURT: Okay.
 14 MR. SOLOMON: Because the way the witness
 15 described, it was the vision for the entire project, yet the
 16 December 13th meeting in this handout that the witness
 17 doesn't recall, even though she received it, describes
 18 responses to the deficiency letter from the contracting
 19 officer.
 20 MR. KISE: But, your Honor, there were lots of
 21 people at the meeting. It may not have been this witness'
 22 role to discuss the things that Mr. Solomon is interested
 23 in, and I don't know why he is getting so frustrated when
 24 the witness tells him that. Like, okay, this is what I
 25 remember about the meeting. I remember our vision, I

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1 remember these things. I don't remember the --
 2 MR. SOLOMON: My question --
 3 THE COURT: He didn't ask that.
 4 MR. SOLOMON: Thank you.
 5 THE COURT: He asked whether she remembered the
 6 discussion of financials, not what happened at the meeting,
 7 because -- would you like to clarify the situation, witness?
 8 THE WITNESS: No. Just like I said, I only recall
 9 one in-person meeting. Everything had been done -- our
 10 requests for proposal, everything had been done via paper.
 11 I recall one in-person meeting that I remember the intention
 12 was prior to selection of bringing the project to life and
 13 sharing -- that's why -- that was the purpose of the
 14 meeting, as I remember it, not financial statements or
 15 anything granular like that, but a big picture discussion of
 16 the vision and, um, our experience from a construction
 17 perspective; that's why I mentioned The Plaza.
 18 (Continued on the next page.)
 19
 20
 21
 22
 23
 24
 25

I. Trump - by Plaintiff - Direct(Solomon) Page 3764

1 Q Did there come a time that the Trump Organization was
 2 awarded the contract for the Old Post Office?
 3 A Yes.
 4 Q At that point in time had Colony dropped out as a
 5 partner in the deal?
 6 A I can't recall when Colony dropped out, but I believe
 7 it was prior to us being awarded the project.
 8 Q Did you then attempt to obtain financing for the
 9 project?
 10 A Yes.
 11 MR. SOLOMON: I am going to mark as PX 1302 for
 12 identification.
 13 (Handing)
 14 THE WITNESS: Thank you.
 15 THE COURT: We will break at ten of.
 16 MR. SOLOMON: Okay.
 17 THE COURT: That clock is a minute or two fast
 18 by my phone, so we will call this the eight minute
 19 warning.
 20 Q Have you had a chance to review the exhibit?
 21 A I have, yeah. Thank you.
 22 Q This is a series of e-mails, the top is from you to
 23 Jared Kushner, correct?
 24 A Yes, I see that.
 25 MR. KISE: Your Honor, before the witness

I. Trump - by Plaintiff - Direct(Solomon) Page 3765

1 answers, and we may need to have her step out, but this is
 2 bordering on marital privilege, which I know Your Honor is
 3 aware of from the other witnesses. This is communications
 4 between a husband and a wife.
 5 THE COURT: I think we call it spousal
 6 privilege, but same deal.
 7 Mr. Solomon, I Trust you recognize that as well.
 8 You must have gone to law school.
 9 MR. SOLOMON: I do, Your Honor. These are
 10 business terms. This is nothing private between a --
 11 THE COURT: I don't think there is an exception
 12 for that.
 13 MR. KISE: There is no business term exception
 14 to the spousal privilege. They can bring their expert,
 15 Mr. Cohen, back on that issue.
 16 MR. SOLOMON: Your Honor, this has been produced
 17 by the Trump Organization. It was given to the Trump
 18 Organization, it was in their files, so any privilege that
 19 might have attached was waived years ago and was clearly
 20 waived when it was produced to us.
 21 THE COURT: I am more interested in the former
 22 than the latter.
 23 Just for the edification, Mr. Robert, is there
 24 an exception to the spousal privilege just for business
 25 information?

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1 MR. ROBERT: I am not aware of it.
 2 THE COURT: I am not aware of it either. But
 3 waived, overruled. And there are third parties on the
 4 string.
 5 MR. SOLOMON: I was going to point out that
 6 later down on the stream, not necessarily the top two
 7 e-mails, but the parties on the stream later down would
 8 waive any further privilege
 9 MR. KISE: To the extent of Your Honor's ruling,
 10 we note an exception to it. But then this document is
 11 waived, the privilege as to this document. That doesn't
 12 waive the actual communications. He can't ask the witness
 13 about communications she had with her husband at this time
 14 contemporaneously. You can't go there. You may be able
 15 to ask, okay, the document is waived but.
 16 MR. SOLOMON: With all due respect, that's as to
 17 the subject matter of the document.
 18 MR. KISE: No.
 19 MR. SOLOMON: I am not asking about other
 20 communications between Ms. Trump and Mr. Kushner. I am
 21 focusing solely on the document, the information in the
 22 document, and that's what has been waived.
 23 MS. HABBA: No.
 24 MR. KISE: Does Mr. Solomon have a case that
 25 supports the subject matter waiver for spousal privilege?

I. Trump - by Plaintiff - Direct(Solomon) Page 3767

1 I don't believe there is one.
 2 THE COURT: Give me one second.
 3 MR. SOLOMON: Your Honor, I have a suggestion
 4 that may address this. If we go question by question I
 5 think this may actually not necessarily impact what
 6 counsel was concerned about.
 7 THE COURT: All right. Let's do that.
 8 MR. SOLOMON: Because Your Honor has ruled that
 9 its been waived based upon the document.
 10 THE COURT: Okay. We have a couple of minutes
 11 let's make use of it.
 12 Q Let's look at the subject on the bottom of page one
 13 from Mr. Orowitz to you and Mr. Kushner.
 14 So we can avoid any issue there. Bottom of page one
 15 subject: Cap One feedback re OPO. Do you see that?
 16 A I do, yes.
 17 Q Is that the Capital One feedback concerning the
 18 potential Old Post Office loan?
 19 A It appears that way. I don't recall Capital One's
 20 involvement in the Old Post Office.
 21 Q Okay. If you look on page two of three at the bottom
 22 ending e-mail on June 17 of 2013. Jim Petrus to
 23 Mr. Weisselberg and Mr. Greenblatt. Do you see that?
 24 A I do.
 25 Q Who is Mr. Petrus?

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1 A Jim Petrus. (Peetrus ph.)
 2 Q Petrus?
 3 A He was the head of the hotel collection.
 4 Q You stated you had a call with Peter over at Capital
 5 One and his initial thoughts right now on the loan are as
 6 below.
 7 Does that refresh your recollection that you spoke
 8 with Capital One about potential financing for the OPO
 9 transaction?
 10 A I have a vague recollection, but I think you may have
 11 mentioned this to me a year and a half ago. Because I --
 12 THE COURT: Closer to the mic, please.
 13 A I don't recall having spoken to Capital One about it.
 14 Q Do you have any reason to believe the information you
 15 put in your e-mail is inaccurate in any way?
 16 A No.
 17 Q Okay. Principal amount is identified as 110 million.
 18 Do you see that?
 19 A I do, yes.
 20 Q Term three plus one plus one, what did you mean or
 21 what do you understand that to mean?
 22 A I would be speculating sitting here today as I don't
 23 recall this, but probably years, three years plus an additional
 24 two.
 25 Q Right. Three year term for the loan plus two

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1 potential one year extensions?
 2 A It seems that way, yes.
 3 Q Rate probably L plus 3.75-4 percent. Is that LIBOR
 4 plus 3.75 to 4 percent?
 5 A I see that, yes.
 6 Q Is that what you meant there?
 7 A Same as before, I -- I don't recall this e-mail so I
 8 would be guessing as to what I meant --
 9 Q You cite her --
 10 A -- over a decade ago. But that sounds reasonable.
 11 Q Okay. If you go further up, while the next e-mail is
 12 from Mr. Kushner to you, it is on a chain that you forward on
 13 to Mr. Orowitz. Do you see that?
 14 A I do, yes.
 15 Q Okay. So let's talk about that. Mr. Kushner says:
 16 "You can get better pricing for such low LTV." Did you
 17 understand LTV to be loan to value?
 18 A Yes. That makes sense.
 19 Q "Natixis will give you 140 million at that rate most
 20 likely. Should I show it to them?"
 21 Do you see that?
 22 A I do see that, yes.
 23 Q Why were you showing a Trump Organization potential
 24 transaction to Mr. Kushner?
 25 MR. KISE: Objection. This is getting into the

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1 spousal privilege now, any reason for her communicating
 2 with her husband, any rationale, any conversations they
 3 had were -- it is squarely within the spousal privilege.
 4 THE COURT: It is a perfect time to take a
 5 break. I'll do a little research over the lunch hour. We
 6 will see you all at 2:15.
 7 I'll direct the witness again not to discuss the
 8 case or her testimony or anything related to it during the
 9 lunch break until she is no longer a witness.
 10 (Whereupon, a luncheon recess was taken at this
 11 time.)
 12 * * *
 13 A F T E R N O O N S E S S I O N
 14 * * *
 15 THE COURT: Before we resume with the witness, I
 16 want to pick up where we left off before. The e-mail
 17 clearly comes in based on First Department Law. I'll read
 18 exactly. This is Peerenboom v. Marvel, et cetera. 148
 19 AD3d, 531, 2017. At page -- you will find it. I think it
 20 is the second page.
 21 Perlmutter's use of Marvel's e-mail system for
 22 personal correspondence with his wife waived the
 23 confidentiality necessary for a finding of spousal
 24 privilege.
 25 There is an SDNY case also to the same effect.

I.Trump - by Plaintiff - Direct(Solomon) Page 3771

1 Cassandra, blah blah blah, versus Petal. 565 F.Supp 557.
 2 And the basic point is, if you use a work e-mail that is
 3 subject to being seen by other people, you waive the
 4 confidentiality. The e-mail here was from a work e-mail
 5 to a work e-mail. I'll call B to B, business to business.
 6 So I'll let the defendants make a statement or
 7 argue this if they want.
 8 And then also the question: Why did you send
 9 this -- or ask Jared, her husband, about this, to me that
 10 doesn't disclose a confidential communication between
 11 spouses. It is a question that is basically a business
 12 question. What was the business purpose.
 13 Why don't I hear from Mr. Solomon for 30 seconds
 14 and the defendants, if they want, for two or three
 15 minutes.
 16 MR. SOLOMON: Your Honor, I would also note,
 17 picking up your point beyond the business e-mail, when
 18 there is a business communication, another First
 19 Department case Security Settlement Corporation v. John
 20 Paul 128 AD2d 429, 1987. The application was also
 21 properly denied on the merits, in as much as no marital
 22 privilege would attach to the ordinary business records
 23 sought here. And testimony as to "ordinary business
 24 matters" of a spouse, citing People v. Melski 10 NY2d 78,
 25 80. And then there is a jump site.

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1 THE COURT: I totally adopt that also.
 2 That's completely relevant here.
 3 MR. SOLOMON: Right. Which goes to the point I
 4 raise, Your Honor, about it being a purely business
 5 communication, which is an exception to the privilege.
 6 THE COURT: Did you know about that case
 7 beforehand or you found it during lunch?
 8 MR. SOLOMON: I will indicate that our strong
 9 bench was responsible for that.
 10 THE COURT: Okay. Let's hear from the other
 11 strong bench.
 12 MR. KISE: So, Your Honor, without reading your
 13 cases, I would -- I'll just say for the record, because I
 14 already know where we are going to wind up, the Melski
 15 case that they cite is contextually different. I am not
 16 going to debate it. There is no point. The document
 17 itself -- that speaks to the document itself. As well,
 18 everything that you and counsel have put on the record
 19 speaks to the document itself, not to the communications
 20 they may have had. I would disagree that the
 21 conversations they had would now be opened up under some
 22 sort of subject matter waiver.
 23 Finally, I think one thing to keep in mind is
 24 that the privilege really belongs to the spouse, who isn't
 25 here. So Mr. Kushner is not here. It doesn't necessarily

I.Trump - by Plaintiff - Direct(Solomon) Page 3773

1 belong to the witness. The privilege belongs not to the
 2 witness, but to the spouse against whom the testimony is
 3 offered. And so that is the -- I have to find the cites
 4 because my handwriting is not what it used to be, my
 5 ability to --
 6 THE COURT: Well --
 7 MR. KISE: The Prink case 48 NY2d 309. And the
 8 Fediuk, I think that's how you pronounce it, 66 NY2d 881.
 9 But to the extent the Court is ruling that the
 10 document comes in, which we will take exception to, for
 11 the reasons stated, certainly any communications other
 12 than the document, if the document comes in they can ask,
 13 did you send this, did you not send this, is this what it
 14 says here, is this what it says here. But going behind
 15 that would invade the privilege, particularly as it
 16 relates to Mr. Kushner, who isn't here to invoke the
 17 privilege. So she cannot be compelled, the witness cannot
 18 be compelled to answer questions about her communications
 19 with her spouse, when her spouse, who also retains the
 20 privilege, isn't even in the courtroom.
 21 THE COURT: Well, we will address the particular
 22 questions as they arise. But the question why did you
 23 send this or communicate, that's clearly not privileged.
 24 So let's get the witness.
 25 MR. SOLOMON: Thank you, Your Honor.

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1 COURT OFFICER: Witness entering.
 2 (Whereupon the witness resumed the stand.)
 3 THE COURT: Mr. Solomon, let's continue.
 4 MR. SOLOMON: Thank you.
 5 Q Before the lunch break we were looking at PX-1302.
 6 The court officer has put it in front of you.
 7 (Handing.)
 8 THE WITNESS: Thank you.
 9 Q And we were on page two of three. We had talked
 10 about your e-mail to Mr. Petrus -- did I get that right this
 11 time?
 12 A Yes.
 13 Q Okay. And Mr. Orowitz?
 14 A That's correct.
 15 Q And then you had forwarded onto Mr. Kushner right
 16 above that. Do you see that?
 17 A Yes, I see that.
 18 Q And the question I had for you is, why did you send
 19 this to Mr. Kushner?
 20 THE COURT: Please answer.
 21 THE WITNESS: Thank you.
 22 A My husband also was in real estate and would have
 23 perspective for me. And so periodically we would discuss what
 24 we were working on specific to real estate and more generally
 25 speaking.

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1 Q Speaking?
 2 A Well, you asked me why I would forward something to
 3 him, and that's why I would forward something to him. I recall
 4 telling him, I don't remember this exact exchange, but it was
 5 not uncommon that I would ask my husband's perspective on
 6 something that I was working on.
 7 Q And after forwarding it on to him, you then asked
 8 Mr.-- well, you asked Dave, I assume that's Mr. Orowitz on the
 9 e-mail above; do you see that?
 10 A I do.
 11 Q To send Jared, that's Mr. Kushner, correct?
 12 A Yes.
 13 Q The latest OM, as well as the THC presentation. Is
 14 OM offering memorandum?
 15 A That would be my best guess, yes.
 16 Q And THC is the Trump Hotel Chicago?
 17 A No, probably the Trump Hotel Collection. I believe
 18 that's the anacronym we used.(sic.)
 19 Q Mr. Orowitz then responds to you and Mr. Kushner,
 20 with cc to Mr. Flores on the bottom, page one of three: "Hope
 21 all is well, see attached for both presentations." So he
 22 followed your instructions, right?
 23 A It appears that way, yes.
 24 Q "I wanted to get to you right away, but -- before we
 25 sent out again -- we are going to remove management fees from

I.Trump - by Plaintiff - Direct(Solomon) Page 3776

1 the income statement." Do you see that?
 2 A I do.
 3 THE COURT: Please speak closer and maybe a
 4 little louder too.
 5 THE WITNESS: My apologies, sorry.
 6 A I do, yes.
 7 Q Did you have a view at that time as to whether it was
 8 appropriate to remove management fees from the income
 9 statement?
 10 A I don't know. I think that was Dave that was saying
 11 that.
 12 Q I understand it was Mr. Orowitz that was saying that.
 13 And I am asking, did you have a view at that time as to whether
 14 it was appropriate to remove management fees from the income
 15 statement?
 16 A Not as I sit here today remembering -- having a
 17 perspective on that, no.
 18 Q As you sit here today, do you believe it was
 19 appropriate to remove management fees from the income
 20 statement?
 21 A I don't know that I have thought about it. I guess
 22 it depends, were we managing the hotel? I would need more
 23 context to understand if it is appropriate or not appropriate.
 24 Q As you sit here today you don't have a view if it was
 25 appropriate or not; is that correct?

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1 A That's correct, yes.
 2 Q Before we go on to the next document in this series,
 3 I want to go back for a moment. We were talking about your
 4 recollection or lack of recollection with respect to the
 5 response submitted to the GSA for the December 13 efficiency
 6 letter; do you recall that?
 7 A I do.
 8 Q And do you recall -- withdrawn.
 9 I am going to ask the court officer to put in front
 10 of you PX-1429, which is already in evidence.
 11 (Handing)
 12 THE WITNESS: Thank you.
 13 Q Now, this document is an e-mail from Mr. Orowitz to
 14 Mr. Weisselberg, December 16, 2011. Beginning: "Allen, Ivanka
 15 wanted me to change the language in the GAAP section. She
 16 asked that I review with you."
 17 Does this document refresh your recollection that you
 18 had conversations about the GAAP section in the Trump
 19 Organization's response to the December 13 deficiency letter?
 20 A No, it doesn't. I don't believe I am on this e-mail.
 21 Unless I am.
 22 Q I didn't say you were on the e-mail. I am asking if
 23 this letter refreshes your recollection, however --
 24 A No.
 25 Q Please let me finish my question.

I.Trump - by Plaintiff - Direct(Solomon) Page 3778

1 -- as to whether you had any role in responding to
 2 the GAAP deficiencies noted in the December 13 letter from the
 3 GSA?
 4 A No.
 5 Q Do you have any reason to believe Mr. Orowitz was
 6 inaccurate in any way when he said you wanted him to change the
 7 language in the GAAP section?
 8 A Well, it is a long section. So I don't know which
 9 language it is referring to. There is language --
 10 Q Do you have any reason to believe Mr. Orowitz was
 11 inaccurate that you wanted any changes in the GAAP section?
 12 A I don't know. You would have to ask Mr. Orowitz.
 13 Q As you sit here today do you have any reason to
 14 believe he was inaccurate?
 15 A No.
 16 Q He goes on to state that she -- and I assume that
 17 refers to you -- ask that I review it with you, meaning
 18 Mr. Weisselberg.
 19 Do you have any reason to believe Mr. Orowitz was
 20 inaccurate when he reported that you wanted Mr. Orowitz to
 21 review it with Mr. Weisselberg?
 22 A No.
 23 Q Okay.
 24 MR. SOLOMON: If we could mark PX-327. It is
 25 already in evidence.

I.Trump - by Plaintiff - Direct(Solomon) Page 3779

1 (Handing)
 2 THE WITNESS: Thank you.
 3 Q This is an e-mail from Mr. Sullivan to you and
 4 Mr. Orowitz attaching a draft term sheet. Do you see that?
 5 A I do, yes.
 6 Q And the reference is the Old Post Office, correct?
 7 A I see that, yes.
 8 Q Do you recall receiving this document?
 9 A Nope.
 10 Q Do you have any reason to believe you did not receive
 11 this document?
 12 A No, I don't.
 13 MR. SOLOMON: We offer it in evidence, Your
 14 Honor -- I am sorry, it is already in.
 15 Withdrawn, Your Honor, it is already in.
 16 Q If you look at the third page of this document, start
 17 with Facility Type.
 18 A I see that, yes.
 19 Q \$160 million. Facility Type is the loan amount in
 20 this context?
 21 A Yes.
 22 Q Among other things?
 23 A Yes.
 24 Q And if you turn to page four. Interest costs, top of
 25 the page. Do you see that?

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1 A I do, yes.
 2 Q During the redevelopment period LIBOR plus 2 percent
 3 or the prime rate; correct?
 4 A Yes.
 5 Q And post-redevelopment period and upon delivery of
 6 appraisal indicating a maximum LTV of less than or equal to
 7 60 percent-LIBOR plus 1.75 percent or the prime rate minus
 8 .25 percent. Do you see that?
 9 A I do.
 10 Q And if you go to page three, the bottom "this
 11 requires a guarantee," correct?
 12 A Yes.
 13 Q And ultimately did Donald J. Trump guarantee the loan
 14 from Deutsche Bank on the Old Post Office?
 15 A Yes.
 16 Q If you turn to page five. Section Conditions
 17 Precedent. Fourth bullet point from the bottom. Quote
 18 "Guarantor's financial information" -- before I read that.
 19 At the top it starts with: "Usual and customary for
 20 a facility of this size and type including but not limited to
 21 receipt, review and acceptance of:" And then it has a number
 22 of bullet points, correct?
 23 A Yes.
 24 Q Okay. The fourth bullet point from the bottom, one
 25 of the items is guarantor's financial information as previously

I.Trump - by Plaintiff - Direct(Solomon) Page 3781

1 delivered, including current balance sheet, bank and/or
 2 brokerage statement to verify liquidity, real estate portfolio
 3 summary, schedule of contingent liabilities, cash flow
 4 statement and limited review of most recent tax returns. Do
 5 you see that?
 6 A I do.
 7 Q Were you aware that that was a condition precedent to
 8 Deutsche Bank making the loan on the Old Post Office?
 9 MR. KISE: Objection. Calls for legal
 10 conclusion.
 11 THE COURT: Overruled. That's not a legal
 12 conclusion. That's common sense.
 13 MR. KISE: Condition precedent? That's
 14 definitely a legal conclusion.
 15 THE COURT: If the bank says you have to do X,
 16 Y, Z to get this loan, to ask the witness does she
 17 understand that guarantor had to do X or Y or Z, that
 18 doesn't take a legal conclusion. I understand condition
 19 precedent would tend to be a legal word.
 20 Is there some way you can change that?
 21 Necessary condition? Pre condition?
 22 MR. SOLOMON: Is Your Honor sustaining the
 23 objection?
 24 THE COURT: Well I am trying to -- yes.
 25 Q Did you understand that based upon this term sheet,

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1 that this term sheet recited a condition precedent to making
 2 the loan was or were all of the items in bullet point that I
 3 just read, the fourth one from the bottom?
 4 THE COURT: All right. Just rephrase it without
 5 using the term "condition precedent."
 6 MR. SOLOMON: That's the language -- Your Honor
 7 that's the language used in the document. That's what I
 8 am asking.
 9 THE COURT: But that's not a layperson's, a
 10 non-lawyer's understanding.
 11 Q Did you understand that before making this loan,
 12 Deutsche Bank required the guarantor to provide the information
 13 contained in the fourth bullet point from the bottom with
 14 respect to financial information as previously delivered and
 15 all of the other items identified therein?
 16 THE COURT: Thank you.
 17 A Not with that specificity, no. I generally
 18 understood that there was a personal guarantee that was a
 19 condition of the loan. And then there was a series of other
 20 requirements that were fulfilled by the team in accordance with
 21 the terms of the loan. But this level of granularity was
 22 not -- was not something I could sit here today and say that I
 23 recall.
 24 Q At some point in time did your company, Ivanka OPO
 25 LLC, become a member of Trump Old Post Office LLC?

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1 A I don't recall what the entity names are, but that
 2 sounds reasonable that it would be one of my entities relating
 3 to the Old Post Office.
 4 MR. SOLOMON: Could we have PX-1333.
 5 I am going to ask to hand up what I have marked
 6 for identification as PX-1333.
 7 (Handing)
 8 THE WITNESS: Thank you.
 9 Q While you are looking at it, I will identify that it
 10 is a document Trump Old Post Office Member Corp., Exhibit D.
 11 Second Amended and Restated Limited Liability Company
 12 Agreement.
 13 And the second page is the Second Amended and
 14 Restated Limited Liability Company Agreement of Trump Old Post
 15 Office LLC (a Delaware Limited Liability Company)?
 16 A Mm-Hm.
 17 Q Do you see that?
 18 A Yes, I do.
 19 Q And if you look on page 37 of 42, is that your
 20 signature under Ivanka OPO LLC?
 21 A For page?
 22 Q Thirty-seven of 42.
 23 A That is my signature, yes.
 24 Q Okay. Do you recognize your father's signature on
 25 behalf of DJT Holdings LLC?

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1 A I do, yes.
 2 Q Do you recognize Donald J. Trump Jr.'s signature on
 3 behalf of Don OPO LLC?
 4 A I believe so, yes.
 5 Q Do you recognize Eric Trump's signature on behalf of
 6 Eric OPO LLC?
 7 A I believe so, yes.
 8 MR. SOLOMON: Your Honor, we offer this in
 9 evidence.
 10 MR. KISE: Objection, statute of limitations and
 11 relevance.
 12 THE COURT: Overruled. It is in evidence.
 13 (Whereupon, the document referred to was deemed
 14 marked for evidence as Plaintiff's Exhibit 1333 by
 15 the Court.)
 16 Q If you look on the page three of 42, please.
 17 A Okay.
 18 Q And the fifth whereas clause. Does that refresh your
 19 recollection along with the signature blocks as to the entity
 20 known as Ivanka OPO LLC?
 21 A As I said to you, it sounded like a reasonable entity
 22 name for the Old Post Office and my interest in it.
 23 Q Was it your understanding by entering into this
 24 agreement that you, through Ivanka OPO LLC, obtained an
 25 interest in the entity known as Trump Old Post Office LLC?

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1 A Yes, I don't know how the interest was structured, I
 2 think it was a profit participation, and that interest was
 3 disclosed to the GSA. But I don't -- I don't recall exactly
 4 how it was structured.
 5 Q You have no reason to doubt that you had an interest
 6 in --
 7 A No.
 8 Q -- the entity known as Trump Old Post Office LLC, do
 9 you?
 10 A No, I don't.
 11 Q Did there come a time -- withdrawn.
 12 Do you have a revocable trust?
 13 MR. SOLOMON: Is that the pronunciation we all
 14 agreed upon?
 15 THE COURT: I think we like that one better,
 16 yes, revoc-able versus re-vocable, (ph.) are we doing
 17 revoc-able?
 18 Let's ask the witness.
 19 How would you pronounce it?
 20 THE WITNESS: I am going to go with revoc-able,
 21 but re-vocable sounds great. I think it is re-vocable.
 22 THE COURT: I think you just changed your mind
 23 there.
 24 Q Do you have one of those trusts?
 25 A I don't know if it is active, but I believe -- I

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1 believe I had one at some point in time. I remember that, yes.
 2 Q And do your brothers, Don Jr. and Eric, also have a
 3 revocable trust?
 4 A I don't know.
 5 Q Did there come a time that your revocable trust
 6 guaranteed to Donald Trump payment of certain amounts he might
 7 have to pay under his guaranty on the OPO loan?
 8 A I don't believe so.
 9 MR. SOLOMON: I am going to ask the court
 10 officer to mark what we have identified as PX-1314 for
 11 identification.
 12 (Handing)
 13 THE WITNESS: Thank you.
 14 Q Is that your signature on the first page of PX-1314?
 15 A Yes.
 16 Q On behalf of the Ivanka Trump Revocable Trust dated
 17 August 13, 2010.
 18 A Yes.
 19 Q Do you recognize Donald J. Trump Jr.'s signature
 20 above yours?
 21 A I do.
 22 Q And do you recognize Eric Trump's signature below
 23 yours?
 24 A I do, yes.
 25 Q Turn to page nine of this document. Is that your

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1 signature on behalf of the Ivanka Trump Revocable Trust?
 2 A It is.
 3 (The following proceedings were stenographically
 4 recorded by Senior Court Reporter Michael Ranita.)
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1 Q And is that Donald J. Trump, Jr.'s signature above
 2 yours?
 3 A I believe so.
 4 Q And is that Eric F. Trump's signature on behalf of his
 5 revocable trust below yours?
 6 A I believe so.
 7 MR. SOLOMON: We offer this in evidence.
 8 MR. KISE: Objection. Statute of limitations and
 9 relevance.
 10 THE COURT: Overruled.
 11 (The Plaintiff's Exhibit was deemed marked and
 12 admitted in evidence.)
 13 Q If you turn to the second -- page two, the second
 14 whereas clause, "Whereas in consideration for lender making the
 15 loan to borrower", and "borrower" is defined above as "Trump Old
 16 Post Office, LLC," do you see that?
 17 A I see that, yes.
 18 Q "Making the loan to borrower, DJT executed and
 19 delivered to lender that certain guaranty dated as of
 20 August 12th, 2014, (the 'existing guaranty'.)"
 21 Do you see that?
 22 A I do.
 23 Q And if you look in section two, "guaranty", the bottom
 24 of the first page, "each guarantor" -- and if you look at the
 25 top, "guarantor" is a defined term, "to include The Ivanka Trump

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1 Revocable Trust." Do you see that?
 2 A I do, yes.
 3 Q So it's a defined term, "Each guarantor hereby
 4 irrevocable, absolutely, and unconditionally guarantees to DJT a
 5 prompt and unconditional payment of his or her respective
 6 guarantor proportionate share of the guaranteed amount as
 7 defined below, as and when the same shall be due and/or payable
 8 pursuant to this guaranty."
 9 Do you see that?
 10 A I see that, yes.
 11 Q Does that refresh your recollection that your trust
 12 guaranteed to Donald J. Trump certain monies he may be called
 13 upon to pay under his guaranty for the OPO loan?
 14 A No.
 15 Q Do you have any reason to doubt that this document
 16 obligated you or your trust to do that?
 17 A I have no recollection of this document, so. I would
 18 have to have a lawyer read it to determine what it obligated,
 19 but I don't remember it.
 20 Q But you have no doubt that you did in fact execute it
 21 on the date indicated on the document?
 22 A No, I see my signature.
 23 Q Between January 2017 and present, have you received any
 24 payments as a result of your interest in the OPO transaction?
 25 MR. KISE: Objection. Relevance.

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1 THE COURT: Overruled.
 2 A I believe you said "since January 2017."
 3 Q Between January 17 and present.
 4 A Yes, I believe we discussed it this morning. I
 5 received a payment upon the sale of the asset.
 6 Q Did you receive any other payments on behalf of -- or
 7 in respect of your interest in the OPO Hotel?
 8 A I don't believe so.
 9 Q Okay.
 10 Do you recall the approximate amount of the payment you
 11 received upon the sale?
 12 A Not the exact amount, no.
 13 THE COURT: He didn't ask for an exact amount, or
 14 he didn't mean exact amount.
 15 MR. SOLOMON: I have a document, your Honor. I
 16 think we could move forward more quickly this way.
 17 I'm going to ask to hand to the witness PX-1373,
 18 which is already in evidence.
 19 (The exhibit was handed to the witness.)
 20 THE WITNESS: Thank you.
 21 (Whereupon, the exhibit was displayed on the
 22 screen.)
 23 Q I understand you are not on this e-mail chain, but I
 24 would direct your attention to the bottom e-mail from Patrick
 25 Birney, with Donna Kidder, with the cc to Mark Hawthorn and

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1 Michael Levchuck?
 2 A I see that yes.
 3 Q You see distributions based upon a sale proceeds from
 4 OPO; correct?
 5 A I see that, yes.
 6 THE COURT: Please, a little louder and/or a little
 7 closer, or a lot louder and a lot closer.
 8 A I see that yes.
 9 Q I believe this has previously been identified as the
 10 distribution from the proceeds from the OPO sale. Do you have
 11 any reason to doubt that?
 12 A I'm not, as you noted, copied on this chain, but I've
 13 -- it -- so I don't know one way or another if this is the
 14 waterfall.
 15 Q Did you receive approximately \$4 million from the
 16 proceeds of the OPO sale?
 17 A That's consistent with my recollection, yes.
 18 MR. SOLOMON: We have nothing further at this time,
 19 your Honor.
 20 THE COURT: Okay.
 21 Will there be any cross examination of the witness
 22 at this point?
 23 (Whereupon, there is a brief pause in the
 24 testimony.)
 25 MS. HABBA: Yes.

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1 THE COURT: I was going to say, I gather that is a
 2 yes.
 3 MR. SUAREZ: Yes.
 4 CROSS EXAMINATION
 5 BY MR. SUAREZ:
 6 Q Good afternoon, Ms. Trump.
 7 A Hello.
 8 Q My name is Jesus Suarez. I represent certain of the
 9 defendants in this case.
 10 Ms. Trump, what role did you have, if any, in creating
 11 Statements of Financial Condition for your father?
 12 A None, that I'm aware of.
 13 Q Were you responsible for preparing Statements of
 14 Financial Condition for your father?
 15 A No, I don't believe so.
 16 Q Were you responsible for reviewing Statements of
 17 Financial Condition for your father?
 18 A No.
 19 Q Were you responsible for approving Statements of
 20 Financial Condition for your father?
 21 A No.
 22 THE COURT: Well, she said she had no role, so you
 23 really didn't have to ask those questions, but let's just
 24 move on.
 25 MR. KISE: So we are getting -- your Honor, I'm

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1 just going to note that we haven't even been at it one
 2 minute and we are already getting a "hurry up" after they
 3 spent hours going over clearly irrelevant documents. I'm
 4 just going to note that on the record. Your Honor, that is
 5 grossly unfair, respectfully.
 6 THE COURT: Okay. I disagree.
 7 Q Were you responsible, personally, for submitting the
 8 Statements of Financial Condition to anyone?
 9 A No.
 10 Q Were you responsible for assigning asset values that
 11 were assigned to specific assets in the Statements of Financial
 12 Condition?
 13 A I don't believe so.
 14 Q Were you responsible for developing the methodologies
 15 used to value specific assets in the Statements of Financial
 16 Condition?
 17 A Could you repeat that last one.
 18 Q Were you responsible for developing the methodologies
 19 used to value specific assets in your father's Statements of
 20 Financial Condition?
 21 A No.
 22 Q Are you familiar with the Private Wealth Management
 23 Group at Deutsche Bank?
 24 A Yes.
 25 Q Earlier in your testimony you described Rosemary

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1 Vrablic as a "formidable banker", I believe?
 2 A Yes.
 3 Q Why did you describe her as such?
 4 A She had an incredible reputation as being exactly that,
 5 a long career in the banking industry and considered a very
 6 reputable solid lender.
 7 Q How is the Private Wealth Management Division of
 8 Deutsche Bank different from the other divisions at the bank?
 9 A As I testified earlier, I dealt primarily with the
 10 Private Wealth Division, so outside of a few conversations here
 11 and there, I really -- that was my experience, was dealing with
 12 Rosemary and her team predominantly.
 13 Q Would it be fair to say you developed a professional
 14 working relationship with Ms. Vrablic?
 15 A Yes.
 16 Q She was the banker assigned to Deutsche Bank to manage
 17 the relationship with your family and its businesses; correct?
 18 A She was one of the bankers. She had a team alongside
 19 of her. She was my primary point of contact though.
 20 Q And her job, together with her team, was to help
 21 develop the relationship between Deutsche Bank and your family;
 22 correct?
 23 A That is correct, yes.
 24 Q In fact, it was her job to help the bank make money by
 25 developing its relationship with your family; correct?

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1 A Presumably.
 2 MR. SOLOMON: Your Honor, how would this witness
 3 know what her responsibility -- Ms. Vrablic's
 4 responsibilities were internally at the bank?
 5 THE COURT: I see the point but, I'll allow the
 6 question. And she answered it.
 7 Q Did Ms. Vrablic do a good job?
 8 A Yes. We were very pleased with the relationship from
 9 when it was initiated to at least what I could speak to, which
 10 is up until the time I left the company.
 11 Q She introduced different products that the Private
 12 Wealth Management Division offered to your family and its
 13 business; correct?
 14 A Periodically.
 15 Q She explained products that were available to members
 16 of the Private Wealth Management Division?
 17 A Correct, yes.
 18 Q And those products included loans; correct?
 19 A Correct.
 20 Q And Ms. Vrablic would have explained to you and to your
 21 family's business the benefits of banking through the Private
 22 Wealth Group; correct?
 23 A Yes, she was -- expressed tremendous excitement to have
 24 our account.
 25 Q And Ms. Vrablic would have served as a conduit between

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1 Deutsche Bank and your family's business for purposes of
 2 explaining what those opportunities were?
 3 A She may have. My relationship with Rosemary was pretty
 4 high level, as I testified earlier. We would have preliminary
 5 discussions typically focused on an asset where I would
 6 describe, um, the property, the opportunity, what we envisioned
 7 for its development potential. And then she would have a team
 8 behind her who would dig into the details.
 9 Q And from time to time, Deutsche Bank would present you
 10 with other investment opportunities?
 11 A Periodically.
 12 MR. SUAREZ: Could we pull up Defendant's
 13 Exhibit 307, please.
 14 (Whereupon, the exhibit was displayed on the
 15 screen.)
 16 MR. SUAREZ: And zoom in.
 17 (Whereupon, the exhibit displayed on the screen was
 18 enlarged.)
 19 Q Ms. Trump, if you could please take a second to review
 20 this document.
 21 (The exhibit was handed to the witness.)
 22 THE WITNESS: Thank you.
 23 Q Do you recall receiving this document?
 24 A I don't recall receiving this document, no.
 25 Q Refreshing your recollection with the document, does

I. Trump - by Plaintiff - Cross (Mr. Suarez) Page 3797

1 this document remind you of any instances in which the bank
 2 would have presented other investment opportunities to you?
 3 A Only in that it seems consistent with them periodically
 4 sending us opportunities for investment, but I don't remember
 5 this specific example, no.
 6 Q And would this have been consistent with the bank's
 7 practice of developing its relationship with you and your
 8 family's business?
 9 A Yes, if they were looking to grow the relationship and
 10 expand it.
 11 MR. SUAREZ: Your Honor, we move to admit
 12 Defendant's Exhibit 307.
 13 THE COURT: Granted. It's in.
 14 (Defendant's Exhibit 307 was deemed marked and
 15 admitted in evidence.)
 16 Q Deutsche Bank was excited about the relationship it had
 17 with your family; correct?
 18 A Yes, they were.
 19 Q And, in fact, Deutsche Bank sought to showcase the
 20 relationship that it was developing with your family's business;
 21 correct?
 22 A That's a characterization of it that I don't know. All
 23 I know is what was expressed to me, which was a level of
 24 excitement for the relationship and positive feelings about how
 25 it was going throughout the arc of the time that I was there.

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1 (Whereupon, the exhibit displayed on the screen was
2 taken down.)
3 Q Was it the case of Deutsche Bank wanted to showcase
4 your family's relationship with the bank in a promotional video?
5 A That's quite possible. I don't remember that, but it's
6 quite possible.
7 MR. SUAREZ: If we could please pull up Defendant's
8 295, pre-marked for identification.
9 (Whereupon, the exhibit was displayed on the
10 screen.)
11 (The exhibit was handed to the witness.)
12 THE WITNESS: Thank you.
13 Q Ms. Trump, if I could please ask you to review this
14 exhibit.
15 A I see it. Yes, thank you.
16 Q Is this your e-mail address at the top of this exhibit?
17 A It was, yes.
18 Q And would this e-mail refresh your recollection as to a
19 time Deutsche Bank asked you to participate in a promotional
20 video for the bank?
21 A Vague recollection, but not -- not -- I don't -- I
22 don't recall if I did the video or not.
23 MR. SUAREZ: Your Honor, we would move to admit
24 this exhibit into evidence.
25 THE COURT: Granted. It's in.

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1 (Defendant's Exhibit 295 was deemed marked and
2 admitted in evidence.)
3 Q Do you recall any discussion with the bank or
4 Ms. Vrablic concerning the different subject areas that they
5 wanted you to speak about in the video?
6 A I think more generally, like I -- it's a long time ago
7 now, but like I said, I was constantly told by Rosemary and
8 members of her team how much they appreciated the relationship
9 and were seeking to grow it.
10 I'm seeing on this chain a reference to the cochairman
11 Jain, which makes me recall a request from, I believe, Rosemary,
12 or her partner, Dominic, to meet with them as one of their top
13 clients, as he was coming to America and wanted to meet with
14 individuals that bank with them in New York. So that -- that
15 refreshes my memory on that front, but I don't remember the
16 specific video, no.
17 Q That's the cochairman of the bank, Anshu Jain?
18 A Yes.
19 Q Do you see it says "What was the key differentiator
20 that DB brought to the table versus other competitors?"
21 Do you see that?
22 A I do, yes.
23 Q Did you ever provide any feedback to Deutsche Bank as
24 to why you had chosen -- excuse me, why your family's business
25 had chosen to do business with them?

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1 A I think I testified earlier that, you know, at one
2 point in time my father was considering building the two
3 projects we spoke most extensively about today, Doral and the
4 Old Post Office, in cash, but we had met with Rosemary. We
5 liked the team. We had heard great things about them. We were
6 excited to work with them. We liked their proposal. And so I
7 think if I were asked that question, I would probably say the
8 relationship was a huge point of differentiation.
9 Q Were you present at a meeting between Anshu Jain and
10 your father?
11 A I was, yes.
12 Q Do you recall when that meeting took place?
13 A I do not.
14 MR. SUAREZ: Can we please pull up Defendant's
15 Exhibit 223.
16 (Whereupon, the exhibit was displayed on the
17 screen.)
18 (The exhibit was handed to the witness.)
19 THE WITNESS: Thank you.
20 Q If you could please take a second to review this
21 letter.
22 (Whereupon, there is a brief pause in the
23 testimony.)
24 Q Do you see the date of this letter March 14, 2023?
25 A I see that.

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1 Q Excuse me, March 14, 2013.
2 A I see that, 2013, yes.
3 Q It's addressed to your father; correct?
4 A Yes.
5 Q And it says, "Great to meet you for lunch last week."
6 A I see that.
7 Q Would this refresh your recollection as to when the
8 meeting with Mr. Jain took place?
9 A No, I don't recall when it took place, but I do recall
10 him coming top Trump Tower at some point and meeting with my
11 father and myself.
12 Q What was the subject matter of that meeting?
13 A I only remember high level that he -- that it was more
14 of an introductory meeting. I don't believe either of us had
15 ever met him before. And Rosemary had told us that her chairman
16 was coming in from Europe and wanted to meet with their top
17 clients. So I was left with the impression that she was going
18 to introduce him to my father, and to a couple of other select
19 clients of hers, while he was in town.
20 Q Do you see where it says "It was a pleasure to see your
21 delight in the build out of your family holdings, and your
22 justified pride in having your children in the business."
23 A I do see that, yes.
24 Q Were the family holdings discussed at the lunch meeting
25 with Mr. Jain?

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1 A Yes, it was -- I recall it being a very, very friendly
2 meeting and him encouraging us to do more business with Deutsche
3 Bank. I think it was a little bit of a sales call, stopping by,
4 talking about the different deals we had pending, um, that I'm
5 assuming Rosemary had briefed him on, and suggesting that we do
6 additional business with the bank.
7 Q And how did your father respond to the meeting between
8 Mr. Jain and himself?
9 A It was very positive. There was a very nice -- it was
10 a very nice meeting.
11 Q Who was present at this meeting?
12 A I recall my father, of course, being there, um, and
13 myself. Allen Weisselberg may have been present as well.
14 Q And after this meeting --
15 A And Rosemary.
16 Q Ms. Vrablic?
17 A Potentially Dominic as well, but I don't think so.
18 Q Who is Dominic?
19 A Rosemary's partner.
20 Q Is that Dominic Scalzi?
21 A Yes.
22 Q And after this meeting, your family's business
23 continued to do business with Deutsche Bank; is that correct?
24 A Yes.
25 Q And that included making deposits at Deutsche Bank?

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1 A I believe so.
2 Q And that included the family business engaging in loan
3 transactions with Deutsche Bank; correct?
4 A Yes.
5 Q And that included those loans resulting in interest
6 being paid to Deutsche Bank; is that correct?
7 A Yes.
8 Q Was there competition within Deutsche Bank for your
9 family's business?
10 A I don't know how I would characterize that. I think we
11 discussed before my experience was with the private bank. I
12 viewed it as a team. I'm assuming, at a big multinational bank
13 there would be many such teams, but Rosemary was the one that I
14 was familiar with and established a relationship with.
15 Q Did your family's business have an existing
16 relationship with Deutsche Bank before you were introduced to
17 Ms. Vrablic?
18 A Yes.
19 Q And was it the case that within Deutsche Bank, the
20 relationship shifted over to the Private Wealth Management
21 Group?
22 A I don't know if it shifted, but that's where my
23 relationship was, and the loans that I worked on were with
24 Rosemary and her team.
25 Q And was that because Ms. Vrablic, Rosemary, courted

I. Trump - by Plaintiff - Cross (Mr. Suarez) Page 3804

1 your family's business?
2 A Yes, in part.
3 Q Were other business sectors inside of the bank also
4 courting your family's business?
5 A I can't speak to -- I can't speak to that, but only to
6 the outreach from, from Rosemary and the -- and I guess her
7 boss, the cochairman, and their interest in doing relation --
8 doing business with us.
9 Q What was your individual role in acquiring --
10 withdrawn.
11 What was your individual role in your family's decision
12 to acquire the Doral property?
13 (Whereupon, the exhibit displayed on the screen was
14 taken down.)
15 A Initially, it was being marketed by a brokerage
16 company, um, as part of the bankruptcy reorganization we had
17 discussed a little bit earlier, and we had looked at the
18 project, um, had ended up, I believe, not initially submitting a
19 bid.
20 There were several people that I recall that were
21 involved at that point in the bidding process, but I remember,
22 then, Michael Asher, who is helping spearhead the process on
23 behalf of -- on behalf of the sellers, reaching out and
24 re-engaging us in the bid process.
25 Um, and I remember the very inconvenient timing of his

I. Trump - by Plaintiff - Cross (Mr. Suarez) Page 3805

1 phone call, because I think I may have been in the hospital, or
2 about to go to the hospital with my first child. And he called
3 and he said -- I may have actually been in the hospital -- that
4 if we were interested, um, we had the opportunity to be the
5 stalking horse bidder for the project. And it was pursued from
6 that point forward, and multi-year multi-million dollar
7 renovation, soup to nuts, of the property was embarked on, and a
8 redevelopment.
9 Q Why was Deutsche Bank selected as the lender in that
10 project?
11 A Well, I spoke before about the relationship, and they
12 had a stellar one, and one that was directly told to me was
13 excellent. And it was a whole multitude of factors, obviously.
14 They gave us a firm sheet with terms that we were interested in
15 pursuing.
16 So there was a whole series of reasons why we chose to
17 do a deal with them. I don't think it's one thing sitting here
18 today.
19 Q Was the development of the relationship by Ms. Vrablic
20 a factor in that decision?
21 A Oh, of course, yeah.
22 Q And, of course, there were other options to finance
23 that acquisition; correct?
24 A There were. I think we spoke about a few of them
25 today. I'm sure there were more that I can't recall, um, over

I. Trump - by Plaintiff - Cross (Mr. Suarez) Page 3806

1 12 years out.
 2 Q It certainly would have been possible for your family's
 3 business to self-finance the acquisition; correct?
 4 A We discussed it.
 5 Q And it would have been possible to talk to any number
 6 of different lenders who could have provided financing for the
 7 acquisition; correct?
 8 A Yes.
 9 Q It would have been possible to sell an asset and use
 10 the proceeds to finance the acquisition; correct?
 11 A Yes.
 12 Q How was the Doral property identified as an asset that
 13 your family's business was interested in investing in?
 14 A Through the public process I mentioned earlier, but my
 15 father had a deep and nostalgic love for that particular
 16 property. He used to tell us stories about having gone there as
 17 a child with his own father, um, when it was owned by the Kaskel
 18 family.
 19 So he told me he took my mother there. They had, at
 20 one time, the greatest spa in the world, um, and they had gone
 21 there as a couple. I believe I may have even gone there as a
 22 child with him as well. So between him being there with his
 23 father, on a golf trip with my mother, and I believe me as a
 24 small child, he had a lot of, um, sentimental affection for the
 25 property, and also a strong feeling that it was not being --

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1 that it was not living up to its potential, physically, in terms
 2 of what the asset had become under the then current ownership,
 3 or operationally, based on the operating performance of the
 4 management team in place.
 5 (Continued on the next page.)
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I. Trump - by Plaintiff - Cross (Suarez) Page 3808

1 Q And what was your vision for redeveloping that
 2 property?
 3 A Ooh, it was a huge project and Herculean because of
 4 the size and scale and enormity and the sheer number of acres,
 5 number of rooms. Most of my attention was focused on the
 6 actual redevelopment of this asset and OPO. You know, once I
 7 had worked with the team and there was high level agreement
 8 around the terms of the financing, my attention really went on
 9 to the redevelopment of the actual asset, and repositioning it
 10 for success, and overseeing the construction and the design of
 11 that. So we renovated all 700 plus rooms, ballrooms, meeting
 12 spaces, common areas.
 13 I was less involved in the golf component. My father
 14 has a particular affinity for golf and a particular vision for
 15 that. So typically he would focus on the golf and I would
 16 focus on the resort itself.
 17 But it was a -- it was a big project. It was a lot
 18 of work, a lot of time, and a lot of energy applied towards an
 19 end result that I feel very proud of. And still now that I
 20 live in Florida, have the good pleasure of visiting
 21 periodically.
 22 THE COURT: Five minute warning.
 23 Q Was that vision for the property conveyed to Deutsche
 24 Bank?
 25 A Of course, yes. They were quite excited by it. They

I. Trump - by Plaintiff - Cross (Suarez) Page 3809

1 sent teams of people down to tour the property, to visit the
 2 property, and to, you know, experience it in advance of our
 3 purchase.
 4 Q What impressions did Deutsche Bank have after the
 5 project had been successfully repositioned?
 6 A They were very happy.
 7 MR. SUAREZ: Please pull up Defendant's Exhibit
 8 324.
 9 (Hanging)
 10 THE WITNESS: Thank you.
 11 Q Ms. Trump, do you recognize this e-mail?
 12 A I don't remember the e-mail. But I do remember, as I
 13 think I just stated, that they were really impressed by what we
 14 had done over the course of several years in terms of upgrading
 15 and refurbishing the property. As I mentioned, Rosemary and
 16 her team had been at the property as we were acquiring it, so
 17 prior to the renovations. So they saw firsthand the
 18 extraordinary change in what the asset had become.
 19 Q Would you agree with me that this is an e-mail that
 20 Rosemary Vrablic sent to you on March 8, 2013?
 21 A It appears that way, yes.
 22 Q And do you see where it says: "Ivanka, I am so glad
 23 we got to see you and have you show us the new rooms"?
 24 A Yes.
 25 Q Is that a reference to the renovated rooms at the

I.Trump - by Plaintiff - Cross (Suarez) Page 3810

1 Trump Doral?
 2 A I assume so, yes.
 3 Q It says: "They look amazing. I have had a wonderful
 4 time here and it is really impressive to see what you have
 5 accomplished so quickly." Do you see that?
 6 A I do.
 7 Q And that, again, would have been a reference to the
 8 Trump Doral, correct?
 9 A I assume so.
 10 Q Which was the collateral for the loan that Deutsche
 11 Bank made to the -- to your family's business, correct?
 12 A Correct.
 13 MR. SUAREZ: Your Honor, we move to admit this
 14 exhibit into evidence.
 15 THE COURT: Granted. It is in evidence.
 16 (Whereupon, the document referred to was deemed
 17 marked for evidence as Defendant's Exhibit 324 by the
 18 Court.)
 19 THE COURT: Another two minutes, if you want.
 20 Q And in fact, were they so pleased with the manner
 21 that the asset had been repositioned that they agreed to an
 22 amendment of the loan terms to let the guaranty on it burn off?
 23 A There was a step down of the guaranty, if I recall,
 24 once the property was operational. And they could see that we
 25 invested -- what we had invested and obviously verified that

I.Trump - by Plaintiff - Cross (Suarez) Page 3811

1 into the collateral to enhance it and to make it what it now --
 2 what it now is.
 3 MR. SUAREZ: We are at a good breaking point.
 4 THE COURT: Okay. A ten-minute break over the
 5 next 15 minutes. See you all soon.
 6 (Pause in the proceeding.)
 7 THE COURT: Let's get the witness.
 8 (Whereupon the witness resumed the stand.)
 9 THE COURT: Mr. Suarez, please continue.
 10 MR. SUAREZ: Thank you.
 11 Q Ms. Trump, I understand you weren't really involved
 12 in the Trump Chicago project, correct?
 13 A Yeah, just only tangentially.
 14 Q But you are aware that the private wealth group of
 15 Deutsche Bank facilitated a loan on that property, correct?
 16 A Yes.
 17 Q And in fact, earlier the government showed you
 18 Plaintiff's Exhibit 3239.
 19 MR. SUAREZ: Can we pull that up, please?
 20 And if we could turn to the first page.
 21 Q Dave Goodman. We can go to the following page from
 22 Deutsche Bank. I believe you testified earlier today, correct?
 23 A Yes. I don't really recall David, but it sounds
 24 vaguely familiar.
 25 Q All right. Let's keep going.

I.Trump - by Plaintiff - Cross (Suarez) Page 3812

1 All the way at the top, you see says: "It is not a
 2 commitment, it is for discussion purposes only"?
 3 A I do.
 4 Q Would you have understood these terms and conditions
 5 that were presented on this document to be something that could
 6 be further negotiated?
 7 A I think that's reasonable. I don't recall this.
 8 Q It could have been further discussed?
 9 A Sure.
 10 Q It was for discussion purposes only?
 11 A That's what it says.
 12 Q It wasn't actually an offer?
 13 A That's what it says.
 14 Q And again, when it came to the Trump Chicago
 15 property, there would have been many different financing
 16 options that would have been on the table to your family's
 17 business, correct?
 18 A I believe so, yes.
 19 Q They could have self-financed, correct?
 20 A I believe so.
 21 Q They could have talked to any number of different
 22 lenders, correct?
 23 A Yes. I was less involved in Trump Chicago. But it
 24 was a very iconic asset on Michigan Avenue in the heart of
 25 Chicago.

I.Trump - by Plaintiff - Cross (Suarez) Page 3813

1 Q And the private wealth management group was very
 2 interested in doing that transaction as well, correct?
 3 A That's what I remember.
 4 Q Turning to the Trump Old Post Office, how did you
 5 learn about the opportunity to redevelop the Old Post Office
 6 property in Washington DC?
 7 A The General Services Administration put the project
 8 out for an RFP as we discussed earlier. And I don't recall
 9 exactly how I first saw it, but I believe that I read about it.
 10 And it was obviously such an historically significant building,
 11 such a beautiful building. I was very, very excited about the
 12 opportunity to participate in a process with the hope that it
 13 would culminate with us being the developers. Which it did.
 14 Q And what role did you play in the acquisition and
 15 development of that project?
 16 A I spearheaded the acquisition and redevelopment, so I
 17 wore a lot of different hats, at a high level. But I was most
 18 focused on the actual vision for the project and overseeing its
 19 design, construction, redevelopment. But also shepherding it
 20 through the full process.
 21 It was a very, very complicated project. There was
 22 an extended lease negotiation with the GSA, in addition to the
 23 RFP process, followed by the redevelopment itself. And since
 24 it is an historic building there are many, many different
 25 agencies. I feel that I remember there were 20-plus different

I.Trump - by Plaintiff - Cross (Suarez) Page 3814

1 agencies we had to work with for various approvals. So the
 2 vast majority of my time as it related to the Old Post Office
 3 was spent on the actual design and development side of the
 4 project.
 5 Q What was your vision for the Old Post Office project?
 6 A Well, when we took over the building it was
 7 completely dilapidated. It was a government owned and managed
 8 project with a food court in the basement and some commercial
 9 office around the perimeter. And we envisioned and then went
 10 on to execute redeveloping it into a super luxury hotel.
 11 And I believe we are very successful in that goal, as
 12 evidenced by how it looks today and ultimately the purchase
 13 price that it sold for, that it was -- it was a labor of love.
 14 It was a lot of work to bring that vision to fruition.
 15 We also created a museum honoring the history of the
 16 building in the context of the greater Washington DC urban
 17 plan, and that was part of our submission. And worked with a
 18 renowned DC architect who had been involved in many historic
 19 projects to bring it to fruition.
 20 Q Was this vision that you had for the Old Post Office
 21 conveyed to Deutsche Bank?
 22 A Yes, of course.
 23 Q And was Deutsche Bank excited about being the lender
 24 on this project?
 25 A Yes. Absolutely.

I.Trump - by Plaintiff - Cross (Suarez) Page 3815

1 Q Was Deutsche Bank's decision to participate in this
 2 project part of its ongoing effort to develop a relationship
 3 with your family and its business?
 4 MR. SOLOMON: Objection. Use of the word
 5 "participate." They were a lender on this project, they
 6 weren't a participant.
 7 THE COURT: I assume he means participant in a
 8 generic sense, so overruled.
 9 You can answer the question.
 10 THE WITNESS: Thank you.
 11 A I recall Rosemary referring to it, I believe, as the
 12 crown jewel of their real estate portfolio. It was, and is, an
 13 incredibly special, iconic building that I am really proud to
 14 have had the opportunity to work on and dedicate a lot of years
 15 of my life to redeveloping.
 16 Q Did Deutsche Bank send representatives to visit the
 17 project?
 18 A Oh, yes.
 19 Q What were the representatives -- withdrawn.
 20 How frequently would the representatives of Deutsche
 21 Bank visit the project?
 22 A That I am not sure. Like I said, you know, my
 23 relationship with Rosemary was quite high level. And once
 24 there was general consensus around the terms of the loan, I was
 25 more involved in focusing on the asset and the redevelopment of

I.Trump - by Plaintiff - Cross (Suarez) Page 3816

1 the asset itself, and other people managed the relationship
 2 with Deutsche Bank. And on an ongoing basis the hotel
 3 operating team, the construction team, the accounting team,
 4 would be in contact, as needed.
 5 So, but it definitely, prior to the loan was made,
 6 Rosemary and/or her team would have visited any of the projects
 7 that I talked with them about. And I am assuming on an ongoing
 8 basis, but at that point I was less involved.
 9 Q And the private wealth group team would have visited
 10 before they made the loan?
 11 A Yes, they did.
 12 Q They would have toured the property?
 13 A They toured the property. And they, for at least
 14 Doral and OPO, I can't recall on Chicago, but required
 15 independent appraisals of the assets.
 16 Q Earlier today you discussed with the government a
 17 meeting between the team at the Trump Organization and the
 18 folks over at the GSA; do you recall?
 19 A I do, yes.
 20 MR. SUAREZ: If we could pull up Defendant's
 21 431?
 22 Q Do you recall what date that meeting took place?
 23 A I do not.
 24 Q Do you recognize this document, Ms. Trump?
 25 A I believe this was shown to me this morning. I don't

I.Trump - by Plaintiff - Cross (Suarez) Page 3817

1 know if it is the same one.
 2 Q Do you see that it is the Source Selection Evaluation
 3 Report and Recommendation for the Old Post Office?
 4 A I see that's what it says, yes.
 5 Q Do you see on page three of this document it has a
 6 schedule, and the schedule includes in the middle of the page
 7 development team presentations. Do you see that?
 8 A Yes, I see that.
 9 Q Do you see there it says the RFP date had a TBD, and
 10 the actual date for those meetings was December 19, 20 and 21
 11 of 2011?
 12 A I see that.
 13 Q Does that refresh your recollection as to when the
 14 meeting with the GSA group would have taken place?
 15 A I think I said earlier it sounds about right, that
 16 December timeframe.
 17 We definitely were not there three days. So I -- but
 18 I recall that many groups were brought in to present. I assume
 19 the finalists in the process.
 20 Q And at the meeting, I would assume the presentation
 21 was made by the Trump Organization, correct?
 22 A Correct.
 23 Q And that the GSA had questions, correct?
 24 A Yeah, I don't recall any -- what those specific
 25 questions are. I recall that this was our first and I believe

I.Trump - by Plaintiff - Cross (Suarez) Page 3818

1 only opportunity to articulate what our vision for the
 2 redevelopment was, and to do so in-person. Because the RFP was
 3 submitted as a binder to the location, the GSA said to send it
 4 to. So this was our, as I recall, our only opportunity to
 5 describe our vision for the redevelopment of this iconic asset.
 6 Q What aspects of the presentation were you responsible
 7 for that day?
 8 A I think I talked about this earlier, but articulating
 9 what our plans for -- at the time it was a complete re-purpose
 10 because it was a commercial office building and a food court.
 11 I think there was a little bit of retail that wasn't food
 12 related, but it was pretty much just that. And we were
 13 proposing converting it into a super luxury five-star hotel
 14 operation, with world class food, beverage.
 15 And it was a complete -- it was a complete
 16 repositioning of the building. So we talked extensively
 17 through that. And I think as I mentioned earlier we talked
 18 about various redevelopment projects that had been done by the
 19 company successfully. So my father had redeveloped the iconic
 20 Plaza Hotel. The Commodore Hotel -- former Commodore Hotel
 21 here in New York; and 610 Park Avenue. Many others that were
 22 historic redevelopments. So we spent quite a bit of time
 23 talking about, and I don't recall who spoke about what per se,
 24 but spent a lot of time talking about the wherewithal to take
 25 on a landmarked historically significant project of this type,

I.Trump - by Plaintiff - Cross (Suarez) Page 3819

1 and see it through to completion.
 2 Q You were not the person who was responsible for
 3 answering questions about the company's financial condition,
 4 correct?
 5 A I don't recall those questions having been asked at
 6 that meeting.
 7 Q Do you recall if all of the questions that were asked
 8 were answered to the satisfaction of the GSA?
 9 MR. SOLOMON: Objection. The witness just
 10 indicated she didn't recall any questions being asked.
 11 A I can't speculate, but we were awarded the project
 12 subsequent to this meeting, so I would assume so.
 13 MR. SUAREZ: If we could turn to page 14.
 14 Q Do you see there where it says notable weaknesses and
 15 it reads: "Financial statements provided by Mr. Trump were
 16 qualified by his accountants as not complying with GAAP"?
 17 MR. SOLOMON: Your Honor, we are going to object
 18 to the use of this document or reading in anything from
 19 this document. This witness has never seen this document.
 20 She hasn't identified it. It appears to be an internal
 21 GSA document. It is classic hearsay.
 22 MR. KISE: So like this morning when they did
 23 the exact same thing and you allowed them continuously to
 24 read from documents that she couldn't authenticate, didn't
 25 have a foundation. This is the document that the GSA

I.Trump - by Plaintiff - Cross (Suarez) Page 3820

1 provided that formed the basis for the decision.
 2 Mr. Suarez is just simply asking questions, just like
 3 Mr. Solomon did this morning, like you have allowed many,
 4 many times in this courtroom, of what was the basis for
 5 decision and exploring this witness's knowledge of.
 6 If she doesn't have any knowledge of it, like
 7 you said, she can say I don't have any knowledge of it.
 8 But otherwise I don't see any difference, goose, gander,
 9 however you say. I don't really see any material
 10 difference here between what is going on all day and what
 11 is going on throughout this trial, and what we are doing
 12 now. It is the same. This is the foundational document
 13 which is a public record. So the Court can take it in in
 14 that regard. And there is really no reason that it can't
 15 be considered. And whatever knowledge this witness has,
 16 she can testify to.
 17 MR. SOLOMON: Your Honor, there is no foundation
 18 that this is a public record other than Mr. Kise's
 19 representation just now. This is a document that appears
 20 to have been produced in connection with this action by
 21 the GSA to the defendant. So, that I don't know if
 22 Mr. Kise has other information to verify that it is a
 23 publicly available document.
 24 MR. KISE: It was.
 25 MR. SOLOMON: May I finish, please?

I.Trump - by Plaintiff - Cross (Suarez) Page 3821

1 Number two. Number two. The questions that
 2 were asked of this witness on the document were e-mails to
 3 and from her that she may not have recalled. There is a
 4 basis for asking a witness that.
 5 This is a document she had never seen before
 6 today. She has not testified that she ever received it;
 7 she ever looked at it; she ever did anything with it or
 8 knew of its existence. It is an internal GSA document.
 9 THE COURT: Okay. Objection overruled.
 10 Let's see what the question -- Can we get a
 11 readback of the question? Let me hear the readback and
 12 then I'll make a final ruling.
 13 (Whereupon, the record was read back by the
 14 court reporter.)
 15 Q Do you see that?
 16 A I do.
 17 THE COURT: Wait. Wait. Wait. Hold on. I am
 18 still trying to figure out how to rule on the objection.
 19 I gave a preliminary ruling, this is the final ruling.
 20 Well, you know, I never mind when someone says
 21 do you see that on the document. Yes, she sees it.
 22 Do you see that on the document?
 23 THE WITNESS: I do, yes.
 24 THE COURT: All right. Let's see what the next
 25 question is.

I.Trump - by Plaintiff - Cross (Suarez) Page 3822

1 Q Does that refresh your recollection as to any
2 discussion concerning the company's financial condition at that
3 meeting?
4 A It does not, no.
5 Q Do you have any --
6 THE COURT: Remember, just a little louder, a
7 little closer.
8 A It does not, no.
9 Q Do you have any reason to believe that the GSA's own
10 internal document would be incorrect when it says that the
11 financial statements provided by Mr. Trump were qualified by
12 his accountants as not complying with GAAP?
13 MR. SOLOMON: Objection, Your Honor. I don't
14 know how this witness would have any idea whether the
15 GSA's own internal documents are accurate, inaccurate;
16 relevant not relevant.
17 THE COURT: Sustained.
18 MR. KISE: Your Honor, I --
19 THE COURT: Let's not argue about this.
20 MR. KISE: We should argue about it,
21 respectfully. Because this is exactly what they asked
22 about the GSA bid document this morning that she hadn't
23 seen. It is the same questions. It is a different
24 document from the GSA, but it is the bid document, and
25 they asked questions about Colony Capital and particular

I.Trump - by Plaintiff - Cross (Suarez) Page 3823

1 terms. And they said -- they asked whether you saw that
2 provision; does it say that; do you have any
3 understanding; do you have any reason to believe that is
4 inaccurate. It is virtually identical to the line of
5 questioning that they pursued of the documents that this
6 witness said the same thing about. No, it doesn't refresh
7 my recollection. Do you have any reason to believe it is
8 inaccurate. It is the same.
9 Again, if we are going to operate under two sets
10 of standards, that's fine. But I would respectfully
11 suggest that that's incorrect, because this is the same
12 thing that they pursued. They have been doing it the
13 entire course of the trial. They have been showing
14 witnesses document after document with no foundation. I
15 have objected hundreds of times now about foundation,
16 about whether or not they have seen the document.
17 And they are like, well, it is just for notice,
18 and it is just to ask if that's what it says, and to ask
19 if that's their understanding. So he is asking this
20 witness's understanding. This is the foundational
21 document that provides the basis for the GSA to have
22 awarded the contract. It is a public record because it
23 was received pursuant to a FOIA request. Anybody can do
24 it. It was provided by the GSA, there is no dispute.
25 They have had this document. They have known about it

I.Trump - by Plaintiff - Cross (Suarez) Page 3824

1 since -- since long since the discovery period.
2 So I don't see any material difference. I don't
3 see any difference, frankly, material or otherwise,
4 between their line of questioning and our line of
5 questioning, other than its us asking the questions.
6 MR. SOLOMON: Your Honor, if I may? There is an
7 absolute distinction. It is not the same. The document
8 that I showed the witness earlier today was the submission
9 by the Trump Organization. And the cover letter on the
10 submission was signed by this witness when it was
11 submitted to the GSA. She represented that the
12 information contained in their submission was truthful and
13 accurate. I am entitled to ask the witness questions
14 about her own document where she signed the cover letter
15 and submits it to the GSA. It is completely different
16 than an internal GSA document and asking the witness if
17 she has a reason to believe whether the GSA was accurate
18 or inaccurate. My questions went to the witness's own
19 submission and whether her submission was accurate or
20 inaccurate. So it is night and day different.
21 THE COURT: Mr. Kise, two things:
22 One, I think he has got you here, as I remember
23 all of this.
24 Two, we have talked about the concept of
25 continuing objection. I continuously object, I object now

I.Trump - by Plaintiff - Cross (Suarez) Page 3825

1 and I continue to object, to your constant insinuations
2 that I have some sort of double standard here. That is
3 just not true. I don't count whether I have sustained
4 more objections for one side or the other. I don't count,
5 you know, the weight, the number of these things. I make
6 every ruling the way I think is correct and fair. So, I
7 have a continuing objection. But you can keep saying it
8 if it makes you happy that I am favoring one side or the
9 other. And you have said this about the rulings in this
10 case. I make the rulings based on the facts and the law
11 as I understand it. So to complain that, oh, my gosh, you
12 are making more rulings in their favor than ours, I don't
13 count them. I just make the rulings as I see them. You
14 know, like the umpire says, call them as I see them.
15 Go ahead.
16 MR. KISE: All I am going to say, Your Honor,
17 is, as part of an Appellate record I have to make the
18 record. I have to call it like I see it. And
19 unfortunately what I see is exactly what I am saying. I
20 wish it were different. I wish we were in a different
21 situation. I respect Your Honor's position. I do, you
22 know that. But I see these rulings constantly going in a
23 different -- let me withdraw that. Frequently going in a
24 different direction, particularly when it comes to issues
25 like this.

I. Trump - by Plaintiff - Cross (Suarez) Page 3826

1 THE COURT: Well, you could try to surmise that
2 that's because of bias. Or, you could understand that I
3 think their objections have been of greater validity than
4 yours on the whole. And that their positions -- well,
5 I'll leave it at that.
6 So, the objection is sustained. This is not her
7 document. I don't know what the point of this is.
8 Q Ms. Trump, if the General Services Administration was
9 under the assumption that financial statements provided by
10 Mr. Trump were qualified by his accountants as not complying
11 with GAAP, would you have any reason to believe that that was
12 inaccurate?
13 A Could you reframe the question?
14 Q Sure.
15 If the General Service Administration?
16 A Yes.
17 Q Was under the impression that financial statements
18 provided by Mr. Trump were qualified by his accountants as not
19 complying with GAAP, would you have any reason to dispute the
20 General Services Administration's understanding?
21 A No.
22 MR. SOLOMON: Objection calls for speculation.
23 THE COURT: Sustained.
24 (The following proceedings were stenographically
25 recorded by Senior Court Reporter Michael Ranita.)

I. Trump - by Plaintiff - Cross (Mr. Suarez) Page 3827

1 THE COURT: Sustained.
2 MR. SUAREZ: But it's not speculation. It's in the
3 General Services Administration document right in front of
4 us.
5 I'm asking her about a document that relates to the
6 project that she spearheaded and the pitch that she was at
7 that's memorialized in this document.
8 MR. SOLOMON: A document which your Honor already
9 ruled it's inappropriate to show the witness, and if they
10 try to enter into evidence, obviously we'll object.
11 So making reference to what's in a document in
12 framing a question creates a hypothetical.
13 THE COURT: Well, I'm not always against
14 hypotheticals, but I just -- how about a read back of the
15 second time he asked the question.
16 (Whereupon, the requested testimony was read back
17 by the court reporter.)
18 THE COURT: That's a ridiculous question. You
19 could ask what she thinks she knows, but referring to this
20 document that is not in evidence, no.
21 MR. SUAREZ: I'm not trying to move the document
22 into evidence. I'm only trying to show her what the GSA's
23 understanding was as reflected in the their document and
24 asking if she has any reason to dispute it. She was at the
25 pitch. She was a witness to the pitch.

I. Trump - by Plaintiff - Cross (Mr. Suarez) Page 3828

1 THE COURT: I don't know if she knows anything
2 about this document, whether it's a statement in the GSA's
3 document. I think there's been an authentication.
4 MR. SUAREZ: You even heard Mr. Solomon get up and
5 tell us it was an internal GSA document. I don't think they
6 dispute that.
7 THE COURT: He may know it. It is not the same as
8 the record in this case.
9 MR. KISE: It certainly can come into this case as
10 a public record. It certainly can be admitted as a public
11 record.
12 MR. SOLOMON: Mr. Kise is representing this as a
13 public record. I think when I was asking questions of
14 Ms. Dillon, if you recall with respect to amendments to a
15 condo plan, there were questions about being a public
16 record, it had to be proved up later. I don't see that
17 Mr. Kise has made any showing sufficient for this document
18 to be deemed to be a public record.
19 MR. SUAREZ: I'm not even trying to move it into
20 evidence. I'm just trying to ask questions about it.
21 THE COURT: You had asked her three times, and I
22 really don't understand the question, but you heard it three
23 times slightly different.
24 I'll ask the witness, can you answer that question?
25 MR. SOLOMON: Your Honor, just note my objection

I. Trump - by Plaintiff - Cross (Mr. Suarez) Page 3829

1 based on speculation.
2 MR. KISE: Are you objecting to the Judge's
3 question?
4 THE COURT: Well, I'm just repeating Mr. Suarez's
5 question.
6 Witness, can you answer that question?
7 THE WITNESS: I have no reason to believe that the
8 GSA wouldn't be accurate in that assessment.
9 THE COURT: That's her testimony.
10 MR. SUAREZ: I'm sorry, can I get a read back.
11 THE WITNESS: I think the question was, do I have
12 any reason to doubt the GSA being accurate in this document.
13 I have no reason to doubt them.
14 THE COURT: How about --
15 MR. SUAREZ: I'm moving on.
16 THE COURT: Instead of "in this document", if they
17 said that somewhere. Plaintiff agrees with that framing of
18 the question?
19 MR. SOLOMON: Still calls for speculation, but if
20 your Honor has overruled that, we could move on.
21 THE COURT: So would you doubt it if it was said
22 anywhere, forgetting this document?
23 THE WITNESS: They were very professional, I have
24 no reason to doubt it.
25 THE COURT: Thank you.

I. Trump - by Plaintiff - Cross (Mr. Suarez) Page 3830

1 Q The GSA is professional in its valuation of the bid;
2 correct?
3 A Very much so.
4 Q It was qualified to understand the information that it
5 was being given; correct?
6 A Yes.
7 Q And ultimately made a decision after running its
8 selection process; correct?
9 A Yes.
10 Q And the team lead by your family's own business was the
11 successful bidder; correct?
12 A That's correct.
13 Q And the project was redeveloped; right?
14 A It was.
15 Q And you were involved in the redevelopment of the
16 project; right?
17 A Yes.
18 Q What was the response to the redevelopment of the
19 project by the federal government?
20 A Well, I could speak I couldn't speak for the whole
21 federal government, but I have a few specific recollections I
22 can share with you. Congresswoman Norton, Eleanor Holmes Norton
23 who represented the district and who had spearheaded the push to
24 have this iconic building put out for redevelopment through an
25 RFP process, um, I met with her at her office, at least on one

I. Trump - by Plaintiff - Cross (Mr. Suarez) Page 3831

1 occasion. I had spoken to her on others. I believe she was
2 there at the groundbreaking ceremony. She may have spoken at
3 it, actually. She was -- I have recollection of her being
4 present. But she was, in my conversations with her, um, very
5 pleased by our plan, our proposal.
6 She issued some statements, I think, speaking to about
7 me, specifically, maybe not my father, but about her
8 appreciation for what we had done. And this was an asset that
9 she was very, very close to because, of course, it was in her
10 district.
11 I also recall, at some point, maybe in -- I don't know
12 what year, but sometime after we had been awarded the project,
13 um, but some -- I believe it was prior to us actually opening,
14 I, um -- there was outreach from Congressman Shuster, I believe,
15 if -- I think it was Congressman Shuster and Congressman Nadler,
16 Jerry Nadler, asking if I would come to Brooklyn and speak in
17 front of an infrastructure committee meeting they were having
18 about the redevelopment of the old post office. And I
19 understood from the request that it was viewed as a very, very
20 successful public/private partnership. And they wanted to
21 encourage more RFP's of federal government buildings, of which
22 there are many beautiful, iconic, but also underutilized
23 buildings.
24 Um, in this particular case I think I remember that
25 before we took over the old post office building, it was costing

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1 taxpayers, I believe -- and this is a little bit of an estimate
2 -- around seven-and-a-half million dollars a year in upkeep to
3 maintain the historic building; the marble, to keep it in good
4 shape. And because it was being utilized, and obviously when we
5 took over the building, taxpayers stopped funding into that.
6 So Congressman Nadler, and I believe his counterpart
7 was Shuster, I believe it was the transportation or
8 infrastructure committee asked me, and I went to Brooklyn to
9 speak about the project and what our plans were and what we had
10 done to date, and my positive experience dealing with the
11 federal government through the bid process.
12 Q And to be sure, the two congressional democrats that
13 you just listed are members of the United States House of
14 Representatives; correct?
15 A Yes, there was -- I believe --
16 MR. SUAREZ: You know, I'm glad that the government
17 thinks it's funny for us to try to put on our case and to
18 put on evidence of the great work that this family has done
19 for the United States government, and while they are sitting
20 here trying to destroy thousands of jobs in this state. I
21 have to sit here and ask questions and listen to them laugh?
22 That's insulting, your Honor, I'm sorry.
23 MR. SOLOMON: Your Honor, move to strike that last
24 speech.
25 MR. SUAREZ: They are striking -- they are

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1 laughing, sitting back here laughing. They think this is
2 funny. It's not funny.
3 THE COURT: Well --
4 A One of the things, just because --
5 MR. SOLOMON: First, there's no question pending.
6 There's also a motion to strike the last speech by Counsel.
7 MR. SUAREZ: I want the record to reflect that the
8 government is sitting here laughing at their attempts to
9 destroy this company.
10 THE COURT: Well, I don't think they were laughing
11 at that. I think they are laughing at the fact that the
12 witness testified, or said three, four, five times that
13 these were congressional representatives.
14 Now you are asking if they are congressional
15 representatives. I know Jerry Nadler, he is a congressional
16 representative. Mr. Shuster, I know the name, I think from
17 Pennsylvania -- does that make sense?
18 THE WITNESS: I think that's right. Maybe they
19 found the question funny, but I will strike what he said.
20 Q You can answer.
21 A I don't know if there was a question pending, but we
22 were talking about congressional representatives and
23 congresswoman Holmes Norton, and you just mentioned jobs that
24 were created.
25 The number one thing she cared about was jobs,

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1 specifically jobs in the District of Columbia. And it's
 2 something that I personally spent a lot of time talking to her
 3 about, both construction jobs, of which there were, I believe,
 4 over 500 during the two years we were under construction. And
 5 permanent jobs once the hotel became operational. Obviously, as
 6 a hotel, you employ a lot more people than as federal office
 7 building.
 8 So this was something that she appreciated. She
 9 commented on, I think publicly, and we also committed to hiring
 10 within the district. I can't remember what the percentage was.
 11 But we created training programs and hired within her district
 12 as well, which she appreciated and supported.
 13 THE COURT: I'll consider that a supplement to your
 14 answer about what the government's reaction was.
 15 All right. Let's move on.
 16 MR. SUAREZ: Thank you, your Honor.
 17 Q What was the response from Deutsche Bank to the
 18 redevelopment of this project?
 19 A Consistent with what I said earlier. They were very
 20 impressed, and they were proud to be able to show them that, I
 21 believe, after many years, a lot of time, a lot of thought, and
 22 a very meticulous execution. We were able to --
 23 THE COURT: Hold on. Hold on. That doesn't answer
 24 the question.
 25 The question was, "What was Deutsche Bank's

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1 reaction?" Not how proud you were of it?
 2 THE WITNESS: No, no, what I was saying, I believe
 3 that they thought that we had over delivered on the initial
 4 vision we had presented to them, so I think they were very,
 5 very happy.
 6 MR. SUAREZ: Can we please pull up Defendant's
 7 Exhibit 299.
 8 (Whereupon, the exhibit was displayed on the
 9 screen.)
 10 Q I would ask the witness to please review this document.
 11 (The exhibit was handed to the witness.)
 12 THE WITNESS: Thank you.
 13 Q Do you recognize this document as an e-mail sent by
 14 Rosemary Vrablic to you, Ms. Trump?
 15 A I have a vague recollection of it, but not
 16 specifically.
 17 Q Do you see where it says, "My direct boss, Michele
 18 Fassiola (he's Italian) would like to call you and your dad to
 19 thank you for being such great clients and for all the business
 20 we have been doing together."
 21 A I see that, yes.
 22 Q It says, "Your family is in the top ten revenue
 23 generating names of Asset and Wealth Management now, and he is
 24 thrilled with how it's grown."
 25 Do you see that?

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1 A I do, yes.
 2 Q Is that consistent with your understanding of Deutsche
 3 Bank's reaction to its business relationship with your family
 4 and its businesses?
 5 A It is, yes.
 6 Q Ms. Trump, earlier the government directed your
 7 attention to your lease of a unit at the Trump Park Avenue,
 8 Penthouse 20?
 9 A Yes.
 10 Q Do you recall that testimony?
 11 A I do.
 12 Q How did you come to lease Penthouse 20?
 13 A I had lived in the building for -- for some time, with
 14 an exception of at one point living downtown. So around the
 15 time I was pregnant with my second child, we entered into a
 16 lease to rent the unit, Penthouse 20.
 17 Q Did the lease come with an option to buy?
 18 A Yes, it did.
 19 Q How was the purchase price on that option negotiated?
 20 A I don't recall the specifics. We never exercised the
 21 option, so I don't remember.
 22 Q Did the lease require you to invest money in the
 23 renovation of that penthouse?
 24 A Yes, this was refreshed for me a year and a half ago
 25 when we -- during my questioning by Mr. Solomon. The lease

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1 required me to invest, I believe, six and a half-million
 2 dollars, and we ended up investing over seven and a half million
 3 dollars in the apartment.
 4 Q What work did you do on the apartment to renovate it?
 5 A Pretty much everything. We completely changed the
 6 floor plan. We did a new floor plan, um, to accommodate our
 7 family. It was going to be the apartment that we would live in
 8 as a family for, hopefully a long period of time, but we ended
 9 up moving to Washington, so we didn't fully move in.
 10 Q Why did you leave the family business?
 11 A I went to Washington.
 12 Q You went to Washington to work in your father's
 13 presidential administration; is that correct?
 14 A That's correct, yes.
 15 Q Now, when you were working in the family business, were
 16 the projects that you did for the OPO and Doral the only things
 17 that you were involved with professionally?
 18 A No. I had other roles within the organization as well,
 19 overseeing various projects, license projects. I would say that
 20 a lot of my time, those were very, very large redevelopment
 21 projects. So a lot of time in construction development of those
 22 two assets, but at the same time I had my own business. We were
 23 doing hundreds of millions of dollars in sales, um, an apparel
 24 and accessories business that I had, was totally separate and
 25 distinct with no connection to The Trump Organization. A

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1 business that I had on my own. My own brand.
 2 So I had numerous responsibilities, both with the
 3 company and independent of the company, the Trump Hotel
 4 Collection was also something my brothers and I collectively
 5 were very involved in.
 6 Q How do you feel about the work that you did for your
 7 family's business?
 8 A I feel incredibly proud of the work that I did of the
 9 Trump Hotel Collection, which I just mentioned generally, and
 10 these two redevelopments specifically. A lot of time, a lot of
 11 vision, a lot of hard work. And as I testified earlier, they
 12 were complicated projects. And I believe that we over delivered
 13 on every metric in bringing them to fruition, as evidenced by
 14 the fact that they are both flourishing today.
 15 MR. SUAREZ: Your Honor, may I have a second to
 16 confer with my colleague?
 17 THE COURT: Sure.
 18 (Whereupon, there is a brief pause in the
 19 testimony.)
 20 MR. SUAREZ: Your Honor, bringing up Defendant's
 21 Exhibit 299, which the witness identified earlier was an
 22 e-mail from Ms. Vrablic to Ivanka Trump, I would like to
 23 move that into evidence.
 24 And I have no further questions on cross
 25 examination of this witness.

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1 witness stand.)
 2 THE COURT: Let's talk scheduling for tomorrow on
 3 the record.
 4 Actually, does plaintiff rest? Let's hear what
 5 he's got to say.
 6 MR. WALLACE: I believe we have some documents to
 7 admit.
 8 MS. FAHERTY: Your Honor, earlier in this case we
 9 introduced two voice messages during the course of
 10 Mr. Flores's testimony. We created transcriptions of those
 11 voicemails and created them as exhibits. So first would be
 12 Plaintiff's -- PX-3297A. It is the transcript for one of
 13 those voicemails.
 14 And then we subsequently created the second
 15 voicemail transcription, PX-3298B. This has been consistent
 16 with our practice to provide a transcript to the Court of
 17 those recordings. We would ask that the Court admit these
 18 consistent with what we've done with other exhibits.
 19 THE COURT: Defendants, would you like to at least
 20 take a quick look, or how do you want to address these?
 21 MS. FAHERTY: They've been added. They were in the
 22 exhibit share. You've received them.
 23 MR. KISE: I don't know that we've looked at them.
 24 To the extent they are representing true and accurate --
 25 MS. FAHERTY: Yes.

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1 MR. SOLOMON: Objection on the document, your
 2 Honor. It's hearsay.
 3 MR. SUAREZ: Plaintiff's 299? If we could pull it
 4 up.
 5 (Whereupon, the exhibit was displayed on the
 6 screen.)
 7 MR. SOLOMON: I think you said Defendant's 299.
 8 MR. SUAREZ: Defendant's 299.
 9 MR. SOLOMON: Sure.
 10 MR. SUAREZ: It's an e-mail from Ms. Vrablic to
 11 Ms. Trump.
 12 THE COURT: Overruled. It's in evidence.
 13 (Defendant's Exhibit 299 was admitted in evidence.)
 14 THE COURT: And that's it?
 15 MR. SUAREZ: Nothing further on cross.
 16 THE COURT: Any cross by the other defendants.
 17 MR. ROBERT: No, your Honor.
 18 THE COURT: Will there be redirect?
 19 MR. SOLOMON: No, your Honor.
 20 THE COURT: Oh, then we are through with this
 21 witness; aren't we?
 22 Thank you.
 23 THE WITNESS: Thank you.
 24 THE COURT: The witness is excused.
 25 (Whereupon, the witness stepped down from the

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1 MR. KISE: -- transcriptions of the recordings, and
 2 the recordings, if your Honor has already allowed those into
 3 evidence, then we have no objection.
 4 THE COURT: Right. Okay. They are in evidence.
 5 (Plaintiff's Exhibits 3297A and 3298B were deemed
 6 marked and admitted in evidence.)
 7 THE COURT: Anything else from plaintiff?
 8 MR. KISE: Your Honor, one other thing in that
 9 regard, though. I don't believe we have -- in their opening
 10 there were videos played, and I don't believe we have
 11 transcripts of those of the -- or at least even if not
 12 transcripts, just like line -- page and line references,
 13 because I think those were from -- the videos they played
 14 there were from the record from the either the depositions
 15 or the EUO's, so I just don't think in the record there's a
 16 start and stop.
 17 MR. AMER: The clip from Eric Trump's deposition
 18 was played during his testimony and was admitted as an
 19 exhibit. The transcription was admitted as an exhibit. So
 20 that one certainly you have. And I think the others --
 21 MR. WALLACE: We could go check.
 22 MR. KISE: If you tell us the page and number, we
 23 have no objection to it at all. The page and line
 24 references -- I think Michael Cohen was one of them. There
 25 may have been one from Patrick Birney. I don't remember

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1 them all, but whatever they are.
 2 Again, there's no objection. It's just page and
 3 line references would be good or useful to have. I'm sure
 4 they have them.
 5 MR. AMER: That's fine. We'll provide it.
 6 THE COURT: You'll provide -- you know what he is
 7 asking for exactly?
 8 MR. AMER: Sure.
 9 THE COURT: Okay. Mr. Wallace, anything else?
 10 MR. WALLACE: So --
 11 THE COURT: Five-minute warning.
 12 MR. WALLACE: Thank you, your Honor. We have no
 13 further witnesses to produce at this time. I will note,
 14 however, we left open the testimony of Mr. Weisselberg
 15 pending the document issues. I believe we are still waiting
 16 for production material from the defendants that raised that
 17 issue. So apart from the reserving our right to recall
 18 Mr. Weisselberg, we have nothing further.
 19 We have nothing further on our case in chief, your
 20 Honor.
 21 MR. KISE: So do I understand that to mean the
 22 plaintiff rests?
 23 THE COURT: Subject to that one condition.
 24 MR. WALLACE: Subject to that condition.
 25 MR. KISE: Well, then, we don't have to do it

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1 today. Since there's five minutes, we could take this up
 2 tomorrow. I don't know that that's a valid condition.
 3 Meaning, that they are not entitled to it. We have
 4 informally, as you know, agreed to work on this. We have
 5 been working on it, and we can provide information in that
 6 regard. But I would just state on the record there are --
 7 this is just Black Letter Law in the First Department, that
 8 there's no such thing as post NOI discovery at trial, just
 9 -- there's nothing of the kind.
 10 MR. WALLACE: If not -- Chris, if we are not
 11 actually following the procedure you --
 12 THE COURT REPORTER: I'm sorry, I can't hear.
 13 MR. WALLACE: We're doing that. We will renew the
 14 letter the Judge asked us to submit and we'll do that on the
 15 record. If you are going to produce the e-mails, we'll take
 16 a look at that following the procedure. I thought we were
 17 agreeing to --
 18 MR. KISE: We've agreed, informally, without
 19 waiving any rights, and I don't think they've waived any
 20 rights, but when it comes down to whether they rest or not,
 21 certainly if they are saying they rest, and that gives us
 22 the opportunity to put on our case and to move for directed
 23 verdict and do those things, um, subject to -- they could
 24 always ask you to reopen the case. They could do that. But
 25 it's not a reservation of rights. It's simply just, we are

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1 resting, and if something comes to their attention that
 2 would support a reopening of the case, then they could make
 3 that function.
 4 I don't know -- by the way, I tend to think all of
 5 this is a tempest in a teapot with respect to discovery.
 6 Nonetheless, we will continue to proceed informally without
 7 anyone waiving their rights. I just want to be clear that
 8 at this stage we are not precluded from moving for a
 9 directed verdict, for example, because the CPLR -- our
 10 expert is here, not me, but that's at the close of the case,
 11 the close of the evidence.
 12 THE COURT: Yes, but maybe we could all agree, but
 13 this goes back about five minutes ago, that plaintiff is
 14 resting conditional, and defendant can move for a directed
 15 verdict, or whatever else you want to do. I suppose if
 16 plaintiff wants to say, but wait a minute, we can counter
 17 that with Mr. Weisselberg's e-mail, testimony, whatever,
 18 then they'll make that argument. So I agree, it's a tempest
 19 in a teapot. We don't really have an issue here.
 20 Plaintiff would you agree?
 21 MR. WALLACE: Yes. We will rest, and if we need to
 22 reopen due to any issues of Mr. Weisselberg, we will make an
 23 application to do that.
 24 THE COURT: Okay. So I think that's agreed to.
 25 We have scheduling issues. I'll ask Allison to

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1 take over.
 2 MS. GREENFIELD: So the cross, you had initially
 3 anticipated was going to be three to four hours. That
 4 obviously is not the case. So we have time for a witness
 5 tomorrow. So who can we bring in tomorrow?
 6 MR. KISE: We do we don't have any witness for
 7 tomorrow because we planned on Monday for the start date.
 8 MS. GREENFIELD: Because you told us you had four
 9 hours of cross examination.
 10 MR. KISE: Based on -- first of all, that was based
 11 on the direct -- their direct testimony. And in an effort
 12 to streamline the proceedings in accordance with the Judge's
 13 wishes, I'm certain that we could have had five hours of
 14 questioning, but given the -- given the state of the
 15 proceedings and given where they are, in the interest of
 16 efficiency, we decided to do what we did. I don't think
 17 there's a penalty associated with that.
 18 THE COURT: All right. So I think, fine, tomorrow
 19 we'll have motions. Will you tell us what those motions
 20 will be.
 21 MR. KISE: Directed verdict.
 22 THE COURT: How long do you think it will take you
 23 to present that motion.
 24 MR. KISE: I think we'll be done, maybe both sides,
 25 by the morning, unless they have motions. Although, I did

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1 see a motion on expert issues --
 2 THE COURT: Right, right.
 3 MR. KISE: -- that we'll need to address. I also
 4 don't think that will take -- I would still think we would
 5 be out of here by lunch break. I mean, that's certainly my
 6 hope, if I'm honest.
 7 MR. AMER: I think that's right. Certainly our
 8 motion on the experts shouldn't take too long.
 9 THE COURT: Although, it was pages and pages.
 10 MR. KISE: It was. There's a goose and there's a
 11 gander. I'm sure you'll hear that again tomorrow.
 12 MR. AMER: That leaves less to argue then.
 13 MR. KISE: There -- and the directed verdict motion
 14 will take some time to present, but I don't anticipate that
 15 it will be extensive where we'll be here all day.
 16 THE COURT: The opposition to the motion for a
 17 directed verdict might take a long time.
 18 MR. KISE: It could. I can't control that. I will
 19 leave that in their hands, certainly.
 20 THE COURT: All right. So both side, we agree,
 21 will be here 10:00 tomorrow. And if plaintiff moves --
 22 obviously if the motion for directed verdict is granted, we
 23 won't have to worry about the expert.
 24 MR. KISE: That would be good.
 25 THE COURT: In the interest of judicial efficiency

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1 the other -- it's always the defendants, say "the
 2 government." Sounds like the federal government. You don't
 3 represent the federal government, do you?
 4 All right. So we agree tomorrow just the morning,
 5 just motions. Any other housekeeping; that way Mr. Kise can
 6 have the afternoon off.
 7 MR. KISE: You hear them cheering outside.
 8 THE COURT: Have a good evening, everyone.
 9 MR. WALLACE: Thank you, your Honor.
 10 (The case on trial was adjourned to November 9,
 11 2023, at 10:00 a.m.)
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1 and lawyer efficiency, I noticed that on defendant's
 2 proposed witness list you have McConney two days. I think
 3 there's at least one or two other people. Can you have
 4 witnesses ready in case it doesn't take two days?
 5 MR. KISE: We do. We do. In the event it doesn't
 6 take that long, yes, but I think Mr. McConney, in order to
 7 go through the specifics, will take the balance of those
 8 days. And whatever cross they have. I would anticipate
 9 that they would have cross.
 10 THE COURT: And, yeah, I understand. We are still
 11 looking at a December 15th?
 12 MR. KISE: We are. The only reason why I haven't
 13 provided the further calendar is because we are waiting on
 14 witnesses to confirm availability on particular dates. And
 15 rather than confuse the issues with changing it, I'm going
 16 to try to get it as close as possible to where we are, but
 17 I --
 18 (Whereupon, there is a brief pause in the
 19 proceedings.)
 20 MR. KISE: If the government proceeds as we have
 21 proceeded, where we put on our witness that they've already
 22 crossed and doesn't spend too much time on cross, we may be
 23 out of here before December 15th. I'm not suggesting that
 24 they need or want to do that.
 25 THE COURT: That's funny to me whenever one side or

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NYSCEF DOC. NO. 1637
NYS Attorney General v.
Donald J. Trump

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NYSCEF DOC. NO. 1637
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RECEIVED NYSCEF: 11/15/2023

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<p style="text-align: center;">0</p> <p>07921 (1) 3659:13</p>	<p style="text-align: center;">0</p>	<p style="text-align: center;">0</p>	<p style="text-align: center;">0</p>	<p style="text-align: center;">0</p>

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In The Matter Of:
NYS Attorney General v.
Donald Trump

November 9, 2023

Ny Supreme Court- Civil

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1 SUPREME COURT OF THE STATE OF NEW YORK
 2 COUNTY OF NEW YORK: CIVIL TERM: PART 37
 3 -----X
 4 PEOPLE OF THE STATE OF NEW YORK, BY LETITIA
 5 JAMES, ATTORNEY GENERAL OF THE STATE OF NEW
 6 YORK,
 7 Plaintiff,
 8 - against - INDEX #
 9 DONALD J. TRUMP; DONALD TRUMP JR.; ERIC TRUMP;
 10 IVANKA TRUMP; ALLEN WEISSELBERG; JEFFREY
 11 McCONNAY; THE DONALD J. TRUMP REVOCABLE TRUST;
 12 THE TRUMP ORGANIZATION, INC.; TRUMP ORGANIZATION
 13 LLC; DJT HOLDINGS, LLC; DJT HOLDINGS MANAGING
 14 MEMBER; TRUMP ENDEAVOR 12, LLC; 401 NORTH WABASH
 15 VENTURE, LLC; TRUMP OLD POST OFFICE, LLC; 40 WALL
 16 STREET, LLC; and SEVEN SPRINGS, LLC,
 17 Defendants.
 18 -----X
 19 Bench Trial
 20 November 9, 2023
 21 60 Centre Street
 22 New York, New York 10007
 23 B E F O R E: THE HONORABLE ARTHUR S. ENGORON,
 24 Justice of the Supreme Court
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1 THE COURT: Let me start with, plaintiff,
 2 anything to say, bring up, discuss at this point?
 3 And then of course I'll ask defendants.
 4 MR. WALLACE: Your Honor, I believe we have our
 5 motion on the expert witnesses, but I believe the order of
 6 operations we determined yesterday that the, if there is a
 7 motion for a directed verdict that should be the first
 8 motion heard today.
 9 THE COURT: Will there be a motion for a
 10 directed verdict?
 11 MR. KISE: Are you surprised, Judge?
 12 Are you ready for me?
 13 THE COURT: Please, yes.
 14 MR. KISE: It may take me a second with the
 15 technology. You know how I am with the technology.
 16 Okay. Is that working? Still? Yes. If we get
 17 any feedback I'll change it around.
 18 Give me one second, Judge, I am sorry.
 19 Thank you, Judge.
 20 Okay. Thank you, Judge.
 21 This -- I'll try and keep this concise, as I
 22 said yesterday, to move things along and have us out of
 23 here at the noon hour.
 24 The defendants are moving, and I believe
 25 Mr. Robert will have comments after myself. The

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1 defendants are moving under CPLR 4401 for a directed
 2 verdict. And that provision, as you know, Your Honor,
 3 provides that any party may move for judgment with respect
 4 to a cause of action or issue upon the ground that the
 5 moving party is entitled to that judgment as a matter of
 6 law. That motion is also fully available in a non-jury
 7 trial. We cite the Court to the Eion Michael Properties
 8 case, 143 A.D.3d 622.
 9 I'll also point out, while discussing, sort of,
 10 the background and legal standard, certainly the defense
 11 view, I think it is the correct view, that because the
 12 predicates for the 63(12) violations are criminal
 13 statutes, that the civil equivalent of the criminal
 14 standard, beyond a reasonable doubt, would apply in this
 15 context, so clear and convincing evidence.
 16 We do not believe that the Attorney General can
 17 meet that rigorous standard or frankly any legal standard.
 18 Even if that's not the standard, we don't believe that the
 19 evidence demonstrates that they can meet that standard.
 20 So let's -- I am just going to address briefly
 21 what the evidence has established so far. The evidence
 22 has established so far that the claims of the Attorney
 23 General involve only successful and profitable loan
 24 transactions. That is undisputed. It is also undisputed
 25 that there are no late payments; no missed payments; the

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1 loans were all paid back timely. 100 million plus in
 2 interest. There is no victim. There is no complainant.
 3 There is no injury. All of that is established now by the
 4 evidence.
 5 The evidence also establishes that the SOFCs
 6 S-O-F-C.
 7 Sorry, I am doing that for the court reporter,
 8 because I am going to say that a lot rather than saying
 9 Statements of Financial Condition.
 10 And the certifications were submitted in
 11 connection with certain loan transactions that are at
 12 issue. And only the specific parties involved in those
 13 transactions made those submissions. I think that's very
 14 clear from the documentary evidence in the case, that it
 15 was specific entities and specific parties that made those
 16 submissions, not the defendants at large. And that's a
 17 concept I'll come back to, Your Honor.
 18 The certifications were true and accurate when
 19 made, and the loan covenants were not violated. There is
 20 no evidence that the loan covenants themselves were
 21 violated.
 22 The SOFCs and certifications were accurate, and
 23 this is important, in all material respects. And that's a
 24 key concept that I'll also come back to. There is
 25 testimony in the record that the SOFC values were actually

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1 lower than the actual values. President Trump himself
 2 testified that he believed the values were lower.
 3 And I have to pause just for a minute on that,
 4 because, you know, in any other context, if we were in any
 5 other setting, President Trump would clearly qualify in
 6 any court in this country as an expert on real estate,
 7 commercial real estate, commercial real estate
 8 development, and the commercial real estate industry.
 9 This is a man that has been involved for 50 years in
 10 reshaping the skyline of New York. I mean, I can list off
 11 the top of my head the buildings that he has been involved
 12 in in terms of development: The Grand Hyatt; Trump Tower;
 13 the complete transformation of the Plaza Hotel back in the
 14 1990s; 40 Wall Street; Trump International Hotel and Tower
 15 in Central Park; Trump World Tower; Trump Park; Trump Park
 16 East; Trump Palace; Trump Park Avenue. There are
 17 innumerable buildings just in Manhattan.
 18 And those buildings, I think it is important for
 19 the Court's consideration both today and ultimately as you
 20 wrestle with the concepts of equitable relief, those
 21 represent real jobs, real economic impact in this
 22 community, over decades, over a lifetime.
 23 And his commitment to the revitalization of
 24 public resources is also demonstrable. The Ferry Point
 25 project. The evidence in this case establishes that

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1 President Trump took the Ferry Point project from a
 2 landfill, from a garbage dump where they were moving
 3 debris back and forth for 20 or 30 years. No one could do
 4 anything with the site. And has transformed it into a
 5 world class facility. Wolman Rink was revitalized. The
 6 West Side Yards, which began the revitalization of the
 7 West Side, which now includes Hudson Yards and many other
 8 things in the vicinity.
 9 So this is an individual whose opinions aren't
 10 to be disregarded, as the Attorney General would say, or
 11 be cast aside, that there is no value to his opinion. So
 12 it is fair for this Court to conclude, based on his
 13 testimony as an expert in the industry, an established
 14 expert in the industry, that there is some deference to be
 15 accorded there.
 16 Setting aside all of the theatrics, setting
 17 aside all of the politics, setting aside where we are, if
 18 we just look at it on its face.
 19 THE COURT: Were there theatrics?
 20 MR. KISE: We will get to that.
 21 THE COURT: I just have to say one other point.
 22 You said one of the buildings, I think Trump
 23 Tower, was in Central Park. I don't know how they do it
 24 in Florida but in New York we don't allow skyscrapers --
 25 MR. KISE: No, No, sorry. Trump International

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1 Tower on Central Park South. I believe, you are correct.
 2 But his testimony that the values, in his view,
 3 other than as he stated, are lower than actual values, is
 4 entitled to real weight, because he is an expert.
 5 THE COURT: But he wasn't qualified as an
 6 expert, so.
 7 MR. KISE: He doesn't have to be qualified as an
 8 expert to be one though. That's my point. You don't have
 9 to qualify him and put him on as expert testimony for the
 10 Court to recognize and acknowledge that this individual
 11 has the requisite knowledge, training and experience to be
 12 one. I am not suggesting his testimony is expert
 13 testimony. What I am saying to the Court is that his
 14 testimony in any other forum would be credited as such.
 15 He certainly would qualify.
 16 The SOFCs, back to our evidence, had valid and
 17 obvious disclaimers negating intent, materiality and
 18 reliance.
 19 There is no evidence in the record of agreement,
 20 a fundamental premise to support the conspiracy claims.
 21 The evidence establishes that the banks relied on their
 22 own independent valuation analysis, not the SOFC values.
 23 So there is no intent to defraud. There's no
 24 defaults. No breach. No reliance. No unjust profits.
 25 And no victims.

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1 More importantly, or as importantly, there is no
 2 real world impact. As I began, there is no -- they are
 3 all profitable loan transactions. There is no record
 4 evidence that anything would have been different with
 5 respect to the loan transactions or the insurance
 6 transactions, that anything would have been materially
 7 different or different at all.

8 There is no party complaining or alleging fraud.
 9 Zurich Insurance, one of the alleged victims, according to
 10 the Attorney General, still does millions and millions of
 11 dollars of business with Trump. I am not sure what the
 12 Court's experience is with insurance companies, but I
 13 certainly know from many years of dealing on the
 14 regulatory side of insurance companies, that if they
 15 believe they have been defrauded by someone, they are not
 16 doing business with them in the future.

17 There is no fraud victim. There is just banks
 18 satisfied with profitable loans. And so the Attorney
 19 General has converted standard commercial real estate loan
 20 transactions into fraud, based not on what the bank says,
 21 but what -- on what she says.

22 And it is similar to the Exxon case. And I know
 23 the Attorney General's office is familiar with the Exxon
 24 case, Mr. Wallace in particular, that there was no
 25 testimony from anyone who claimed to have been misled by

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1 the disclosure. We don't have testimony in this record,
 2 particularly from the banks, where they say something
 3 would be different; I was misled; I was defrauded. That's
 4 essential to proving intent and materiality.

5 As this Court has held in the summary judgment
 6 order, it is the Attorney General's burden to demonstrate
 7 a component of intent and materiality at this phase. The
 8 Attorney General has failed to introduce any evidence of
 9 materiality or intent, and instead simply relies on the
 10 Court's summary judgment decision to establish both. That
 11 decision, however, as Your Honor knows, specifically
 12 determined that intent and materiality must be established
 13 at trial. And the failure to do that entitles the
 14 defendants to a directed verdict on the remaining causes
 15 of action and as to the issue of disgorgement.

16 So materiality is an essential element. The
 17 statutes make this clear. The issuance of a false
 18 financial statement needs to be inaccurate in some
 19 material respect. It needs to be known to be materially
 20 inaccurate. The insurance fraud statute is the same. A
 21 written statement as part of support of the application --
 22 COURT REPORTER: Sorry, I missed that.
 23 MR. KISE: Sorry, I always go fast when I am
 24 reading, I'll stop that.
 25 The insurance fraud statute requires a written

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1 statement as part of or in support of an application for
 2 the issuance of a commercial insurance policy, which is
 3 known to contain materially false information. That's a
 4 different standard than, as Your Honor knows, was applied
 5 at the first phase, at the summary judgment phase.
 6 Now, the compliance certificates incorporate
 7 materiality.
 8 Just bear with me one minute, Your Honor.
 9 THE COURT: Sure.
 10 MR. KISE: I forgot to bring this up.
 11 Thank you, Judge.
 12 The compliance certificates that are part of the
 13 Attorney General's claim incorporate materiality. If you
 14 look at the language: The foregoing presents fairly in
 15 all material respects, all of the representations and
 16 warranties made by guarantor remain true and correct in
 17 all material respects.
 18 There hasn't been any evidence introduced about
 19 materiality other than just a reference back to Your
 20 Honor's opinion, which itself doesn't decide that question
 21 on its face.
 22 The guarantor made only this representation.
 23 That's the standard and that can't simply be read out of
 24 the certificate.
 25 That representation also, importantly, was made

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1 as part of a contractual obligation. The bank, the
 2 contracting party, never asserted any breach claim. And
 3 so you have the additional issue that the Attorney General
 4 cannot now just step into the shoes of a private party and
 5 enforce contract terms that the private party, whose role
 6 it was, contractually, to determine issues like
 7 materiality, and breach, never claimed any violation.
 8 The OPO loan documents contained a materiality
 9 provision together with a representation from guarantor
 10 that there has been no material change.
 11 The 40 Wall Street loan contains materiality
 12 language. No material adverse effect or change. There
 13 has been no material adverse change. There is a
 14 definition of what material adverse effect is.
 15 These concepts are at the core of the Attorney
 16 General's claims. And again, they have done nothing to
 17 introduce any evidence of materiality other than rely on
 18 Your Honor's opinion and their own opinion.
 19 The 40 Wall Street loan continues with another
 20 example about material respects certified by guarantor as
 21 being true, correct and complete and fairly presenting
 22 financial condition. No material adverse change.
 23 The Attorney General's own complaint, as you
 24 have heard me say before, 48 paragraphs reference
 25 materiality. Twenty-five of those paragraphs reference

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1 materiality in loan covenants. This is a fundamental,
2 core concept.
3 The complaint paragraphs themselves and I am
4 just giving one example here, paragraph 589, talk about
5 untrue statement of a material fact. A material fact
6 necessary to make any material statements contained herein
7 or therein not misleading.
8 An example of the actual -- I believe this is
9 the 2016, it is -- certificate of compliance. You can see
10 there in all material respects. So materiality is a core
11 concept.
12 THE COURT: How would you define materiality in
13 this context?
14 MR. KISE: I would define materiality and I will
15 get there. That's a good question, Your Honor. I would
16 define materiality in this context as through the lens of
17 the user. It is not, respectfully, what you think. It is
18 not what they think. It is not what I think. It is what
19 did the bank think. They are in the role of determining
20 materiality. There is no objective materiality. You have
21 to look at this through the lens of the user. Because
22 everyone's definition might be a little different. Now
23 you heard testimony about a 5 percent standard. And
24 that's a -- that's a fair standard. And there is
25 testimony of that in the record. That if you have

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1 someone, like you do here, where the net worth is four and
2 a half or five billion dollars and there is \$100 million
3 swing or \$200 million swing, yes, that's a lot of money in
4 an abstract sense, but in the context of financial
5 statements, it is not.
6 THE COURT: Just one thing. There is a record
7 so when you say "they" and point to someone.
8 MR. KISE: I am sorry, the Attorney General.
9 Fair point.
10 The Court, the Attorney General, the Defendants,
11 the issue of materiality must be viewed through the lens
12 of the user, in this case the bank or the insurance
13 company as the case may be.
14 The second key component is intent. Falsifying
15 business records, the statute requires an intent to
16 defraud. And that intent to defraud is commonly
17 understood to mean to act with intent to cheat someone out
18 of money, property or something of value.
19 And we have got cases cited there:
20 The Saporita case 132 A.D.2d 713.
21 The Jeremias case 66 A.D.2d 178.
22 And the Briggins case 50 N.Y.2d 302.
23 Additionally, falsification of business records
24 in the first degree requires the additional element that
25 the defendant intends to commit another crime. There is

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1 no evidence in the record as to what that other crime was.
2 There is a lot of discussion during the course of the
3 case, but nobody has put any evidence in the actual record
4 as to what that other crime was. And so for that reason
5 alone, the count that relates to falsification of business
6 records in the first degree is subject to directed
7 verdict.
8 Issuing false financial statements also has an
9 intent and materiality component to it. The issuance of a
10 false financial statement occurs when an individual, with
11 intent to defraud, knowingly makes or utters a written
12 instrument, which is inaccurate in some material respect;
13 represents in writing that a written instrument that he
14 knows is materially inaccurate.
15 So let's look just briefly, because it is hard
16 to prove a negative, it is hard to prove that there is no
17 evidence of something, but let's look at what we do have.
18 So President Trump testified, and I will point out that
19 the Court did state that it is not here to hear what
20 President Trump has to say. And we are not here and these
21 people are not here and the Attorney General is not here
22 to hear what President Trump has to say. But I would
23 respectfully say, the Court cannot ignore President
24 Trump's testimony.
25 And the fact that there was an adjudication

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1 earlier connected with a collateral matter, should not
2 have any bearing on the Court's view of the witness's
3 testimony or credibility when it comes to the substantive
4 case. And I am not suggesting it does or doesn't, I am
5 just pointing that out as a matter of procedure.
6 THE COURT: The first line on that screen: This
7 Court stated it is "not here to hear what President Trump
8 has to say." Do you remember what I said right after
9 that?
10 MR. KISE: I don't have it in front of me.
11 I have that --
12 MR. WALLACE: I believe Your Honor said you are
13 here to hear him answer questions.
14 THE COURT: That's exactly what I remember. So
15 I think it is misleading to just have the first half.
16 MR. KISE: Since you are the trier of fact, you
17 will ultimately decide that. But certainly the point that
18 I am trying to make, Your Honor, is that the Court cannot
19 ignore President Trump's testimony. And whatever happened
20 in the course of the proceeding before, that testimony has
21 to be evaluated in the context of whether or not the
22 Attorney General has sufficient evidence to prove intent.
23 And intent is a subjective analysis. You have
24 to demonstrate that, in a criminal case, you have to
25 demonstrate that the defendants had subjective intent.

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1 And I won't go through all of the, obviously,
2 the testimony in the record. Here is a question and
3 answer from President Trump's testimony:
4 "How did you know the banks did not pay much
5 attention to your statements?
6 "ANSWER: Because I have been dealing with banks
7 for 50 years. And I probably know banks as well as
8 anybody. And I have borrowed a lot of money. I have paid
9 back a lot of money. And I know what they look at. They
10 look at the deal. They look at the location. They don't
11 want to get involved in financial statements because
12 that's not what they are after. If a deal goes bad, they
13 want to be able to take the deal back over and, you know,
14 have it. They want you to be able to put up some cash, or
15 whatever it is you may be, including expertise, but they
16 don't want to be fighting for ten years over a personal
17 financial statement. They want to take over the deal."
18 So that testimony negates subjective intent. If
19 his view, based on 50 years of experience, is I am going
20 to give this statement over and they are going to
21 understand it to be my opinion, compilation statements by
22 definition are the opinion of an owner or the person that
23 prepared them. So there is no assurance of anything other
24 than that. That it is, by definition, an opinion. But if
25 subjectively based on his experience he knows doing deal

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1 after deal after deal after deal with banks, that they are
2 not going to do anything other than say, thank you
3 President Trump, for your opinion. We are going to go do
4 our own homework now. And in fact, that's what the record
5 shows.
6 THE COURT: I think you are assuming that I
7 believe him.
8 MR. KISE: Well, I am certainly suggesting that
9 you should, because there is no evidence to the contrary.
10 There is certainly no evidence to the contrary is the
11 point. I mean, they haven't introduced any evidence that
12 you shouldn't believe him, other than them running around
13 saying as many times as the Attorney General can possibly
14 get it out of her mouth that he is a fraud, he is a fraud,
15 he is a fraud, he is a fraud.
16 But, you know, what building has the Attorney
17 General built in this community? What expertise does the
18 Attorney General or any member of her staff have in the
19 commercial real estate sector? What understanding do they
20 have? Do they have 50 years of understanding how bank
21 deals are done? Do they have 50 years of understanding
22 how negotiations are handled, as to what banks rely on and
23 what they don't? If you are trying to prove subjective
24 intent, then you need to establish that there is a basis
25 to say, other than just saying it, that the individual is

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1 not credible and not to be believed.
2 In response to another question. "That's not my
3 question," Mr. Wallace said. "My question is whether you
4 would actually use them to obtain financing.
5 "ANSWER: I would give them, but I don't think
6 anybody paid much attention to them because of the
7 disclaimer clause."
8 Which I'll come back to.
9 "And because generally that's not the way to do
10 it. Again, I have been doing it for 50 years and they
11 look at the property."
12 There are multiple examples where he continued
13 this testimony, despite many different ways of asking him
14 the question. Which is fine, that's cross examination.
15 But it negates fully any intent to mislead or defraud.
16 The knowledge of disclaimers in 50 years of industry
17 experience goes to the state of mind of President Trump,
18 and the other defendants for that matter, when the
19 statements were given over.
20 Additionally, President Trump testified that he
21 "gave Mr. Weisselberg and Mr. McConney total authority to
22 work with the very expensive accounting firm."
23 We heard about that a lot.
24 "And they worked with the accounting firm, and
25 they came up with a statement."

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1 Well, New York Courts have held that plaintiffs,
2 if there is no good faith, if there is no evidence --
3 excuse me. If there is no evidence to suggest that a
4 defendant's reliance on accounting professionals was other
5 than in good faith, then there is no evidence of intent.
6 And I would cite the Abrahami case 224 A.D.2d at
7 233, I believe.
8 And the Dillard case 271 New York 403.
9 It is beyond reasonable for any CEO in a major
10 corporate enterprise to rely on multi million-dollar
11 accountants and staff when -- when dealing with financial
12 matters. So again, there is no evidence of intent. The
13 disclaimers also -- the inclusion of the disclaimers
14 negate intent, whatever the Court may think about the
15 disclaimers substantively, which as you know we disagree
16 with strongly.
17 THE COURT: And I wrote extensively, or at least
18 pointedly, about the disclaimer and the worthless clause,
19 and I believe the Appellate Division affirmed me on both.
20 They are not defenses at all. But I'll let you make your
21 record.
22 MR. KISE: Whether they are substantive defenses
23 or not, a point which we will allow the Appellate Court
24 ultimately to decide.
25 THE COURT: They already did.

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1 MR. KISE: Well, I mean, again, respectfully, I
2 would disagree with that. But I -- that's why it is up on
3 appeal now.
4 But in all events, the inclusion of the
5 disclaimer itself and the knowledge of that inclusion and
6 the testimony you have heard, negates subjective intent.
7 If President Trump knows that when he hands this to
8 someone that it is telling them on its face, these are my
9 opinions. The compilation is, by definition, a
10 corroborated opinion -- an uncorroborated opinion. The
11 disclaimers tell the banks what is being provided and not
12 being provided. And they notify the users, like Deutsche
13 Bank and Zurich, do your own analysis. If that's what is
14 in his mind, it is not possible for him to form subjective
15 intent to defraud. Whether you think it is a defense or
16 not, is a completely separate matter.
17 Whether it actually survives as a defense, which
18 again, we think it is a full and complete defense, but
19 whether it is or it is not, it is certainly a defense to
20 intent, because it goes to the state of mind of the person
21 providing the statement itself, the SOFC. I know that
22 there is a disclaimer in there.
23 THE COURT: Wait a minute. I am sorry to
24 interrupt. And I want to give you --
25 MR. KISE: No, you can.

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1 THE COURT: I want to give you your due. But
2 you seem to be saying the fact that somebody says don't
3 believe me, which is not what it says anyway, but don't
4 believe me, proves that they are not lying? Or --
5 MR. KISE: It proves that they have no
6 subjective intent to defraud. Because why would you --
7 why would you put a bank on notice to do your own
8 homework? Why would you tell them, don't rely on me? Why
9 would you say, hey, this is my opinion. This is what I
10 think, you go do your own homework.
11 As you heard President Trump testify, in the
12 industry, I mean, often they don't even put statements
13 together.
14 THE COURT: I see your point. Okay. Thanks.
15 (The following proceedings were stenographically
16 recorded by Senior Court Reporter Michael Ranita.)
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1 MR. KISE: Back to materiality. As stated, the
2 Attorney General cannot ignore materiality, and it permeates
3 the complaint. It permeates the documents, and it permeates
4 the governing law here. But from the opening statement the
5 Attorney General makes clear their approach to materiality.
6 The Court has already found that the People submitted
7 conclusive evidence that between 2014 and 2021, the
8 defendants overvalued the assets in the statements between
9 812 billion and 2.2 billion per year.
10 There's no world in which that an overstatement of
11 that size -- there is a typo there. I'm sorry. There's no
12 world in which an overstatement of that size is not
13 material.
14 So, in fact, the Attorney General's position is
15 that the ruling by this Court on summary judgment meant that
16 what the banks thought and did, just doesn't matter. And
17 that's just completely inaccurate. It does matter. It --
18 the materiality must be viewed, and we are going to get
19 there. I'm going to show the Court concrete examples of
20 this through the Haigh testimony and the documents, that, in
21 fact, there is a world in which a difference of that size --
22 I'm not going to call it an overstatement -- a difference of
23 that size is not material. And it's the world we are living
24 in right now. It's the real world that these transactions
25 were negotiated and consummated in.

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1 And the standard under New York law for materiality
2 is that in all probability the omitted or misrepresented
3 facts would, in view of the circumstances, have assumed
4 actual significance in the deliberations of, in this case, a
5 reasonable shareholder, or a bank or investor; that's the
6 Essner case 124 Misc., M-I-S-C 2d 830.
7 THE COURT: Your position is that no witness
8 testified that they would have regarded these discrepancies
9 as material.
10 MR. KISE: I don't believe they did. In fact, the
11 witness -- the bank witnesses, and I'll show you that
12 testimony, they never asked them if they would have made any
13 different changes. Let's look at that, because the bank
14 employees, Mr. Haigh and Mr. Weisselberg make clear that the
15 materiality was not demonstrated.
16 The Attorney General never asked Mr. Haigh if
17 anything would have been done differently. They never asked
18 Jack Weisselberg about if anything would have been done
19 differently. Moreover, the bank considered many, many, many
20 other factors, not just the SOFCs in determining loan
21 approvals and pricing. There's testimony in the record for
22 this. Those factors included the nature of the collateral,
23 the quality of the collateral, the loan to value ratio, the
24 bank's lending history, the actual lending experience with
25 the customer, the bank's experience in a particular

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1 industry, the client's experience in a particular industry,
 2 the client's performance in a particular industry, the
 3 guarantor's liquidity, the unpledged access -- unpledged
 4 assets. That may be unintentional. The unpledged assets by
 5 the guarantor, and the economic climate.
 6 THE COURT: Let me give you a hypothetical. Let's
 7 say a bank employee says -- and we are doing this because
 8 this is your view of materiality. Would it have affected
 9 the view of the recipient of the document? Let's say an
 10 employee says, "Oh, we viewed it very differently, but we
 11 still would have done the deal." Does that make it
 12 material, or not?
 13 MR. KISE: Not, because if they would have viewed
 14 it differently and still done the deal, that's ultimately
 15 what matters, because ultimately what matters is the
 16 decision making process of the bank. If they would have
 17 approved it, even with this knowledge, then right in their
 18 mind it's not material. And I think the evidence, and I'm
 19 going to point to this now, demonstrates that.
 20 Materiality must be viewed through the lens of the
 21 bank, not the Attorney General and not the Court. What is
 22 material to the bank? And so Mr. Haigh testified that all
 23 approvals were based on the Deutsche Bank adjusted values.
 24 And those -- and I'll show you the specifics here in a
 25 moment, your Honor. And you may recall them. Those

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1 adjusted values reduced the values in the SOFCs by roughly
 2 two billion dollars in most years, and Deutsche Bank
 3 approved the loans anyway because they didn't view that sort
 4 of differential as material.
 5 So when the AG says, or the Attorney General says
 6 at the beginning of the trial that there's no world in which
 7 a \$2 billion difference cannot be material, I would suggest
 8 that here in the real world it is based on the facts that
 9 are in evidence now.
 10 THE COURT: My hypothetical -- sorry to interrupt,
 11 my hypothetical, I think you are confusing materiality and
 12 reliance. If somebody says we would have -- we would have
 13 done the deal anyway, and that could be for any number of
 14 reasons; they want repeat business, et cetera. But using
 15 your own view, look at it from the eyes of the bank
 16 employee, or whomever, if -- let me just ask plaintiffs
 17 quickly, did any defendant employee -- I mean, any bank
 18 employee, I'm sorry, say oh, yeah, we viewed it differently
 19 and if so, who?
 20 MR. KISE: They are certainly going to get their
 21 chance.
 22 MR. WALLACE: I guess the question is, would they
 23 have said -- would they have done it differently? We didn't
 24 present, at trial, the hypothetical of all the evidence that
 25 we've shown to show the statements were false.

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1 THE COURT: I'm just asking whether any bank
 2 employee said, we would have viewed it differently if we had
 3 known B instead of A.
 4 MR. WALLACE: Mr. Haigh said that in his
 5 deposition, but we didn't put that in front of him at the
 6 trial.
 7 MR. KISE: It's not in the trial. Whether he said
 8 it in the deposition, it's not in the courtroom.
 9 THE COURT: Okay.
 10 MR. KISE: So if they are satisfied with their
 11 adjusted values, I'm not conflating the concepts of
 12 materiality and reliance, your Honor, respectfully, but they
 13 are interconnected. And I don't think there's a bank that
 14 doesn't want to have the federal regulator standing on top
 15 of them for the rest of their existence that would ever
 16 testify, we deem something to be material, but we went ahead
 17 anyway. It's not plausible to conclude that.
 18 So there's no even theoretical argument that the
 19 approvals, the rates or terms, would have been any different
 20 because the banks own analysis and rationale demonstrates
 21 that it wouldn't. And so the Attorney General cannot simply
 22 come along a substitute her view of what's material and say
 23 it's material.
 24 And I'm just going to use the 2014 year as, you
 25 know, we went through each year, but I'll just go with the

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1 2014 year. You could see from the highlighted language,
 2 approval of the various credit facilities; Doral, Trump
 3 Chicago, Trump Old Post Office, are being recommended based
 4 on, we have three items listed there. The first is the
 5 financial strength of the guarantor. If you'll notice that
 6 language that is so pesky for the Attorney General that they
 7 don't want anyone to pay attention to, "on an adjusted
 8 basis" -- we're gonna flip over to the next slide so you see
 9 what that means. On an adjusted basis the financial
 10 strength of the guarantor. It doesn't say on basis that he
 11 told us. It says on our basis, on an adjusted basis.
 12 Mr. Haigh testified repeatedly, I think the Court, frankly
 13 got tired of hearing it over and over again, that yes, those
 14 are adjusted numbers.
 15 The other two factors which are very important,
 16 particularly in this context, are the operating experience
 17 and the Deutsche Bank relationship. Remember, President
 18 Trump was brought into the private bank because as a whole
 19 -- you have his testimony -- as a whole, as a bank, as an
 20 institution, they believed that this would be a valued
 21 customer to them; this relationship would be valuable to
 22 them. And as the record reflects and as history
 23 establishes, they were right. He was a valuable customer
 24 for them. He made lots of money for them. They got deposit
 25 relationships. And it was only because he became President

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1 of the United States, and that created all sorts of
 2 political complications, that they ceased doing business
 3 with him at that time.
 4 THE COURT: Is there any evidence that they still
 5 do business with him one way or the other? I don't know.
 6 MR. KISE: I don't believe so, because of the
 7 testimony you heard about when he became President, it got
 8 elevated to the management and they were concerned about the
 9 navigating politics of that.
 10 If you look at the credit memos where you see the
 11 numbers, and this goes back to my point about the "real
 12 world" versus the "Attorney General world." If you look at
 13 the net worth numbers each year, just in 2014 here, they
 14 looked at the 2012 and 2013 numbers. And in 2012 you have
 15 the client reported net worth of 4.559 billion and you have
 16 the Deutsche Bank adjusted net worth of 2.436 billion.
 17 Similarly, in 2013 you have a client reported
 18 4.978 billion, and the Deutsche Bank adjusts the number of
 19 2.645 billion. So contrary to what the Attorney General
 20 maintained in their opening, and has maintained throughout,
 21 there is a world in which a difference of that magnitude of
 22 \$2 billion isn't material, is not material, and it's the
 23 real world. It's the one in which these loans were
 24 negotiated, executed, consummated successfully.
 25 Same is true, if you flip over to the next page of

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1 the 2014 credit memo. You see the Deutsche Bank valuation
 2 and the client valuation. And again, there is 1.5 to
 3 \$1.7 billion differential -- 1.5. We'll call it 1.5,
 4 differential between the client reported valuation and the
 5 client reported net equity, and the Deutsche Bank valuation
 6 and the Deutsche Bank adjusted net equity. And as we saw
 7 from the two slides before, and as we know from Mr. Haigh's
 8 testimony, the numbers that Deutsche Bank relied on, their
 9 numbers, their own numbers, and they were satisfied with
 10 these wide differentials.
 11 Just briefly on materiality, two more points.
 12 William Kelly, the General Counsel of Mazars, testified that
 13 "Mazars never determined that there were any material
 14 discrepancies with respect to the Statement of Financial
 15 Condition -- Statements of Financial Condition that it
 16 prepared for President Trump from 2011 to 2018."
 17 Mr. Larson, an appraiser from Cushman & Wakefield,
 18 who you know I have some question as to his veracity, but
 19 nonetheless, he certainly testified, the Attorney General's
 20 own witness, that there was absolutely nothing to prohibit
 21 President Trump from conducting his own valuation of his
 22 property and the valuations never needed to be conducted by
 23 an appraiser.
 24 So when you couple that testimony, and bear in mind
 25 that all of the witness testimony we are talking about are

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1 Attorney General witnesses, they are not even our witnesses.
 2 None of them have done anything to establish materiality.
 3 And this point has been ignored by the Attorney General,
 4 because as I began, they are relying on your determination
 5 and their view that, well, the numbers are so large it must
 6 be material. But materiality is measured in the real world
 7 by reel participants. In this case the banks that came
 8 before this court. There's no evidence of materiality, and
 9 the claim, on that basis alone, fails.
 10 I'll talk briefly on insurance fraud. First of
 11 all, in our view, there's no evidence that the SOFCs, were
 12 material to the underwriting decisions. And importantly,
 13 there's no evidence of any false written statement submitted
 14 to insurers. Ms. Markarian testified that Allen Weisselberg
 15 allegedly told her SOFC values are based on appraisals.
 16 Mr. Holl, H-O-L-L, testified about certain verbal
 17 representations during a meeting, but he couldn't attribute
 18 any statement to any specific person, and therefore, you
 19 can't hold defendants liable, in general, but there's no
 20 false written statements to insurers, so those claims fail.
 21 Conspiracy. Conspiracy requires an agreement, most
 22 importantly. The heart of any conspiracy is agreement. An
 23 agreement between two or more parties, an overt act in
 24 furtherance of that agreement, the parties' intentional
 25 participation in the furtherance of a plan or purpose, and

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1 resulting damage or injury. This is the Abacus Federal
 2 Savings Bank case, 75 AD3d 472. We also cite the Court to
 3 the Robinson case, 259 AD2d 280.
 4 So here, there is no proof whatsoever of any
 5 agreement to commit a criminal act. The agreement to
 6 prepare and submit SOFCs is not an agreement in and of
 7 itself to commit a criminal act. And there's no evidence of
 8 any intentional participation in any plan/purpose in
 9 furtherance of a criminal act.
 10 There is also no evidence of resulting damage or
 11 injury. As I began, there are no victims here. There's no
 12 fraud. There's no complaining witness. There's no
 13 defaults, there's no later missed payments. These are all
 14 profitable transactions.
 15 There's no evidence of agreement. The Attorney
 16 General's star witness. I know that the Attorney General
 17 says, no, Michael Cohen is just a small part of our case.
 18 Really, it doesn't matter. Right on that screen, Michael
 19 Cohen was featured. They played his testimony in the
 20 openings. Donald Trump told me to do A, B, C, D, E, F G.
 21 He was showcased. Now the Attorney General, herself,
 22 retreats from his -- no other way to describe it -- pathetic
 23 performance. I mean, he is not credible. He admitted to
 24 perjury. In fact, I think -- I didn't go back and count --
 25 I think he lied, he admitted to lying in just about every

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1 court he's ever appeared in.
 2 Importantly, he finally admitted, after
 3 Mr. Robert's cross examination, that President Trump never
 4 told him to inflate the statements. He said on redirect,
 5 and this I think is the most astonishing part of Mr. Cohen's
 6 testimony, that somehow or another President Trump speaks in
 7 code.
 8 I mean, you saw him on the stand. I don't think
 9 when he was addressing Mr. Wallace, or talking about the
 10 Attorney General, or talking about the allegations, or
 11 anything else, this is not a man that speaks in code. I
 12 could assure you personally, this is not a man that speaks
 13 in code. Anyone that has been around President Trump for
 14 more than 15 minutes knows you will know what it is that he
 15 wants, and you will know exactly how it is that he intends
 16 for you to get there. This is not someone that speaks in
 17 code.
 18 So the idea that Michael Cohen tried to
 19 rehabilitate himself on redirect after demonstrating he lied
 20 and lied and lied, well, he never really told me. He just
 21 speaks in code, is preposterous.
 22 THE COURT: Can I bring up something not in the
 23 record, but a matter of public knowledge? I think the
 24 perfect call with Zelenskyy about the military aid, there
 25 might have been code rather than straightforward talk.

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1 MR. KISE: I don't know. That's a political issue
 2 that really has no bearing on anything in the courtroom, and
 3 I certainly don't know the facts or circumstances of it.
 4 And I hope, sincerely, that that is not bearing on the
 5 Court's mind when it comes to the testimony. I know it's
 6 not. I know you were making a point, but that's a
 7 completely different context. And here the only proof of
 8 agreement that they presented to the court was Michael
 9 Cohen.
 10 THE COURT: Okay. I understand. I only base my
 11 decisions and rules on what's in the record, and that
 12 clearly was not, so okay.
 13 MR. KISE: There's no testimony to support the
 14 Attorney General's claim that President Trump directed
 15 anyone to overstate this SOFC values. I mean, Cohen said
 16 affirmatively, he did not direct him to overstate the
 17 values. And I'll just touch previously on the other only
 18 other statement that's even come close to this issue in the
 19 record, is the statement that the Attorney General attempted
 20 to get in through Mr. Birney about what Allen Weisselberg
 21 allegedly told him. Well, as you know from our submission,
 22 that statement is inadmissible because until -- unless and
 23 until the Attorney General proves a prima facie of
 24 conspiracy, without that statement, which they haven't,
 25 because they haven't demonstrated agreement over the various

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1 elements, then that statement doesn't come in.
 2 Even if it came in, that statement, alone, is not
 3 proof of any agreement or any criminal act. The statement
 4 is purportedly, "Mr. Trump wanted his net worth to go up."
 5 Well, that, on its face, is not evidence of guilt or
 6 criminal conduct.
 7 I think I believe President Trump himself said,
 8 "Well, who doesn't want to it go up?" I mean, you are going
 9 to tell people, "I would like it to go down." You know, I
 10 would like it to go down. The statement itself proves
 11 nothing, even if it's admissible, which we believe that it's
 12 not.
 13 Briefly, on two points about specificity, because
 14 we argued the criminal statutes. The Attorney General has
 15 failed to establish individual claims against each
 16 defendant. There's no specific proof of liability, specific
 17 conduct. I mean, look at Seven Springs, DJT Holdings, DJT
 18 Managing Member, Trump Organization, Inc. and LLC. The
 19 parties to the loans and the guaranty are very specific
 20 parties. They are set forth in the governing documents. So
 21 Seven Springs didn't prepare an SOFC or certification, DJT
 22 Holdings didn't, Trump Org, Inc. did not, Trump Org, LLC did
 23 not. The trust did not prepare and submit the SOFCs at the
 24 loan inception, at least. And so there's no separation of
 25 any kind. None of the defendants are specified as to the

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1 insurance fraud claim. It's just simply insurance fraud and
 2 defendants. And the Attorney General cannot simply just
 3 conflate all of the defendants together. There's no basis
 4 in the record to disregard the corporate forum. And the
 5 Attorney General has failed completely to attribute specific
 6 criminal conduct to specific defendants, which is the
 7 statutory burden.
 8 They've also -- the Attorney General has also
 9 failed to establish specific defects. So the Attorney
 10 General's position which, you know, we disagree with, but
 11 their position is is that each SOFC submission or
 12 certification constitutes a separate act. But there's no
 13 actual evidence specific to each act.
 14 The Attorney General, just in the record, has
 15 conflated the 2011, 2021 period without specific proof, year
 16 by year. There's no specific delineation as to each defect
 17 year by year. So the evidence has sort of wandered, um, I
 18 think some of the media has observed this, that each day we
 19 move from the 2014 Statement of Financial Condition to the
 20 2013 spreadsheet, to a 2016 e-mail, back to a 2012 document.
 21 There's -- it's just sort of this meandering presentation,
 22 which at least where I'm from we call it a spaghetti method.
 23 You throw it all up on the we'll and let's just see what
 24 sticks, but there's no attempt to establish the materiality
 25 of each alleged defect or each separate SOFC, or each

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1 separate certification. And the Attorney General cannot
 2 simply conflate all of this together. There's no basis in
 3 the law for establishment of criminal liability against any
 4 individual defendant without a specific delineation.
 5 And so the failure to completely to attribute
 6 specific criminal conduct to a specific SOFC and a specific
 7 individual defendant, and a specific certification and a
 8 specific individual defendant, is fatal to their claims.
 9 Disgorgement. I'm only going to say this once for
 10 the record. We do not believe, as you know, that it's
 11 available under 63(12) or the underlying statutory claims.
 12 Even if it's available, though, we do not believe the
 13 evidence has established that any gains or ill-gotten,
 14 meaning there's no demonstration that there's a causal link
 15 between the purported gains to defendants, and the purported
 16 fraudulent conduct. And I cite to the court the JP Morgan
 17 Securities case, 91 AD3d 226, which unfortunately was
 18 reversed on other grounds. I'm not sure what the grounds
 19 are, but that case stands for this proposition, that the
 20 disgorgement must be causally connected to the violation.
 21 There's no evidence the loan approvals, the terms
 22 or rates, would have actually differed. And the
 23 disgorgement must be directed at ill-gotten gains for
 24 recompense of investors, or some entity other than the
 25 prosecuting agency. That's the Access, A-C-C-E-S-S, Point

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1 Medical case, 106 AD3d 40.
 2 So here what you have is no victim, no complainant,
 3 no loss, no nothing, and a request for disgorgement based on
 4 ill-gotten gains that haven't been established to be, in the
 5 record, ill-gotten, all directed at the agency, the
 6 prosecuting agency, the Attorney General. There isn't
 7 anything to recompense.
 8 I'll bring up briefly, for context purposes, the
 9 statute of limitations, because I think it's appropriate
 10 here in the discussion of the disgorgement.
 11 Any transactions closed before July 13, 2014, are
 12 not subject to any sort of financial disgorgement. They
 13 cannot be included in the calculation. So the only
 14 remaining loan claims would then relate to the OPO loan
 15 and/or the 40 Wall Street loan; that setting aside the
 16 issues as to the application of the tolling agreement. But
 17 just as a broad proposition, prior to July 13th, 2014,
 18 that's a hard stop. So there cannot be any disgorgement as
 19 to transactions closed before July 13, 2014 loan
 20 transactions or otherwise.
 21 They cannot seek disgorgement as to contracts
 22 awarded to the OPO contract, the Ferry Point contract before
 23 July 13, 2014. And this chart, which you have seen before,
 24 sort of lays that out. It lays out the relevant dates. The
 25 Seven Springs loan was in July of 2000. The Trump Park

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1 Avenue loan was July 2010. The Ferry Point contract was
 2 2012. The OPO bid selection approval was 2012. The Doral
 3 loan was in 2012. The Chicago loan was in 2012. The OPO
 4 contract and lease was in 2013. So all of those long well
 5 predate the 2014, July 13, 2014, date.
 6 So then the only other transactions as I mentioned
 7 that are even theoretically viable, setting aside the
 8 tolling agreement, would be the OPO loan of August 12th,
 9 2014, which is just across the July 13th line. And then the
 10 40 Wall Street loan on 2015. Again, those transactions,
 11 because there hasn't been materiality, hasn't been the
 12 requisite establishment, we would say there's no basis to
 13 award any disgorgement. They are particularly based on the
 14 disgorgement case law that I referenced. There is nothing
 15 to recompense. But in all events, those transactions would
 16 be the ones only theoretically viable.
 17 THE COURT: What if a loan was closed, money
 18 transferred prior to the statute of limitations cut off, but
 19 the loan was still outstanding and interest was affected,
 20 and let's assume that the loan was obtained through
 21 fraudulent means, or the particular interest rate was
 22 obtained through fraudulent means. Wouldn't the borrower
 23 still be benefitting after the statute of limitations bar?
 24 MR. KISE: Um, no, because you now have to look at
 25 the certification, as the Attorney General has requested

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1 that you do, on a free-standing basis. What were the
 2 impacts of that certification. And I have a slide on that,
 3 but I'll certainly answer your question, your Honor.
 4 What would the impact of that certification be on
 5 the loan terms itself? What would change? What difference
 6 would there be? We can't -- we can't use the concept of,
 7 well, I could look backwards to defeat the statute of
 8 limitations. I mean, that's why, respectfully, we believe
 9 that the First Department said what it said. I know there's
 10 a disagreement; that will be the subject of later
 11 proceedings, but that's why when you are dealing with a loan
 12 transaction, a transaction of this nature, you have to look
 13 at it at the time the agreement is consummated. And all the
 14 subsequent certifications, whether they are false or not, we
 15 say they are not, but even if they are, they don't carry
 16 with them a corresponding damage component because the bank
 17 -- the die is cast. I mean, the deal is done and it's
 18 moving forward.
 19 And to the extent that there is an opportunity to
 20 alter the trajectory, that would be pursuant to the express
 21 terms of the loan agreements, which you have in the record.
 22 The bank and the borrower contemplated expressly in that
 23 agreement the exact scenario that the Attorney General is
 24 now bringing before this Court, which is what happens if
 25 this representation isn't met? What happens if that

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1 representation isn't met? All of that is the subject, the
 2 core of the agreement between the parties, and for the
 3 Attorney General to interject herself into the private
 4 marketplace to this degree is both startling and, and, you
 5 know, frankly, frightful, because the parties themselves are
 6 in the best position to determine how they want to proceed
 7 with one another.

8 And if they anticipate specific circumstances, then
 9 they anticipate those. And if the bank is defrauded, they
 10 are perfectly capable of coming to the Attorney General to
 11 affording themselves to the remedies in the documents. But
 12 we don't get to, as Attorney General, ten years later
 13 rewrite the terms of a contract and say, "Well, I know that
 14 Deutsche Bank didn't believe that this was material." "I
 15 know that Deutsche Bank didn't view this these vagaries and
 16 the statements and the valuations as material or important,
 17 but we do." That's a substitution of judgment which is
 18 based on total speculation. There's no record of any
 19 ill-gotten gains. There's no testimony or evidence the
 20 approvals, the terms or rates would have been different.

21 The Attorney General is ignoring the multiple
 22 factor underwriting analysis. The Attorney General is
 23 ignoring the realities of marketplace. There's not even any
 24 proof that the loans, based on their concocted theory, would
 25 have ever been agreed to higher rates, meaning, that the

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1 parties would have come to some agreement.

2 THE COURT: Hold on. For present purposes, I'll
 3 agree with you, without prejudice, that the certifications,
 4 the subsequent year certifications would not change the
 5 terms of the loan. But my question is -- it's a
 6 hypothetical, almost; a rhetorical question.

7 If the loan was obtained pre-statute of limitations
 8 and under false pretenses, but the borrower is still
 9 benefitting post-statute of limitations based on the
 10 interest rate, I don't know, maybe disgorgement is possible
 11 for that. I'm not taking an official position. I'm just
 12 raising a question.

13 (Continued on the next page.)

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1 MR. KISE: Well, you know our position. There
 2 is no way to unwind that analysis, particularly here where
 3 the bank itself is telling you -- well, strike that.

4 The bank hasn't told you that anything would
 5 have been any different. The bank hasn't said, wow, if I
 6 had known that certification wasn't accurate, I would have
 7 acted differently. Most likely what the bank would have
 8 done is they would have determined, okay, I have got
 9 performing loans. Banks don't want to foreclose on loans.
 10 Bank don't like to declare defaults. Banks like, what,
 11 making money off of performing loans, that's the business
 12 they are in. So if the loan is performing, if the
 13 collateral is otherwise secure, both things that are in
 14 the record here, if there is no risk or little risk of
 15 actual substantive default. Then it is up to the bank.
 16 It is up to the private parties to determine, I think in
 17 some years actually based on the Deutsche Bank analysis,
 18 if we were to go back and look year by year, which I
 19 won't, but I think in some years maybe even on our slide.

20 Let's just look at that briefly.

21 Here. So right here in 2012 Deutsche Bank
 22 credit memo. Their own analysis, their own adjusted value
 23 has the net worth at 2.436 billion. So by their own
 24 analysis they would say, oh, well, he is not meeting the
 25 threshold. That's their own analysis. They obviously

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1 didn't complain about it.

2 In fact, not only did they not complain about
 3 it, they approved the loans and the credit facilities.
 4 They continued doing business year after year after year
 5 after year.

6 And so again, I am back to, this is what happens
 7 in the real world, not the land of make believe, not the
 8 Attorney General's world.

9 THE COURT: By the way, this is sort of an
 10 offhand point. The chart that you were working with, the
 11 fact that the defendants or Trump Organization put X
 12 dollars, as claimed to have a value of X dollars, the fact
 13 is that the bank said, no, it is X minus Y, it is not
 14 4 billion, it is 2 billion, maybe that means they don't
 15 trust him.

16 MR. KISE: It means what Mr. Haigh testified to,
 17 they don't trust anybody. No one trusts anybody. What
 18 bank would? They will not be in business for very long,
 19 and the regulators will be all over them. Their job is to
 20 conduct the exact analysis you see here, particularly in
 21 the commercial sector. They can't just say, oh, well,
 22 that's very nice President Trump, you are worth \$10
 23 billion, \$50 billion \$5 billion, whatever number, here,
 24 how much money do you want, let me take it out of my
 25 pocket. That's not how any commercial lender works. I

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1 think we can all speak from personal experience on dealing
 2 with borrowing for homes, cars, anything on an ordinary
 3 sense. No lender takes your word for it. That's why we
 4 have credit reports and we have all of these checks and
 5 balances. The whole purpose is to make sure that at the
 6 time the loan is consummated, whether it be a personal
 7 loan for a home or a giant commercial loan that is at
 8 issue here, that the parties have developed an
 9 understanding with each other as to the relative pros and
 10 cons of the deal, and that's what they have done here.
 11 And Deutsche Bank, yes, they discounted it
 12 heavily. And back to where I began, they -- they
 13 determined that a \$2 billion differential was not material
 14 to them. So it is not really a matter of not trusting
 15 President Trump or the Trump Organization, it is a -- I
 16 think if you were to look at any of the deals in the
 17 commercial real estate center, you are going to see these
 18 wide disparities. They are looking at it from a different
 19 purpose as well.
 20 So there is no proof that the OPO would not have
 21 been made, the OPO loan. There is no proof that the OPO
 22 loan terms would have differed. There is no proof that
 23 the 40 Wall Street loan would not have been made. There
 24 is no proof that the 40 Wall Street loan terms would have
 25 differed. There is no proof in the record that the OPO or

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1 Ferry Point contracts would not have been afforded. And
 2 there is no proof that any of the certifications could
 3 have possibly impacted these rates and terms.
 4 Now, you have done me the favor of foreshadowing
 5 exactly what I was going to put up. Which is, we had this
 6 colloquy, I believe it was yesterday, or Monday.
 7 The AG's -- the Attorney General's only
 8 remaining theory relates to these certifications, but
 9 there is no proof in the record that post-closing
 10 certifications could possibly impact approvals, rates or
 11 terms. And you yourself agreed, at least
 12 conversationally, you will have to make the ultimate
 13 determination, but I agree with your logic that a
 14 certification in 2017 doesn't affect anything directly
 15 about the original loan, how it was negotiated, how it was
 16 finalized.
 17 So the Attorney General ignores all that. The
 18 Attorney General also completely ignores the guaranty and
 19 step down -- the step downs and the guaranty and the
 20 elimination. You know, with Doral and Chicago loans,
 21 which still feature prominently in their expert's opinion,
 22 the evidence establishes that the Doral guaranty went down
 23 to 10 percent and the Chicago guaranty was eliminated. So
 24 at that point there is no, even, theoretical impact of the
 25 certifications, because there is no longer any guaranty.

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1 And the guaranty is at 10 percent, so the net worth
 2 covenant was at 250 million on Doral and not 2.5 billion.
 3 And so therefore, I don't think there is any allegation,
 4 even from the Attorney General, that President Trump's net
 5 worth fell below 250 million at any point.
 6 So there is no possible basis, even theoretical,
 7 for disgorgement on the Doral or Chicago loan after the
 8 step down or the elimination of the guaranty.
 9 So Mr. McCarty's -- and I am closing here to be
 10 mindful of the time. Mr. McCarty's analysis is, I don't
 11 want to be pejorative and use the word comical, but it is
 12 disconnected from reality. He develops his own absurd
 13 construct. He ignores the bank officer testimony. He
 14 ignores the plain language of the loan agreements, never
 15 looks at the step downs, never looks at the elimination,
 16 never looks at the default rate. He simply substitutes
 17 his judgment for that of the sophisticated counterparties
 18 who negotiated this with high-powered counsel, lots of
 19 back and forth.
 20 So the Attorney General is just using
 21 Mr. McCarty, and apparently he is willing to be used in
 22 this regard, to back fill a gaping hole in the case, that
 23 there is no ill gotten gain. So we can't prove it so the
 24 Attorney General decides let's just make it up.
 25 So these cases you heard us cite before, I will

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1 cite them for the record now.
 2 The Gathers case 242 A.D.2d 506.
 3 The Quinn case 203 A.D.2d 444.
 4 The Ortiz case, which you heard about many
 5 times. And I think you probably think that's my favorite.
 6 I do like that one, because the Ortiz case frames it well.
 7 You can't have an accident reconstructionist when you have
 8 eyewitnesses to the accident testifying and saying X. The
 9 accident reconstructionist is not allowed to come in later
 10 and say no, no, no, no, this is what really happened.
 11 The Ortiz case is found at 19 A.D.3d 239.
 12 And then the last case I'll cite to the Court is
 13 the 91st Street Crane Collapse Litigation. 154 A.D.3d
 14 139.
 15 All of these cases stand essentially for the
 16 proposition that experts opine on the evidence. They
 17 don't manufacture the evidence. They don't substitute
 18 their opinions. They can't contradict facts that are in
 19 the record.
 20 So McCarty simply adopted this Court's position
 21 on summary judgment without -- assuming facts not in
 22 evidence. Didn't give any -- pay any heed to what the
 23 Deutsche Bank testimony was, what the Ladder Capital
 24 testimony was. Or more importantly here, what it was not,
 25 because there is no indication, as I have said, that

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1 anything would have been differently. So Mr. McCarty
 2 offers only to substitute his judgment for the judgment of
 3 the sophisticated private actors who underwrote and
 4 negotiated what, without question, are highly successful
 5 business transactions. It is not disputed.
 6 The Frye standard and the cases that I cited
 7 simply do not permit this kind of expert by speculation.
 8 There is nothing in the record to suggest the banks would
 9 have denied approval, altered the terms of the loan based
 10 on additional information. And this is important, you
 11 heard me say this before, because the Attorney General
 12 never asked them.
 13 And it is fair for the Court to conclude that
 14 they didn't ask because they knew they were going to get
 15 an answer they didn't want. So they decided, let's roll
 16 the dice with Mr. McCarty.
 17 Mr. McCarty, you know one thing, it is
 18 interesting, maybe even more than one about his testimony,
 19 is in response to, I believe it was a question from the
 20 Court, he himself testified he could not -- he couldn't
 21 state with any reasonable degree of certainty as to what
 22 the banks actually would have done. The Court, you
 23 prompted him:
 24 "It is a yes or no question, are you certain
 25 they would or would not have, whatever, offered a loan on

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1 those terms. Are you certain?
 2 THE WITNESS: It is a hypothetical question. I
 3 can't be certain."
 4 That's exactly the point.
 5 Mr. McCarty even confirmed there was no
 6 violation of the 40 Wall Street loan covenants. The
 7 colloquy that ensued on cross examination:
 8 You would see here that the covenant that it
 9 describes is that the key principles must maintain a net
 10 worth equal to at least 160 million and a liquidity of at
 11 least 50 million.
 12 "ANSWER: That's correct.
 13 THE COURT: I think principals is spelled wrong.
 14 MR. KISE: It is. It is. I think this is in
 15 the record though, sorry. It is though, I noticed that.
 16 "QUESTION: And the key principal described in
 17 this document is Donald John Trump?
 18 "That's correct.
 19 "QUESTION: Do you have any reason to believe
 20 during the life of this loan Mr. Trump didn't maintain a
 21 net worth equal to at least 160 million and a liquidity of
 22 at least 15 million?
 23 "ANSWER: No. I don't think there was any
 24 violation of this covenant."
 25 So back to your -- the question you posed about

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1 certifications and the covenants themselves, I mean, with
 2 the 40 Wall Street loan, there is not even any question in
 3 the courtroom presented that President Trump always met
 4 those thresholds. Always. So there is no impact, it is
 5 not even theoretically possible that there would be --
 6 would have been any impact on the rates, the terms, the
 7 approval process, none of it.
 8 So in sum, we submit that the Attorney General
 9 has failed to establish a prima facie case. There is no
 10 proof of intent. There is no proof of materiality. There
 11 is no specifically attributable contact to each defendant.
 12 There is no specifically identifiable conduct with respect
 13 to each SOFC and certification each year. There is no
 14 entitlement to disgorgement.
 15 And what we have here is the Attorney General
 16 seeking to impose liability for profitable transactions,
 17 to substitute her judgment for that of the banks. And
 18 frankly, her judgment for that of a person who has been
 19 involved in the commercial real estate industry for 50
 20 years.
 21 I am not sure about the Court but I know if I
 22 had money to invest in commercial real estate and my
 23 choices were Donald Trump or Attorney General James,
 24 respectfully, I would certainly go with Donald Trump,
 25 because I know I am going to make money there. I don't

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1 know about the Attorney General. Her opinions in the real
 2 world don't matter. What matters in the commercial
 3 private sector is what do these parties have to say.
 4 And the Attorney General is not pursuing any
 5 wrongdoer. She is pursuing a political opponent. I am
 6 not speaking out of turn or politicizing it, but he is a
 7 political opponent. There is no fraud. There is no
 8 victim. And respectfully, Your Honor, there is no
 9 liability as to counts two through seven, nor any basis
 10 for disgorgement.
 11 Thank you.
 12 I believe Mr. Robert has something.
 13 THE COURT: Okay, Mr. Robert.
 14 MR. KISE: If I have left him time.
 15 MR. ROBERT: Can you hear me, Your Honor?
 16 THE COURT: Yes.
 17 MR. ROBERT: Good morning.
 18 THE COURT: Good morning.
 19 MR. ROBERT: I will be brief, as is usually my
 20 custom here. But I don't want my brevity to be
 21 misconstrued as a lack of importance that your decision
 22 will have on the impact of my clients in particular and
 23 their future. Or any indication of a lack of how strongly
 24 we feel that directed verdict should be granted in favor
 25 of my clients.

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1 I think it goes without saying that obviously I
 2 join in Mr. Kise's arguments on behalf of Eric Trump and
 3 Donald Trump Jr. that we request a directed verdict in
 4 this matter.
 5 What I want to spend my few minutes discussing
 6 is, what I believe the New York Attorney General has not
 7 proven as to my clients. And since they have rested their
 8 case, therefore we believe we are entitled to a directed
 9 verdict.
 10 What I believe is clear is that the Attorney
 11 General has not proven that my clients were involved in
 12 the creation of the Statement of Financial Conditions.
 13 They were not involved in the preparation of it; in
 14 assembling the backup to it; in reviewing the supporting
 15 data spreadsheets to it; in performing the calculations
 16 or, quite frankly, in determining the methodologies used
 17 in the Statement of Financial Condition.
 18 I know throughout the course of the trial there
 19 were exhibits, and we are going to talk about those this
 20 morning. But respectfully, the Attorney General is so
 21 desperate to make a connection between, for example, Eric
 22 Trump and the Statements of Financial Condition, that they
 23 actually used an e-mail from 2010 that attached an NDA
 24 that wasn't signed that had a reference of a Statement of
 25 Financial Condition, I think it was in the second

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1 paragraph, in the unsigned attachment to show that somehow
 2 he had knowledge going back to 2010 of the SOFC.
 3 There were also several other documents that
 4 were shown to Mr. Trump which were passing references to
 5 the SOFC. But let's not talk about what I am saying,
 6 let's talk about how Eric Trump answered the question
 7 about that.
 8 If we could put on the screen Mr. Eric Trump's
 9 testimony from November 2, 2023, page 3328, starting at
 10 line 20.
 11 THE COURT: Just one question. A few moments
 12 ago you said, "Mr. Trump."
 13 MR. ROBERT: That's why I am being clear now I
 14 am going to call them Eric Trump, Donald Trump Jr. and
 15 President Trump. Those will be the three words I use.
 16 THE COURT: Okay.
 17 MR. ROBERT: This is Eric Trump's testimony.
 18 "ANSWER: I think where we are getting tripped
 19 up, is I clearly understood that I sent notes to Jeff
 20 McConney. I worked with him almost every single day.
 21 What's maybe not registering is the difference between
 22 sending him things that were used for financials and
 23 things that were used for a Statement of Financial
 24 Condition. Somebody from accounting would ask me
 25 something, they had ask me details of a project, and I

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1 would respond. I don't think it ever registered that it
 2 was for a personal Statement of Financial Condition. It
 3 was just a detail that was irrelevant to me."
 4 Based on testimony like that, I respectfully
 5 submit that the Attorney General cannot show any intent
 6 for the remaining causes of action as relates to Eric
 7 Trump.
 8 As to Donald Trump Jr. let's look at his
 9 testimony from November 1, 2023, page 3213 starting at
 10 line 21:
 11 "QUESTION: Did you ever perform work on the
 12 Donald J. Trump Statement of Financial Condition for any
 13 year.
 14 "ANSWER: Not that I recall, no.
 15 "QUESTION: No specific knowledge, sir?
 16 "ANSWER: No."
 17 But obviously, parties to a case have an
 18 interest in the outcome of the case. Your Honor is able
 19 to deal with credibility issues. But let's look at what
 20 the other witnesses you heard from so far had to say about
 21 the involvement or, as I'll respectfully submit, the lack
 22 of involvement of my clients in this case. Although I
 23 know Your Honor hates arguing in the negative, but here I
 24 am going to need to do a little bit of that to show,
 25 respectfully, what it is that we believe the People have

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1 not been able to prove.
 2 As to Eric Trump, let's start with one of the
 3 earlier witnesses in the case who was Camron Harris, from
 4 the Whitley Penn firm, the current accountants for the
 5 Trump Organization. And let's turn to Mr. Harris'
 6 testimony of October 4, 2023, page 455, line nine:
 7 "QUESTION: I asked you if you had any meeting
 8 with Eric Trump that discussed the Statement of Financial
 9 Condition.
 10 "ANSWER: No, I did not."
 11 Mr. Harris continuing on page 458, line 19.
 12 "So while not specifically, did you have any
 13 meetings in which the Statement of Financial Condition
 14 would be a part of the discussion?
 15 "ANSWER: I did not have any meetings with
 16 Donald Trump Jr. or Eric Trump in regards to the Statement
 17 of Financial Condition."
 18 We then can move to the testimony of Donald
 19 Bender, who you heard ad nauseam was the long-time
 20 accountant for the Trump Organization, had been paid to
 21 his firm millions of dollars, representing them for years
 22 and years. Let's go to Mr. Bender's from October 5, 2023.
 23 Page 526, line three:
 24 "QUESTION: Mr. Bender you never spoke with Eric
 25 Trump about his father's Statement of Financial Condition,

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1 correct?

2 "ANSWER: I may have had -- nothing with the

3 actual compilation of the report."

4 We then move down to Allen Weisselberg. And we

5 know Allen Weisselberg and Jeff McConney were the main

6 players, for lack of a better word, in dealing with the

7 Statement of Financial Condition. And we have

8 Mr. Weisselberg's testimony of October 10, 2023 at page

9 845, line 13:

10 "QUESTION: Did you rely on Eric Trump?

11 "ANSWER: No.

12 "QUESTION: Not at all for any of the

13 information contained in the Statements of Financial

14 Condition?

15 "ANSWER: Not me personally, no."

16 Now we know from the evidence that the Attorney

17 General did submit to this Court that there were

18 conversations between Eric Trump and Jeff McConney. But

19 respectfully, they don't rise to the level of intent that

20 the Attorney General needs to establish in this case.

21 So let's look at the testimony of David McArdle

22 of Cushman & Wakefield, again a non-party to the

23 proceedings, who can talk about Eric Trump's view of

24 value, which again goes to the heart of this matter.

25 Let's go to Dave McArdle's testimony, which was

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1 October 19, 2023, starting on page 1933, line 15:

2 "QUESTION: So two questions here. Toward the

3 bottom of that long first paragraph it says "of course

4 Eric Trump has lofty ideas on value and assumes 1,000 PSF,

5 per square foot, is no problem. First, had Eric Trump

6 communicated his understanding of what the values might be

7 on this property?

8 "ANSWER: Well during the course of this

9 engagement, I did have conversations with Eric Trump.

10 Some of it was about gathering the physical data that we

11 just spoke to, you know, construction costs and building

12 configurations and units. And he did a great job of

13 describing the physical nuances of the project. And --

14 but importantly, you know, we ended up speaking about what

15 they could sell for. And you know, Eric loved this

16 project. He thought it was very special. I didn't

17 disagree with him. I think it is a very unique project

18 and it would definitely appeal to high-end buyer -- to the

19 high-end buyer interested in, you know, low rise attached

20 housing with the amenities that this project might offer.

21 So he shared his thoughts. He thought it was

22 very special and unique. And at the time that \$1,000 per

23 square foot price point was what he thought was

24 reasonable, you know.

25 "And I am perfectly willing to listen. I think

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1 its -- owners are a great source of information, but

2 ultimately, you know, I have to come up with my own

3 conclusions."

4 Eric Trump is not running away from the fact

5 that this would have been a conversation he would have had

6 with the appraiser. It doesn't mean that any of the

7 conversations he had were nefarious or done for any ill

8 purpose.

9 We can continue with Mr. McArdle on page 2034 of

10 the same date:

11 "QUESTION: Would you agree that as an owner of

12 the property Mr. Trump -- Eric Trump, is entitled to have

13 his view?

14 "ANSWER: Yes. We always seek out an opinion.

15 Its fair to obtain their input."

16 So here we have another witness who was an

17 impartial witness who didn't have a problem with what Eric

18 Trump had done.

19 Now, we have heard ad nauseam about Michael

20 Cohen. And I agree with Mr. Kise that it appears that in

21 every court he has ever testified in, he has lied. But

22 there was actually something that even he couldn't lie

23 about. That's on October 25, 2023, page 2328, starting at

24 line one:

25 "QUESTION: And you never discussed the SOFC

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1 with Eric Trump, did you?

2 "ANSWER: Not that I recall."

3 You know, the Attorney General has kind of

4 thrown in this issue of some sort of an insurance fraud,

5 which frankly I still don't understand. But let's look at

6 the one witness that was brought in -- or one of the

7 witnesses that was brought in to deal with it, as it

8 relates to my client.

9 Let's look at the Claudia Mouradian transcript,

10 which was played in court, but was taken on June 28, 2023.

11 Page 124. And I will read all three just for context,

12 Your Honor. Line five:

13 "QUESTION: Did you speak to Donald Trump,

14 Donald J. Trump?

15 "ANSWER: No.

16 "QUESTION: Donald Trump Jr.?

17 "No.

18 "QUESTION: Eric Trump?

19 "No."

20 So so far we have gone through these witnesses

21 and nobody -- and everyone has been consistent in what

22 they have said about my client.

23 We then kind of dovetail into this issue of the

24 certifications that were signed by Eric Trump. And in a

25 few minutes we will talk about the ones signed by Donald

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1 Trump Jr. And I'll respectfully submit to you that the
 2 Attorney General has failed to show that Eric Trump acted
 3 in an inappropriate way, in that as a senior executive in
 4 a large company, he relied on others to assist him in
 5 understanding whether the certifications were appropriate,
 6 and as Mr. Kise set forth, the certifications said that
 7 they were true in all material respects. Let's go to
 8 Mr. Eric Trump's testimony from October 3, 2023, page
 9 3442, line eight.

10 Being questioned by Mr. Amer:
 11 "QUESTION: Now, we have just looked at three
 12 certifications you signed stating that your father's 2021
 13 Statement of Financial Condition presents fairly in all
 14 material respects the financial condition of your father
 15 as of June 30, 2021.

16 Can you tell us what, if anything, you did to
 17 ascertain that the 2021 Statement of Financial Condition
 18 in fact presents fairly all material -- in all material
 19 respects, the financial condition of your father as of
 20 June 30, 2021.

21 "ANSWER: I relied on a very big accounting
 22 office. I relied on one of the biggest accounting firms
 23 in the country. And I relied on a great legal team. And
 24 when they gave me comfort that the statement was perfect,
 25 I was more than happy to execute it.

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1 "QUESTION: Did you personally review any of the
 2 methodologies used to value any of the assets in the 2021
 3 Statement of Financial Condition; yes or no?
 4 "ANSWER: No."
 5 I respectfully submit to this Court that there
 6 is no basis of which the Attorney General has laid out a
 7 prima facie case of remaining claims against my client,
 8 Eric Trump.
 9 Turning to Donald Trump Jr. and his involvement,
 10 if any, with his father's Statement of Financial
 11 Condition.
 12 Again, we start at the beginning with Camron
 13 Harris, his testimony, October 4, 2023, page 458, line 19:
 14 "So while not specifically" -- Question -- or
 15 rather: "So while not specifically, did you have any
 16 meetings in which the Statement of Financial Condition
 17 would be a part of the discussion?
 18 "ANSWER: I did not have any meetings with
 19 Donald Trump Jr. or Eric Trump in regards to the Statement
 20 of Financial Condition."
 21 Again, moving onto Donald Bender the next
 22 witness. October 5, 2023. Page 527, line 23:
 23 "QUESTION: Mr. Bender, did you ever speak with
 24 Donald Trump Jr. about his" -- referring to President
 25 Trump's -- "Statement of Financial Condition?"

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1 "ANSWER: Not that I recall."
 2 Moving onto Allen Weisselberg, October 10, 2023
 3 testimony. Page 964, starting at line three:
 4 "I believe you told me earlier Donald Trump Jr.
 5 was also a Trustee at this point in time?
 6 "ANSWER: Yes.
 7 "QUESTION: What, if anything, did he do, to
 8 your knowledge, to determine the estimated current value?
 9 "ANSWER: I don't believe he did anything. It
 10 was -- it was done by the same people that did it for 25
 11 years."
 12 Going on to page 965, line 20.
 13 "QUESTION: Did you tell Donald Trump Jr. during
 14 the time that you were both trustees how the values were
 15 calculated?
 16 "ANSWER: Not that I can remember."
 17 We go back again to even Michael Cohen, who said
 18 the second thing that was truthful, which he could not
 19 deny. Page 2327, line two:
 20 "QUESTION: Okay. And you never discussed the
 21 Statement of Financial Condition with Donald Trump Jr.,
 22 did you?
 23 "ANSWER: Not that I recall."
 24 We then move to the Claudia Markarian transcript
 25 which, again, is from June 28, 2023. I don't need to read

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1 it again to Your Honor. We dealt with it before. But it
 2 was: Did you speak to Donald Trump Jr?
 3 And the answer was "no."
 4 So, again, moving to the certifications in
 5 Donald Trump Jr. as well. Again, these officers and
 6 directors of the company acted appropriately. And as
 7 Mr. Kise outlined in his presentation, the Attorney
 8 General has failed to show any proof of intent and/or
 9 materiality. And I think that goes, we have to look again
 10 at the testimony of both Mr. Trump -- Eric Trump and
 11 Mr. Donald Trump Jr. As the issue of reliability and what
 12 they presented to the banks and the certifications, I
 13 would refer you to page 3437 of Eric Trump's testimony,
 14 starting at line 17:
 15 "QUESTION: And when you executed these three
 16 certifications, you intended the bank to rely on the
 17 certifications; isn't that right?
 18 "ANSWER: I don't know what the bank does with
 19 the certifications. I certified something that I believe
 20 was accurate, and my lawyers told me that it was accurate,
 21 and our financial people told me it was accurate. And
 22 that's absolutely accurate.
 23 As to what Deutsche Bank does with a piece of
 24 paper like this, I have no idea."
 25 We then have Donald Trump Jr. dealing with the

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1 same issue. First at page 3238 of his testimony from
 2 November 2, 2023.
 3 And I apologize, Nate, I know I skipped and
 4 changed the order. I do that sometimes.
 5 So we are going to page 3238, starting at line
 6 25.
 7 "QUESTION: Did you take any steps to assure
 8 yourself of this certification?
 9 "ANSWER: As with all of the certifications, as
 10 I think we discussed yesterday, I would have sat with the
 11 relevant parties, mainly in accounting, whether that's the
 12 Trump team and/or Donald Bender. I would have asked them
 13 if everything that is in here is correct. I would have
 14 likely also checked with our legal department to make sure
 15 that the conditions are met as it relates to anything I
 16 would sign for Deutsche Bank. And if they assured me in
 17 their expert opinion that these things were fine, I would
 18 have been fine with that and signed offer accordingly.
 19 "QUESTION: Is that specific to this particular
 20 certification, sir?
 21 "ANSWER: Well I think I probably would save us
 22 some time and say that's probably specific to all of these
 23 certifications, because I am sure I've signed dozens of
 24 these in my time as a trustee.
 25 We then also go to Mr. Trump's testimony on page

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1 3249, line 20:
 2 "QUESTION: Correct, that you signed this
 3 certification with the intent that the bank would rely on
 4 it?
 5 "ANSWER: I don't know that they rely on it. I
 6 don't. I know a lot of bankers and they do their own due
 7 diligence. But I was fine saying this based on
 8 everything --
 9 THE COURT: Not "saying this" -- "signing this."
 10 MR. ROBERT: Thank you, Your Honor.
 11 "I was fine signing this based on everything I
 12 had been told as per everything we have discussed
 13 yesterday, yes.
 14 THE COURT: "Today." Not "yesterday."
 15 MR. ROBERT: Let me try it again.
 16 "ANSWER: I don't know what that they rely on
 17 it. I don't -- I know a lot of bankers and they do their
 18 own due diligence. But I was fine signing this based on
 19 everything I had been told as per everything we have
 20 discussed today, yes.
 21 So Your Honor, while the burden of proof is not
 22 ours, I respectfully submit to this Court that the
 23 evidence is clear that my clients had no real involvement
 24 in the preparation of the Statements of Financial
 25 Condition. The Attorney General cannot possibly prove

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1 that they had the requisite intent necessary for the
 2 claims that are still the subject of this trial.
 3 And having now heard the testimony of witnesses,
 4 not just my clients, but also non-parties and people that
 5 have no vested interest in the outcome of this, I
 6 respectfully submit that there is no relief appropriate
 7 other than having a directed verdict in favor of my
 8 clients.
 9 I think it is unfortunate that my clients have
 10 been dragged into what I'll say is a fight primarily
 11 between the Attorney General and their father. But
 12 nonetheless, we are where we are. But now the time has
 13 come, respectfully, that we need to put an end to it, and
 14 a directed verdict entered in favor of my clients.
 15 Thank you, Your Honor.
 16 (The following proceedings were stenographically
 17 recorded by Senior Court Reporter Michael Ranita.)
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 23
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1 THE COURT: Thank you. Any other defendants have
 2 anything to say?
 3 MS. HABBA: I'll be brief, your Honor. If it's
 4 okay I don't need to go up over there.
 5 I have full confidence in my team, and I join in
 6 all of their sentiments. I think they went through, in
 7 excruciating detail, why a directed verdict is warranted.
 8 Obviously I represent different entities, different
 9 individuals. And we do join in everything that both
 10 Mr. Robert and Mr. Kise stated.
 11 With that, I just want to highlight the fact that
 12 it is the burden of the plaintiffs to prove every element.
 13 And while there has been a tremendous amount of noise in
 14 this trial for the past few weeks, I think that the law has
 15 to be what is held and what is examined here, and just the
 16 law.
 17 There are elements that need to be proven against
 18 clients that I represent that were not proven. There was no
 19 intent. There was no proof of materiality. They are not
 20 entitled to disgorgement. Frankly, it was more of a press
 21 claim, if you ask me, because they couldn't prove it when
 22 they came in here. There was no bank that brought any
 23 claims against anybody that is a defendant in this case
 24 because there was no damage and there was no victim.
 25 Further, the conspiracy to commit fraud is

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1 completely ridiculous, and they have no proof of it in this
 2 trial. We have seen numerous people come up, but none of
 3 them, none of them showed a conspiracy. And the only one
 4 that did, Mr. Cohen, who claimed to say that there was some
 5 meeting that never happened, that he never had proof of,
 6 committed perjury, lied under oath in this court, and made a
 7 mockery of the judicial system time and time again; that was
 8 their witness.

9 The minute he got off the stand, he was retracted
 10 and they retreated. And I think that speaks volumes, your
 11 Honor, volumes. Ms. James stated that that was why she
 12 brought the case originally. She Tweeted it. I showed that
 13 Tweet in trial on my cross examination. And now we have
 14 nothing, but have wasted taxpayers dollars.

15 So as I said, I believe they have -- I don't
 16 believe. They have failed to establish a prima facie case
 17 for their claims. I truly do want to encourage your Honor
 18 to please look at every individual defendant separately,
 19 individually. I think they are all entitled to their fair
 20 chance and not to be grouped in for some -- as I feel that
 21 the AG, frankly, has done and has failed to prove their case
 22 as a result.

23 So, again, on behalf of my clients, I'm also asking
 24 for a directed verdict at this time. Thank you.

25 THE COURT: Just one question, you said something

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1 about Michael Cohen retracting his statements after he left
 2 the witness stand; is that correct?

3 MS. HABBA: Michael Cohen, as we know -- he has a
 4 PR play. I could go on and on and on. He has gone on TV.
 5 He has gone on podcasts discussing his testimony here. And,
 6 you know, quite honestly it's irrelevant, because I believe
 7 what happened in court was the most relevant. He admitted
 8 under oath that he perjured himself, and that speaks
 9 volumes.

10 THE COURT: My point is, if it was after he was a
 11 witness --

12 MS. HABBA: That's not relevant. To me what's
 13 relevant is what happened here, and, frankly, said it all.

14 MR. KISE: As predicted, I wound up on his podcast,
 15 as predicted.

16 MS. HABBA: I used to be the only one, but he got
 17 in on it.

18 THE COURT: Opposition to the motion for directed
 19 verdict?

20 MR. WALLACE: We certainly oppose the motion, your
 21 Honor. I really will try to be brief.

22 THE COURT: This is past or normal break time.

23 MR. WALLACE: Should we take a break at this time
 24 or just keep going?

25 THE COURT: It depends on how long you are going to

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1 be.

2 MR. WALLACE: I'll try to be brief, your Honor. I
 3 will just say that the presentations we just heard sound
 4 like closing arguments. They sound actually like the
 5 presentations the defendants made at summary judgment. They
 6 are not a basis for a directed verdict. And I know that
 7 Mr. Kise, through all the legal standards he went through,
 8 failed to lay out the standard for a directed verdict, which
 9 is that when the Court is considering this motion you have
 10 to afford the Attorney General every inference which may be
 11 properly drawn from the facts presented, and the facts must
 12 be considered in a light most favorable to the plaintiff.
 13 So that's in the Szczerbiak case, 90 NY2d 553. The
 14 defendants don't even come close to meeting that burden.

15 I would just note that it was two weeks ago the
 16 defendants sought a directed verdict after Mr. Cohen's
 17 testimony, was denied because there was a courtroom full of
 18 evidence. We've moved on to the overflow courtrooms. The
 19 evidence has only been supplemented since then, so it is
 20 still appropriate to deny a motion for a directed verdict.

21 I will walk through it at a very high level, your
 22 Honor. And I guess I will start with materiality, which
 23 Mr. Kise spent a great deal of time on.

24 Materiality, I will just note the, false business
 25 records claim does not have a materiality standard. The

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1 question is just whether this document is false and was done
 2 with criminal intent. So for those claims there is no
 3 materiality standard.

4 For the false financial statement requirement, the
 5 question is, is the financial statement on its face
 6 materially misstated. And I actually do believe that your
 7 Honor did decide that during the course of the summary
 8 judgment proceeding.

9 On insurance fraud, it is questions as to whether
 10 the misstatements are material to the insurance transaction.
 11 I think the evidence establishes that. I will say, though,
 12 because we are not trying to prove bank fraud. We are not
 13 -- it's not a larceny claim. It's not a federal bank fraud
 14 claim, which I will also note does not actually require a
 15 loss by the bank. It is merely based on whether false
 16 information is presented in an effort to obtain credit from
 17 the bank.

18 But I would still argue that these statements were
 19 material to the bank and that the evidence presented so far
 20 proves it. They are material because the banks asked for
 21 the financial statements. The banks require them to be
 22 certified by the defendants. The information was then
 23 evaluated and included in the underwriting. The fact that
 24 it was not the end of the analysis does not mean it's not
 25 material. Materiality questions whether or not it

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1 influences someone's decision. I would also add there are
 2 multiple statements here that are potentially false. We
 3 have potentially false financial statements, the actual
 4 Statements of Financial Condition themselves. We have the
 5 false certifications. We have the false representations to
 6 Mazars. And on those, Donald Bender was very clear on the
 7 materiality of those statements. He said that the Mazars
 8 would not have issued the Statements of Financial Condition
 9 if they did not get the representation letter from The Trump
 10 Organization.
 11 That was reiterated by Mr. Kelly who said that they
 12 decided to pull the statements when they found out that The
 13 Trump Organization had not met its requirement to provide
 14 them with all information, as had been represented in those
 15 statements.
 16 Now, I would go beyond that, your Honor, and just
 17 add that the law allows for the creation of a false
 18 financial statement to be accomplished by having a third
 19 party create that statement in someone else's records. So
 20 that means that to the extent people are directing folks to
 21 take steps, that creates the false records that are in the
 22 Trump Organization's own files; the false records that are
 23 in the files of Mazars; the false records that are in the
 24 records of Deutsche Bank; the false records that are in the
 25 files of the City of New York.

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1 I will also focus briefly on intent. On intent, I
 2 would just say that the defendants' position seems to be
 3 that if they get on the stand and say, "I had nothing to do
 4 with the statements", or more commonly, "I don't remember
 5 having anything to do with the statements", then intent is
 6 disproven; that's certainly not the law.
 7 As your Honor highlighted in the Alamo decision,
 8 which Mr. Kise also flagged, a mens rea element is typically
 9 proven by reference to the facts and circumstances
 10 surrounding the case, and that's 174 Misc 2d 501; that idea
 11 is repeated elsewhere in New York law.
 12 Marine Midland, 120 AD2d 122 stands for the
 13 proposition that fraudulent intent by its very nature is
 14 rarely susceptible to direct proof, and must be established
 15 by inference from the circumstances surrounding the
 16 allegedly fraudulent act, and that's a Second Department
 17 case, but the standard is the same in the First Department
 18 as set out in Setters, which is at 139 AD3d 492 at page 493.
 19 This is also shown in plenty of other fraudulent
 20 cases, including in the Second Circuit, in the Powers case
 21 at 57 F3d 176 at page 184, which establishes that intent can
 22 be shown through a motive to commit fraud and a clear
 23 opportunity to do so. And where the mode of evidence is not
 24 apparent, it can be demonstrated by proving circumstances
 25 indicating conscious behavior by the defendant.

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1 Now, all of this is just to say that intent is not
 2 proven by admissions alone, and that intent is something
 3 that the Court should -- is going to infer from the
 4 evidence, which makes it a poor prospect for a decision on a
 5 directed judgment, as opposed to at the close of evidence
 6 and at the close of the trial.
 7 I will say that here we think we have ample
 8 evidence to demonstrate the intent of the defendants. The
 9 primary argument from Mr. Kise and Mr. Robert seems to be
 10 that the individual defendants were not involved in the
 11 preparation of the Statements of Financial Condition and had
 12 no idea what they contained.
 13 Well, first off, that's obviously not true from
 14 Mr. Weisselberg and McConney. No one's talked about them at
 15 all in these presentations. And so there's also almost no
 16 defense of their actions whatsoever in what I just heard.
 17 That, in turn, means that each of the entity defendants that
 18 they were working on ban of are also liable.
 19 And with respect to the three Trump defendants, I
 20 will start by reminding your Honor that this is documents
 21 case, and each of the three defendants signed documents
 22 saying that they were responsible for the preparation and
 23 fair presentation of the statements.
 24 Now, the "fair presentation of statements", that's
 25 at the heart of the case, and that's the graveyard the

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1 defendants keep whistling past, is the finding by this
 2 Court, on summary judgment, that the Statements of Financial
 3 Condition were false and misleading.
 4 The Court has also issued final, binding rulings
 5 that the values of individual properties were inflated, and
 6 that includes Mar-a-Lago, the triplex apartment, Seven
 7 Springs, 40 Wall Street, Aberdeen, the Vornado property and
 8 the golf clubs. Those standings -- those findings stand,
 9 and are not a basis for reargument, because we are having a
 10 trial.
 11 THE COURT: Let me ask you a personal question.
 12 MR. WALLACE: Sure.
 13 THE COURT: Do you file tax returns?
 14 MR. WALLACE: I do file tax returns.
 15 THE COURT: Do you have an accountant to do that
 16 for you?
 17 MR. WALLACE: I do not.
 18 THE COURT: You're like me.
 19 MR. WALLACE: I did when I was a partner at a law
 20 firm. Now that I work for state, I don't have an
 21 accountant.
 22 THE COURT: Do you rely on your accountant -- did
 23 you rely on your accountant at that time?
 24 MR. WALLACE: I did.
 25 THE COURT: Okay. So the defendants here relied on

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1 their accountants, highly paid accountants, and the highly
 2 paid attorneys.
 3 MR. WALLACE: Certainly, but I'm also responsible
 4 for what is submitted in my tax returns. I was not here
 5 when it happened, but I believe that was the subject of some
 6 discussion with Mr. Cohen during his cross examination.
 7 The other issue is the statements, on their face,
 8 say the values are being prepared by Donald J. Trump. They
 9 are being prepared by the trustees. It says in conjunction
 10 with their accountants, or with their staff, but they are
 11 taking responsibility for it. They are then certifying to
 12 Mazars that they've taken responsibility for it. They are
 13 certifying to the bank that they are true and accurate. So
 14 it's not a case where it's just a question of, you know, a
 15 document that went out and went to an accountant. But it's
 16 also true that if I, in the preparation of my taxes, give me
 17 accountant false information, if I give him fake donations
 18 that I didn't make, I'm liable for that fraudulence. I'm
 19 not relieved of my responsibility because I handed it off to
 20 an accountant before I did it.
 21 So I think there is plenty of evidence here to
 22 establish intent. I think in particular with Eric Trump,
 23 the idea that he said he wasn't involved. He got a direct
 24 e-mail from Mr. McConney saying I'm preparing your dad's
 25 financial statement. Here's the manner in which I'm

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1 calculating Seven Springs, let's talk about it. Mr. Trump
 2 says, "I don't remember that", or "I can't recall", that's
 3 something for your Honor to weigh.
 4 THE COURT: Eric. You are supposed to say Eric
 5 Trump, not Mr. Trump.
 6 MR. WALLACE: I apologize. Because Eric Trump
 7 created that statement, was responsible and involved in the
 8 preparation of Seven Springs, which his father, Donald J.
 9 Trump, said was overstated. So I think at this point
 10 there's ample evidence within the record that if we are
 11 given, as we are entitled to assumptions in our favor, is
 12 more than sufficient for this to continue to a final verdict
 13 where the defendants can repeat these arguments, yet again,
 14 on their closing, in their posttrial brief, and your Honor
 15 will be able to make a decision with a full record.
 16 I would also not belabor it here, but Mr. Kise is
 17 incorrect on disgorgement. The OAG does not have an
 18 obligation to prove what loans Mr. Trump would have been
 19 able to obtain if he presented an honest financial
 20 statement. He chose to obtain discounted loans by the use
 21 of a fraudulent statement.
 22 The burden here for the government is to
 23 demonstrate the reasonable approximation of profits causally
 24 connected to the violation; that's the SEC v. Fowler case at
 25 6 F.4th 255 that we discussed in our letter briefing over

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1 Mr. McCarty's testimony. With that, your Honor, I really
 2 won't belabor things anymore and I'm happy to answer any
 3 questions your Honor may have, but I think there's simply no
 4 basis for a directed verdict at this point.
 5 THE COURT: I could ask you more questions, and
 6 that would take away some ammunition for Mr. Kise about one
 7 side or the other.
 8 MR. KISE: Five minutes.
 9 MR. WALLACE: Your Honor, the standard is usually
 10 move for directed verdict, yes or no. But Mr. Kise --
 11 THE COURT: I --
 12 MR. WALLACE: He had an hour and a half.
 13 THE COURT: Nobody else from plaintiff, I assume?
 14 I'll give him a reply.
 15 MR. KISE: Just briefly. Is it okay if I stand
 16 here?
 17 THE COURT: Sure.
 18 MR. KISE: Thank you.
 19 Could you pull up slide 13, please.
 20 (A demonstrative aid was displayed on the screen.)
 21 MR. KISE: So Mr. Wallace talked about the false
 22 business records statute doesn't have a materiality element
 23 to it, so facially, his argument is correct, but this is
 24 kind of part of the problem with the whole case. This is
 25 purportedly the false record, slide 13. And on slide 13 you

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1 could see the highlighted language, all material respects.
 2 So this certification is not false. It's no at false
 3 business record unless and until they proof that it's all
 4 material respect. They have to get past that language.
 5 They can't read that language out of the document.
 6 Mr. Wallace also mentioned that the differentials
 7 were material, but didn't offer any testimony. He just said
 8 they are not material in the view of the Attorney General,
 9 but no bank thought that these differentials were material.
 10 Intent, he touched on, um, just two brief points
 11 there. First of all, intent cannot be inferred. I mean, in
 12 the criminal context intent has to be established.
 13 President Trump, for the record, did not say, "I don't know
 14 and I wasn't involved." He didn't say that at all. He said
 15 what I quoted, "In my 50 years of experience" and "based on
 16 the disclaimers." He took responsibility for what any CEO
 17 would take responsibility for. Yes, they are his
 18 statements. He didn't say, "I wasn't involved" and "I don't
 19 know." He testified about the things he did know.
 20 And he testified, which hasn't been refuted in any
 21 way, other than by accusation, that he relied on
 22 accountants, like any CEO would, any accountants -- any CEO
 23 is not there putting numbers together on a spreadsheet.
 24 There is no evidence he ever saw the spreadsheets; that
 25 doesn't mean that he testified that he wasn't involved;

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1 that's not his defense at all. His defense is is that I
 2 didn't have any subjective intent to defraud anyone, because
 3 I didn't need to. I mean, Mr. Wallace, and that goes to
 4 that same point, circumstances and motive. The
 5 circumstances that are before the Court are circumstances
 6 involving profitable loans, no defaults, no victims, and no
 7 loss.
 8 And the motive that you had before the Court is to
 9 develop great projects, to pay interest, and to pay back the
 10 loans. I mean that's the circumstances and motive that are
 11 before the Court. There isn't anything else. They want to
 12 paint the ordinary as sinister. And respectfully, that's
 13 not there.
 14 Again, Mr. Wallace relied, as they always have, as
 15 I said, he is making my argument for me in that regard. He
 16 referenced specifically the summary judgment decision. But
 17 your Honor said, no intent, no materiality, and those are
 18 very different concepts. So relying on that is simply not
 19 sufficient.
 20 The last one I'll make, perhaps to spare
 21 Mr. Roberts from standing up. On Eric Trump, they pointed
 22 to one e-mail. You are talking about a ten-year period,
 23 okay, there's five e-mails, four e-mails, one e-mail, um,
 24 there's nothing sinister; there's nothing intentionally
 25 criminal, which is what they are accusing these individuals

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1 of. By communicating with someone in the finance
 2 department, in the accounting kept about valuations over a
 3 ten-year period, and simply because you don't remember that
 4 doesn't mean that you are now a fraudster. It also doesn't
 5 mean you had any material involvement, any real involvement
 6 in the preparation of the Statements of Financial Condition
 7 and the certification. This goes back to the spaghetti
 8 approach. They just want to throw it all up on the wall and
 9 say, well, the defendants are guilty.
 10 Lastly, my comments do apply, as Ms. Habba said,
 11 with equal force to Mr. Weisselberg and Mr. McConney.
 12 Thank you, Judge. I think I made it under five
 13 minutes.
 14 THE COURT: You probably did. You just have to be
 15 careful talking about spaghetti around lunchtime.
 16 MR. KISE: I know.
 17 THE COURT: Just one question. I think you said
 18 "intent cannot be inferred." Well, I'm familiar with the
 19 doctrine in the cases that Mr. Wallace cited that fraud
 20 generally isn't, you know, done in daylight. People don't
 21 say I'm going to be committing fraud or commit to writing,
 22 this is a fraud. But you have to infer, at least in a civil
 23 case. I don't know about criminal. Don't you have to --
 24 doesn't -- I'll rephrase it. Withdrawn. Can't fraud be
 25 inferred from circumstances in a civil case.

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1 MR. KISE: Two things on that. Number one, we are
 2 dealing with criminal statutes, and as I began, I think the
 3 civil equivalent of the criminal burden of proof, this is
 4 why we think we are entitled to a directed verdict, another
 5 reason, is clear and convincing. So even with the deference
 6 that Mr. Wallace began with being accorded, there is no
 7 clear and convincing evidence here of proof of the criminal
 8 statutes.
 9 This isn't pre-summary judgment. This isn't 63(12)
 10 where they get all everything lined up, the deck is fully
 11 stacked in their favor, whether it be by the legislature or
 12 otherwise, and that's not our issue today, but under 63(12),
 13 as we've gone through repeatedly, you don't have to prove
 14 much of anything other than somebody in the Attorney
 15 General's Office thinks it's a false statement, no intent,
 16 no materiality, no reliance, no jury, but here, now we do.
 17 Now we have to prove those concepts. And they have not
 18 established those concepts, and frankly they haven't
 19 attempted to establish them. They are just simply relying
 20 on your judgment and this idea that well, you said on
 21 summary judgment that the statements were false. You didn't
 22 say anything about materiality. You didn't say anything
 23 about intent, and the numbers, as I began, the numbers are
 24 so great they must be material. No, they need someone to
 25 establish that, and that someone would be the bank in the

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1 private sector who got to make that determination. As you
 2 saw from the numbers, the bank was not at all disvalued in
 3 any way, shape, form or fashion by a \$2 billion
 4 differential.
 5 MR. WALLACE: I'll just note my objection. That
 6 was a yes or no question.
 7 MR. KISE: That's true.
 8 THE COURT: I did ask him a question.
 9 MR. KISE: Do we get our 15 minutes? You gave me
 10 five minutes.
 11 THE COURT: You went past the five minutes.
 12 Let's talk about burden of proof. I tend to think
 13 of them in a criminal context as beyond a reasonable doubt,
 14 99 percent. Some other context, clear and convincing, I
 15 tend to think of 75 percent, and a preponderance of the
 16 evidence I tend to think of as 51 percent.
 17 Let me ask the AG. What's the, in a general way,
 18 what's the standard of proof here, because defendants are
 19 saying it's clear and convincing.
 20 MR. WALLACE: We would say it's preponderance, your
 21 Honor.
 22 THE COURT: On all questions in front of me?
 23 MR. WALLACE: I think so, yes.
 24 THE COURT: Mr. Kise, are you claiming clear and
 25 convincing on all questions in front of me?

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1 MR. KISE: Certainly as to the criminal predicates,
 2 yes, which is most of the counts. I mean, disgorgement, as
 3 a lot of other things, that's a different analysis
 4 altogether; that's an equitable analysis. But in terms of
 5 the predicate counts, they are all criminal counts, and
 6 there is no -- yes, there is no 95 or 99 percent in the
 7 civil world. There's no beyond a reasonable doubt. The
 8 closest standard, the civil standard, if you will, is clear
 9 and convincing. That's our position anyway.
 10 THE COURT: Any authority that clear and convincing
 11 would be the correct burden of proof in a 63(12) case.
 12 MR. KISE: Well, again, it's not -- I can provide
 13 the Court with authority, but I would just draw that
 14 distinction, it's not a 63(12) when you are dealing with
 15 criminal predicates. 63(12) on count one, very different
 16 standard.
 17 THE COURT: Okay. I understand the difference.
 18 All right. Let's take a little break.
 19 MR. WALLACE: Can we do ten minutes?
 20 THE COURT: Ten minutes.
 21 (Whereupon, a 10-minute break was agreed upon and
 22 taken by all parties.)
 23
 24
 25

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1 a significant development in this case. The Court held
 2 that the People prevailed on their 63(12) fraud claim
 3 based on the undisputed evidence as a matter of law.
 4 The decision rested on predicate findings of
 5 fact by the Court that many assets in the Statements of
 6 Financial Condition for many years were fraudulently
 7 inflated to a material degree, rendering the statements
 8 false and misleading.
 9 Now, defendants are certainly free to challenge
 10 that decision in the Appellate Division. And in fact,
 11 they filed their notice of appeal already. But they are
 12 not free to ignore the decision in this courtroom at this
 13 trial. Yet that is what they have repeatedly done.
 14 We have just heard a lengthy hour-long argument
 15 on a motion for directed verdict that, to a significant
 16 degree, ignored the holdings that this Court issued in its
 17 summary judgment motion. So to does their intent to call
 18 the four expert witnesses that are the subject of our
 19 motion.
 20 THE COURT: Let me stop you a second.
 21 Do you want to withdraw your request to have
 22 these four witnesses testify? Yes or no?
 23 MR. KISE: No. No, Your Honor.
 24 THE COURT: Okay. Just wanted to make sure.
 25 MR. AMER: As a result of the decision and the

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1 THE COURT: Well, defendants were sort of
 2 long-winded, plaintiff was sort of medium-winded, I'll be
 3 short-winded:
 4 Taken under advisement.
 5 Okay. What else do we have?
 6 MR. AMER: Your Honor --
 7 THE COURT: As if that wasn't enough.
 8 And obviously the time back there was spent
 9 really hashing this out and thinking. And I appreciate
 10 the defendants' presentation, and I appreciate the
 11 plaintiff's presentation.
 12 Okay.
 13 MR. AMER: Your Honor, we ask for an opportunity
 14 to be heard on our in limine motion concerning four of the
 15 five expert witnesses. So I appreciate the opportunity to
 16 be heard on that now.
 17 THE COURT: I read your five-page or
 18 four-and-a-half-page letter. Was there any written
 19 response by the defendants? There didn't have to be, I am
 20 just asking.
 21 MR. KISE: No, Your Honor.
 22 THE COURT: Then let's hear the in limine
 23 motion.
 24 MR. AMER: Thank you, Your Honor.
 25 The Court's September 26 decision and order was

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1 predicate factual findings that the statements were
 2 fraudulently inflated, any expert opinions about valuation
 3 of assets or accounting standards for personal financial
 4 statements, are simply irrelevant. And allowing
 5 defendants to put on such expert evidence is, we submit, a
 6 total waste of time and resources.
 7 In the wake of the Court's decision, this trial
 8 is now about four things:
 9 One, whether defendants have the requisite
 10 intent to defraud.
 11 Two, whether they engaged in a conspiracy to
 12 violate the three Penal Law provisions.
 13 Three, what is the proper amount of
 14 disgorgement.
 15 And four, what equitable relief should be
 16 granted in addition to the equitable relief already
 17 included in the Court's decision.
 18 And I would like to just quickly review why the
 19 proffered expert testimony from Dr. Laposa, Mr. Witkoff
 20 and Mr. Flemmons is simply not relevant to any of these
 21 remaining issues in the case.
 22 As to the remaining causes of action based on
 23 illegality, the predicate findings of fact made by this
 24 Court on summary judgment largely satisfy the elements of
 25 these claims, except for intent to defraud. That is,

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1 whether each defendant had an intent to defraud when
 2 preparing or using the Statements of Financial Condition
 3 in business transactions with banks and insurers. The
 4 issue of intent essentially boils down to two questions:
 5 What did the defendants know, and when did they know it.
 6 These questions are the realm of fact witnesses.
 7 These experts have nothing to say on this issue that is
 8 the least bit relevant. They simply have no knowledge
 9 about any direct or circumstantial evidence that would
 10 bear on any witness's intent.
 11 The same is true for the related conspiracy
 12 claims. Experts have no relevant knowledge about whether
 13 agreements were or were not made between and among the
 14 defendants to engage in the illegal conduct.
 15 Defendants appear to argue that their experts
 16 can somehow negate an inference of an individual
 17 defendant's intent to defraud, by showing that through
 18 some valuation method that was never actually used by the
 19 defendants, one could, hypothetically, have derived a
 20 value for an asset that is higher than the value that they
 21 actually derived.
 22 First, this is the same argument that defendants
 23 raised in support of their summary judgment motion. In
 24 fact, based on the very same expert opinions that they
 25 submitted by affidavit and through their reports that is

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1 part of the summary judgment record. And it has already
 2 been rejected by the Court in its summary judgment
 3 decision.
 4 Second, the argument simply makes no sense. The
 5 Court has found that the statements were fraudulently
 6 inflated. The issue of intent is based on what the
 7 defendants actually did and what they actually knew when
 8 they were fraudulently inflating the values, and
 9 certifying the statements to banks and insurers. And
 10 whether what they did provides direct or circumstantial
 11 proof of intent to defraud, again, is the realm of fact
 12 testimony, not expert testimony.
 13 It simply doesn't matter what someone else could
 14 have done to value the assets at their current estimated
 15 values, it matters what was actually done. And that's a
 16 fact question to be proven through fact witnesses and the
 17 documents in the case.
 18 And to the extent that the defendants are really
 19 arguing that based on their expert case the values were
 20 not inflated at all, that ship has sailed. That is just a
 21 refusal to acknowledge the binding effect of this Court's
 22 decision. The Court has held that many values were
 23 fraudulently inflated, and defendants have to live with
 24 and abide by that ruling at this trial.
 25 Now, as to the amount of disgorgement, we put on

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1 our banking expert, Michael McCarty, to provide his expert
 2 opinion about how to quantify the ill-gotten gains
 3 attributable to the defendant's use of the fraudulently
 4 inflated statements to obtain lower interest rates on
 5 loans. None of the four experts at issue on our motion
 6 are -- have anything to do with banking or disgorgement.
 7 I expect we will see defendants add a banking expert to
 8 their list for December. And to the extent their banking
 9 expert offers opinions on matters involving disgorgement,
 10 we certainly have no issue with defendants' right to
 11 present that testimony. But the issue of disgorgement
 12 does not provide any avenue for defendants to present
 13 these experts that are the subject of this motion, who are
 14 dealing with valuation and insurance and accounting
 15 principles.
 16 Now, as to the remaining equitable relief. The
 17 remaining additional equitable relief that plaintiff is
 18 seeking, that requires the Court to consider evidence
 19 bearing principally on the scope of duties for the
 20 receiver, whether to bar individual defendants from
 21 serving in certain corporate capacities; whether to
 22 require preparation of an audited financial statement; and
 23 whether to replace the trustees of Mr. Trump's Revocable
 24 Trust.
 25 Now, the evidence relevant to the Court's

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1 consideration of this type of relief involves the degree
 2 of culpability that each defendant has in the preparation
 3 and dissemination of the fraudulent financial statement --
 4 statements and matters concerning existing corporate
 5 culture at the Trump Organization.
 6 Defendants' proffered valuation and accounting
 7 experts offer no opinions that bear on these issues. A
 8 quick word about a separate argument we raised with
 9 respect to Mr. Witkoff and Mr. Miller, who is an insurance
 10 expert, both of whom were designated solely as rebuttal
 11 experts. We did not call the experts that they have been
 12 designated to rebut, because for all of the reasons I am
 13 arguing, we don't see a need for that type of expert
 14 testimony in light of the Court's summary judgment ruling.
 15 So there is simply no basis to permit these rebuttal
 16 experts to testify. They could have been designated as
 17 experts in their case-in-chief, but they weren't. Their
 18 opinions are only relevant to counter opinions from our
 19 experts that have not been offered into evidence. They
 20 should be precluded.
 21 I would also note that Mr. Miller, who is being
 22 offered as a rebuttal insurance expert, he is not their
 23 only insurance expert. They did designate another person,
 24 Mr. Giuletti, as their insurance expert on their
 25 case-in-chief. He is also on their calendar for November,

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1 and we do not seek to preclude his testimony on this
 2 motion. While we certainly reserve the right to object to
 3 specific questions during his examination, we agree there
 4 is at least a basis to put him on the stand, since there
 5 is an insurance fraud claim that remains in the case. So
 6 just to be clear, our objection to Mr. Miller is that he
 7 was a rebuttal witness, and we haven't put in the witness
 8 that he is being called to rebut.

9 I am going to make a final point, and it is
 10 really more of a fervent plea, Your Honor. For some
 11 evidentiary objections the Court has remarked that because
 12 this is a bench trial, the Court will hear evidence now
 13 and decide what weight to give it at a later date. While
 14 that approach, and I would call it, without being
 15 pejorative, the path of least resistance, is certainly one
 16 that many judges often take when there is no jury. And it
 17 might make sense to take that approach when the issue is
 18 whether to let in a handful of documents or to listen to a
 19 few more minutes of questioning. I submit, Your Honor,
 20 that taking that approach here with respect to these
 21 expert witnesses, would be wrong and it would be
 22 inappropriate for three independent reasons:

23 First, this is not about adding a few more
 24 documents to the record or sitting through a few more
 25 minutes of testimony. Allowing these experts to testify

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1 will come at significant cost to the Court and the parties
 2 in terms of time and effort. And for the plaintiff, quite
 3 frankly, taxpayer expense.

4 Defendants have three additional valuation and
 5 accounting experts, in addition to the ones that are the
 6 subject of this motion: Mr. Chin, Mr. Moens and Professor
 7 Bartov, who will, no doubt, show up on their witness list
 8 for December. And allowing the valuation and accounting
 9 experts to testify will likely require us to put on a
 10 rebuttal expert case. This will add substantial time to
 11 this trial. These four experts on the current calendar
 12 for November account for a solid week of testimony.
 13 Including the other valuation and accounting experts they
 14 will likely call, our cross examination of these
 15 witnesses, and plaintiff's rebuttal experts that will
 16 likely be necessary, will add, I would estimate, two weeks
 17 of trial time at a minimum. At a minimum, Your Honor.

18 Second, the Office of the Attorney General and
 19 more specifically all of these people here at this table
 20 in the well behind me, expended a tremendous amount of
 21 effort in culling through a huge volume of discovery
 22 material in order to present to the Court a comprehensive
 23 summary judgment motion and record that would permit the
 24 Court to dispose of a significant portion of the case as a
 25 matter of law, and substantially narrow the issues for

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1 trial.

2 We succeeded in that effort. It would be
 3 manifestly unfair, I submit, to our side, and would
 4 deprive us of the benefit achieved by our summary judgment
 5 victory to a significant degree, to now say that despite
 6 resolving the 63(12) fraud claim in our favor and removing
 7 that claim from the scope of the trial, we should
 8 nevertheless take the path of least resistance, act as
 9 though the issues for trial have not been narrowed, and
 10 spend at least two weeks hearing expert evidence that is
 11 not relevant to the remaining issues in the case.

12 Now, defendants can spin it however they want,
 13 press conferences outside of this courtroom. They can
 14 take the stand and testify about their perfect disclaimer
 15 clause, their statute of limitations theory, and they can
 16 invoke other defenses that this Court has repeatedly
 17 rejected. But none of that wipes away the court's
 18 decision that is the law of the case. Your Honor, we
 19 worked hard to achieve the substantial victory we obtained
 20 on summary judgment. We should be permitted to benefit
 21 from the more streamline trial that inevitably should flow
 22 from that victory.

23 Third, the Court has broad discretion to
 24 preclude expert testimony that has no relevance to the
 25 claims at issue. And more importantly, and this is the

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1 test in the case law that is clear, will offer no
 2 assistance to the Court as the trier of fact.

3 The Court should exercise that discretion here
 4 to preclude these experts from testifying, because this
 5 trial should not be turned into an opportunity for
 6 defendants to supplement the summary judgment record in an
 7 improper attempt to shore up their appeal from the Court's
 8 summary judgment decision. They have their opportunity to
 9 create a record in opposition to plaintiff's partial
 10 summary judgment motion. That was the record on which the
 11 Court rendered its decision, and it is the record on which
 12 the First Department will review your decision on appeal.
 13 This trial is not their opportunity to get a do-over on
 14 the summary judgment motion.

15 Your Honor, for all of these reasons, the Court
 16 should preclude defendants from call Dr. Laposa,
 17 Mr. Flemmons, Mr. Witkoff and Mr. Miller.

18 Thank you.

19 THE COURT: Just one second. I am wondering
 20 whether there were two intentional references there.
 21 Do-over was very big in City Slicker. Do you remember
 22 that? This is a do-over?

23 And "What did he know and when did he know it,"
 24 that was a Watergate phrase, wasn't it? I am getting
 25 some --

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1 MR. AMER: It was indeed. And it is phrases I
2 use repeatedly when they are appropriate, Your Honor.
3 THE COURT: All right. Mr. Kise, I am sure you
4 are anxious to talk.
5 By the way, now you know what it is like to
6 listen to a long presentation.
7 MR. KISE: I know.
8 THE COURT: I am sure it is not your first
9 rodeo.
10 MR. KISE: It isn't, not with Mr. Amer.
11 THE COURT: To start off, just as a matter of
12 logic and common sense, do we need Witkoff and Miller to
13 rebut testimony that is not going to exist?
14 MR. KISE: That is what? I am sorry?
15 THE COURT: Do we need them to rebut testimony
16 that is not going to exist, that doesn't exist.
17 MR. KISE: So that raises an interesting point.
18 The first thing I want to say is, I don't know
19 that I am shocked, because everything I have seen here
20 from the Attorney General's office it is hard to shock me.
21 But I suggest that Mr. Amer check the Internet, Vladimir
22 Putin has some openings. That's where he belongs. No
23 question that's where he belongs. This is beyond crazy.
24 So now they have had five weeks to put on a
25 case, they have had an open-door policy. And he has the

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1 audacity to stand here, the temerity to stand here and
2 tell this Court, oh, well, I know you have allowed
3 evidence in on this liberal standard, and we have operated
4 on that, that's great when it is our case for the Attorney
5 General, but you know, you shouldn't do that now, Judge,
6 that's a waste of time. Frankly, Your Honor, if I were
7 Your Honor I would be insulted by that. That they don't
8 want you to hear evidence.
9 To your question, how they present their case,
10 how they call their experts, whether they call their
11 experts, does not dictate how we present our case.
12 THE COURT: If you are trying to rebut testimony
13 that doesn't exist.
14 MR. KISE: No. No. We put them in as
15 rebuttal -- I am sorry. We put them in as rebuttal
16 because that was the sequencing during the course of the
17 pretrial preparation. But we are not locked in forever
18 to, oh, that's a rebuttal witness, if you don't call your
19 witness, I don't get do it. Those witnesses have things
20 to offer. They have changed the course of their case.
21 The only two bases for excluding experts in the
22 case law are, they are not qualified; and they weren't
23 disclosed. The whole purpose of the pretrial disclosure
24 process is not to lock someone in and say, okay plaintiff,
25 you get to now dictate how we present our case. It is to

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1 disclose to them if these individuals take the stand and
2 there is an issue for them to testify about, then this is
3 what they will say. And they have had full and ample
4 disclosure. And these witnesses all address a key issue
5 that Mr. Amer glossed right over when he mentioned your
6 summary judgment decision.
7 He stated, which is their position, that you
8 have already determined that they were inflated to "a
9 material degree" but your opinion doesn't say that. We
10 are here to talk about intent and materiality. Something
11 that I know they don't want to talk about. So these
12 witnesses relate to that. And we should be entitled to
13 present the evidence to the Court. It is a bench trial.
14 The goose gander rule, what is sauce for the
15 goose, has been on ample display throughout the course of
16 these proceedings. And after spending what is, no doubt,
17 tens of millions of taxpayer dollars chasing down someone
18 who engaged in successful business transactions that made
19 all of the parties hundreds of millions of dollars, they
20 are now suddenly concerned with the resources of the
21 State. And so I think it rings hollow.
22 We are not ignoring your decision. But we are
23 certainly entitled to put on a case. Unless maybe not. I
24 guess maybe we should just ask them. Should we rest now
25 and not have any defense of any kind? That's really where

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1 they want this to go.
2 And so these witnesses, Mr. Witkoff is a
3 developer who will speak to how developers view assets.
4 His testimony isn't going to take weeks. But it goes to
5 state of mind. We are talking about intent and we are
6 talk being materiality. Remember that slide 13 that I put
7 up? That pesky materiality language that the government
8 doesn't really want to focus on?
9 THE COURT: Mr. Kise, I hang on your every word,
10 I am sure I remember. But let me stop you for a second.
11 Your opening comment about one of the
12 plaintiff's counsels is completely uncalled for. I think
13 you should apologize.
14 MR. KISE: I am not going to apologize, Your
15 Honor. Because frankly, I am not going to. That is the
16 most astonishing display of one-sided anti-democratic
17 anti-rule of law principles I have ever seen in my years.
18 And I am sorry, but that's it. There is no reason for me
19 to apologize. I never had anyone from the government say
20 you can't put on your case, in any case, that you can't
21 put on your case.
22 And now the rule that they have benefited from,
23 that they have benefited mightily from, the latitude that
24 was accorded them in putting on Mr. McCarty, Mr. McCarty
25 amended his disclosure four days before he took the stand,

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1 his expert disclosure. So all of this. And now they say,
2 well, we shouldn't -- we shouldn't be allowed to put on
3 our case and Your Honor should be concerned with judicial
4 economy and Your Honor should be concerned about this
5 goose/gander rule doesn't apply anymore. They were
6 certainly very happy to be the recipient of it.
7 So I'll refrain from further pejoratives, but I
8 will not retract. I don't think there is a reason to. I
9 am entitled to my opinion, and I think his conduct is
10 unfair to my client. And to me, frankly.
11 To say that here we are, and we are not ignoring
12 your decision, but we have to be entitled to put on our
13 case as to intent, as to conspiracy. These experts have
14 nothing to do with disorgement.
15 Mr. Laposa is a valuation expert.
16 THE COURT: Wait. Wait. Before we get to him.
17 I'll use another cultural political historical
18 reference. The Red Scare. He is a Communist, send him to
19 Russia. Let's leave the ad homonyms out of it. You don't
20 have to apologize. I think it was totally uncalled for,
21 totally incorrect.
22 MR. KISE: Well, Your Honor, I will say that
23 unlike everyone else in this courtroom, to date, that's
24 the first time I have ever used an ad homonym insult. I
25 believe other people have used them against me, in the

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1 courtroom. Including, respectfully, Your Honor. So I
2 just, you know, I will refrain from further pejoratives I
3 agree with you that ad homonyms are not something we need
4 to have on a basis in a courtroom.
5 I'll go back to legal arguments.
6 THE COURT: Now let's talk about the two
7 rebuttal witnesses.
8 MR. KISE: Right.
9 THE COURT: Part of the purpose of expert
10 reports are to say what the person will testify to. They
11 can't just then come up here and testify to anything they
12 want to. Their testimony is restricted by what they said
13 they would.
14 MR. KISE: Right.
15 THE COURT: I'll confess, I don't think I read
16 the -- all of the expert affidavits, but plaintiffs are
17 telling me that these two proposed expert witnesses,
18 Witkoff and Miller, just said, I am going to testify to
19 rebut the testimony of X and Y; and that X and Y haven't
20 testified.
21 MR. KISE: They testified that they are going to
22 rebut the positions taken by the People.
23 THE COURT: Let me ask. All right.
24 MR. KISE: So in the context of expert
25 discovery, that's how it is done. But they have advanced

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1 these positions. They have said, and continue to say,
2 that my clients had intent. They advanced the position
3 and said my clients, you know, that these were material
4 departures. So we are entitled to at least demonstrate
5 the state of mind. We are entitled to demonstrate what is
6 the thinking of our clients.
7 And the discussion we had, to the extent Your
8 Honor is not going to grant the directed verdict, then we
9 certainly have to rebut what they are advancing as their
10 case, whatever it may be.
11 They are entitled -- they are the master of
12 their own case. And I will say for the record, Mr. Robert
13 is the expert, as we know. I don't see how a plaintiff
14 gets to sit back and decide, okay, I am not going to call
15 these witnesses now and then if the defense comes along
16 and demonstrates that there are gaping holes in their case
17 in chief, that they get to call rebuttal experts after
18 that. That's not how it works. They made a choice as to
19 who they wanted to call and how to present their case.
20 And if now there are holes in that case. And there are
21 holes in that case. And if the defense in presenting its
22 case, puts on a witness that demonstrates, for example,
23 that a developer, like President Trump, would view
24 properties differently. Mr. Laposa, the same thing. We
25 are not challenging the underlying finding by Your Honor

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1 with respect to the summary judgment motion.
2 THE COURT: Can you stick to these two
3 witnesses?
4 MR. KISE: I am.
5 THE COURT: I don't think you are.
6 By the way, my institutional memory tells me,
7 yes, I did read all of these affidavits, but months ago.
8 So instead of saying I didn't read them, I'll say I didn't
9 remember exactly what they said.
10 MR. KISE: I took it that way.
11 THE COURT: Mr. Kise, you can stay at the
12 podium.
13 Plaintiffs, do you stand by the representation,
14 as I understood your letter, to be the only reason that
15 Witkoff and Miller were mentioned as experts or their only
16 testimony they were going to give was rebuttal testimony
17 to the two witnesses that didn't appear? Yes, no?
18 MR. AMER: Three witnesses, Your Honor.
19 THE COURT: Three. Okay.
20 MR. AMER: So Mr. Witkoff is a rebuttal to our
21 two valuation experts Mr. Hirsh and Mr. Korologos. And
22 Mr. Miller is a rebuttal to Professor Baker, who is our
23 insurance expert.
24 I would add that both of these witnesses were
25 designated on the schedule for rebuttal expert witnesses.

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1 They were not designated in the initial round of experts.
 2 So they are rebuttal experts.
 3 (The following proceedings were stenographically
 4 recorded by Senior Court Reporter Michael Ranita.)
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1 Had I known what they were going to present, either
 2 before in pretrial, or now at trial, what the evidence would
 3 be, then I would have designated all these people as our
 4 experts on primary case.
 5 They just -- there's no rhyme or reason. There's
 6 no designation that has a meaning because of the way it
 7 unfolded. And so these witnesses will speak to intent,
 8 materiality. In the case of Miller, reliance, which goes to
 9 disgorgement. Flemmons, as you may recall me talking about,
 10 is a former SEC enforcement chief forensic accountant. His
 11 testimony goes to materiality, and governing standards, and
 12 whether or not they met those standards with respect --
 13 whether or not they had the requisite intent to violate
 14 those standards; whether any violation of those standards
 15 was material. Those are the issues that are decidedly not
 16 part of your Honor's summary judgment, because they didn't
 17 have to be. The Attorney General argued, forcefully, at
 18 summary judgment that you don't need to consider any of
 19 this. And now we are here considering any of this, and they
 20 are saying, no, it's all subsumed by your summary judgment
 21 decision, which I think is both inaccurate and unfair.
 22 So the fact that the Attorney General did not put
 23 on their experts doesn't -- we think should result, in part,
 24 is another basis for why we should get a directed verdict,
 25 but to the extent that we will not, and we are here to

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1 MR. KISE: Your Honor, because of the initial
 2 round, neither side has any notion what the other side is
 3 going to present. So the only reason they are in the
 4 rebuttal --
 5 THE COURT: You do have a -- knowledge of what they
 6 are going to present.
 7 MR. KISE: Not until we get, not until we receive
 8 it. It was simultaneous. We exchanged -- we exchanged
 9 primary experts, and rebuttal experts simultaneously. So it
 10 wasn't like we had time to figure out -- oh, no, this was
 11 all simultaneous.
 12 THE COURT: I didn't realize that.
 13 MR. KISE: So that's my point. Before they
 14 presented their experts, just like before we presented ours,
 15 we would have no idea, really, of the parameters and contours
 16 of their case. And so the fact that these witnesses wind up
 17 in the rebuttal bucket is simply more by the circumstances
 18 of the way the litigation unfolded pretrial, as opposed to
 19 any, like, understanding of what their case was. So that's
 20 why I'm saying, the fact that they are not calling someone
 21 in their case, that's their prerogative. If they believe,
 22 as they do, and I respect that, that they have satisfied
 23 their burden of proof, okay, they don't need an expert. But
 24 that doesn't mean that we are not entitled to present our
 25 case.

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1 defend ourselves. Then the Court should be able to consider
 2 that evidence. The Court, I would think, would want to
 3 weigh that evidence. There's plenty of tools the Court has
 4 if it believes that it's going on to long, or it's taking
 5 too much time, but for us to say that our case is going to
 6 be completed in less trial days than, I believe, the
 7 government's case, and we've already got us ahead of
 8 schedule, I think give us -- we haven't even gotten out of
 9 the gate yet and they want to shut the door. So I just
 10 don't think all of these witnesses speak to the elements
 11 that are squarely and completely before the Court.
 12 The degree of culpability, Mr. Amer mentioned that
 13 on the equitable side. The degree of culpability goes to
 14 state of mind, goes to intent. It goes to whether or not
 15 these individuals, you know, flagrantly violated something,
 16 or in the case of the statements under 63(12), we don't have
 17 to prove all of this if you find that they are false. As
 18 you've said before, okay, I find that they are false. That
 19 doesn't mean that they are materially false, it also doesn't
 20 mean they intended for them to be false. And then there is
 21 a whole lot of layered issues there.
 22 THE COURT: Five-minute warning.
 23 MR. KISE: Mr. Witkoff, Mr. Laposa -- Dr. Laposa,
 24 Mr. Flemmons, Mr. Miller, all of these witness noticed. And
 25 the goose/gander rule, however the Court wants to phrase it,

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1 applies wholly here. There's no reason to close the door to
 2 us after they had benefitted handsomely from it being
 3 opened. There was never any complaint about it before. And
 4 I will leave some time for Mr. Robert, because he is far
 5 more the experienced practitioner when it comes to the CPLR
 6 in these matters than I.
 7 You heard me say it before, the world is watching,
 8 so the world needs to see that everyone's evidence at least
 9 gets into the courtroom at some point, respectfully.
 10 Thank you.
 11 THE COURT: Thank you. Mr. Robert.
 12 MR. ROBERT: So sitting here and hearing Mr. Amer
 13 talking about wanting to -- one of the reasons to deny these
 14 experts is wanting to save money -- and I'm not going to use
 15 any pejorative words -- is beyond anything I could fathom.
 16 The relief they are seeking, in particular to my two clients
 17 who are relatively young men, is to bar them from doing
 18 business in New York for the rest of their lives, and yet he
 19 is now coming in here after spending five weeks saying we
 20 really should try to short circuit this.
 21 I'll remind the Court that at the last pretrial
 22 conference, after the summary judgment motion had been
 23 granted, you actually asked the government, well, since you
 24 already prevailed on the first cause of action, do you need
 25 to proceed on the balance? Do you want to? And in a

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1 resounding yes, they said, "Absolutely." And your Honor, in
 2 a colloquy with them was saying, well, a lot of the relief
 3 is the same. You don't get more relief from the other
 4 causes of action. And their answer was, "You need to hear
 5 it because that may affect part of your ultimate decision."
 6 So they could've taken away, to save the taxpayers
 7 of New York money, they could've said, yes, let's move to a
 8 damages phase of the trial. They elected not to do that.
 9 At this point now, because they changed their theory to
 10 prejudice our clients, respectfully I think would be
 11 improper.
 12 Now, as to this issue of rebuttal not rebuttal, I
 13 respectfully submit that that's just an absolute red
 14 herring. In New York, the fact that we have expert
 15 depositions in this case, and expert reports is even more
 16 than we usually have in case like this. So there's no
 17 issue. My experience has been, as Mr. Kise said, it's
 18 always an issue of notice or a qualification of the experts.
 19 Not when the plaintiff changes their theory midstream, that
 20 affects the ability of an expert to testify. I respectfully
 21 submit, I think one of the bases that they failed to meet
 22 their burden, and our directed verdict should be granted, is
 23 that they failed to call an expert on those issues.
 24 However, if your Honor agrees with them, at that point it is
 25 incumbent upon us to put on a defense that we feel is

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1 appropriate.
 2 My final thing is, what I really took offense to
 3 the most of what Mr. Amer said is that there should be
 4 consideration for the efforts of the Attorney General staff
 5 in doing their summary judgment motion. All I'll say on a
 6 personal level is, they had this case over three years.
 7 This defense team, in less than a year, worked on this case,
 8 are here trying this case, and we are working 24/7 to be
 9 able to comply with what these Court's orders were. So
 10 nobody is working harder than us, nobody is putting in more
 11 energy than us. So to say we should be precluded from
 12 bringing in these experts because they are tired, is
 13 offensive.
 14 THE COURT: Mr. Amer, you are still standing there.
 15 I assume you want to say something.
 16 MR. AMER: I do, your Honor. A few quick points.
 17 I think Mr. Kise completely confuses fact evidence with
 18 expert evidence.
 19 Nobody is seeking to preclude them from putting in
 20 whatever fact witnesses they want to put on the stand. This
 21 is about expert testimony. No party has an entitlement to
 22 put on an expert case if it has nothing to do with the
 23 issues in the case and will not assist the trier of fact.
 24 There's no due process right to put on expert testimony.
 25 And the cases we cite in our letter demonstrate that courts

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1 have routinely precluded parties from putting on experts if
 2 the experts are not going to assist the trier of fact.
 3 So the notion that we are somehow trying to
 4 preclude them from making their case is nonsense. This is
 5 about expert testimony. And our position is that in light
 6 of the Court's summary judgment decision, there are no
 7 issues left in the case that would make these experts
 8 relevant.
 9 The goose/gander rule, I have to make a point about
 10 this. They are distorting this rule beyond all recognition.
 11 This is a very simple rule. When the Court makes a ruling
 12 on an evidentiary issue, the Court should then apply that
 13 ruling on an evenhanded manner as the same issue comes up
 14 again and again throughout the course of the trial.
 15 It doesn't mean that for every time I sustain your
 16 objection I have to sustain the other side's objection.
 17 These evidentiary rulings are about calling balls and
 18 strikes based on how the pitches are coming over the plate.
 19 And there's no goose/gander rule that says if I sustain ten
 20 of your objections I have to sustain ten of your adversary's
 21 objections.
 22 I would also add, the rule has no application here
 23 because the Court has not previously ruled on the question
 24 of whether expert testimony is or is not relevant to the
 25 issues in the case. There's been no ruling that the Court

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1 has issued on this matter to then apply in an evenhanded
 2 manner. This is a matter of a clean slate for the Court in
 3 terms of whether and to what extent valuation and accounting
 4 experts have a role in this truncated narrower trial as a
 5 result of the Court's summary judgment decision.
 6 THE COURT: Hold on. If I can speak for Mr. Kise
 7 for a minute. His references to goose and gander are that
 8 not about expert testimony, but about the fact that you've
 9 had a long time to put on a long case, 25 witnesses in
 10 25 days. He wants an opportunity to put on a defense.
 11 MR. KISE: And expert as well. I mean,
 12 Mr. McCarty -- we had that debate over McCarty, whether or
 13 not he should be permitted. You said, which is your
 14 province, particularly in a bench trial, I could hear it all
 15 and I could sort it out. Which would be the appropriate
 16 procedure here.
 17 THE COURT: Let's break for lunch. I'll have --
 18 MR. AMER: Can I just finish two more points?
 19 THE COURT: Quickly, and I'll probably give you a
 20 chance after lunch, because the food might regenerate the
 21 brain.
 22 MR. AMER: I understand. This will be quick. I
 23 think I expressly said that we have no issue with the
 24 banking experts that they want to put on in their case.
 25 They could put on all the fact witnesses they want and a

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1 banking expert. We have no issue with that. So this
 2 goose/gander rule, it's just nonsensical.
 3 Mr. Kise talked about state of mind. I don't
 4 understand how an expert, who's retained after the fact, has
 5 any relevant information to impart on a witness's state of
 6 mind at the time of the events in question.
 7 And finally, Mr. Kise said Mr. Miller goes to
 8 disgorgement. I don't understand that. We are not putting
 9 on any disgorgement for the insurance fraud. We haven't put
 10 in a single piece of evidence seeking disgorgement with
 11 respect to any differential in the premium. That's not part
 12 of our disgorgement case.
 13 Our disgorgement case is based on the loans and the
 14 differential and the interest rates, and that was
 15 Mr. McCarty's testimony.
 16 THE COURT: Thirty seconds. Do you need to have a
 17 rebuttal expert on disgorgement on the insurance?
 18 MR. KISE: Just briefly, your Honor. I mean, I
 19 know you said after lunch. Do you need us back? I don't
 20 have anything more to argue, but we are happy to come back.
 21 THE COURT: Have a good lunch, but come back.
 22 MR. KISE: The only thing I'll say on this point is
 23 the best disinfectant is sunlight. They want to keep this
 24 case shrouded, in their view, their view of the world. They
 25 don't want the Court, they don't want to hear evidence and

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1 -- to hear full evidence. And yes, yes if Mr. Amer doesn't
 2 understand how the experts will shed light on the issues
 3 before the Court, it will become apparent to him, I'm sure,
 4 when they testify.
 5 Thank you.
 6 THE COURT: Who first said sun slight is the best
 7 disinfectant?
 8 MR. AMER: Brandeis.
 9 THE COURT: Brandeis. See you after lunch at 2:15.
 10 (Whereupon, the case on trial was adjourned until
 11 2:15 for the luncheon recess.)
 12 * * * * *
 13 A F T E R N O O N S E S S I O N
 14 * * * * *
 15 THE COURT OFFICER: All rise. Part 37 is back in
 16 sex. The Honorable Judge Arthur Engoron presiding. Please
 17 be seated and come to order.
 18 MR. KISE: Your Honor --
 19 THE COURT: Mr. Kise, when there is a three-day
 20 weekend, I go up the stairs much faster.
 21 MR. KISE: Indeed, you were bounding. I'm glad you
 22 gave us the lunch break. I'm going to apologize to the
 23 court and apologize to Mr. Amer. You know it's not like me
 24 to be ad hominem. I shouldn't be. I wasn't raised that
 25 way. So when you are right, you are right. Mr. Amer is

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1 working very hard. He is being a zealous advocate for his
 2 client. We are all very tired. It doesn't excuse it, but I
 3 just want to apologize on the record. I could withdraw it.
 4 You could strike it, leave it there, whatever you want, but
 5 I shouldn't have said what I said.
 6 And I hope the apology is at least accepted, but as
 7 you know, I don't make extrajudicial statements. I don't
 8 make pejoratives, and I will go back to being my assertive,
 9 but generally affable self.
 10 THE COURT: Mr. Amer, any response or requests.
 11 MR. AMER: I appreciate it, and I certainly accept
 12 the apology. Thank you.
 13 THE COURT: All right. Does either side want to
 14 say anything else about the question of whether plaintiff is
 15 entitled to preclude the four experts that their letter
 16 addressed? No? No? Oh, okay.
 17 Well, Mr. Amer asked me not to take the path of
 18 least resistance, and I will take that to heart, generally
 19 speaking through the trial. Obviously one of my real goals
 20 here -- well, one of the real goals, which is obvious, is I
 21 don't want a retrial of this case. I don't want to be
 22 reversed. And to me, that basically speaks in favor of
 23 allowing, rather than disallowing, the questions, answers,
 24 expert testimony, et cetera; however, I'm going to let --
 25 I'm going to deny the request, without prejudice to object

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1 to anything that they think is irrelevant, and I'll sort of
 2 explain how I see the heart of this case. And I think I
 3 made this clear in the summary judgment decision of
 4 September 26th. But let me say again, I'm not here to value
 5 these properties; I'm here to decide whether the Statements
 6 of Financial Condition and related documents were
 7 fraudulent, or whether they were correct or whether they
 8 were accurate. I'm not going to say oh, well, and I don't
 9 think I ever did, and I specifically disclaim saying it
 10 about Mar-a-Lago. I'm not going to say what a property is
 11 worth, because I don't have to. This is a case about, as we
 12 keep saying, it's a document case, or were the documents
 13 truthful, accurate, fair. And I'm going to go through some
 14 of the highlights, if you will, the greatest hits we call
 15 it, of the summary judgment decision.
 16 What I think I was allowed to grant summary
 17 judgment was because it's -- whether the statements were
 18 true or false, it was not a question of whether they
 19 presented the correct value of the properties, but whether
 20 they were internally true and internally consistent. And
 21 here are the ways I found some, or maybe all of the ways I
 22 found they were not internally accurate or fair. I'll start
 23 with the low hanging fruit. And I never want to
 24 overemphasize this. And I'll give you the numbers.
 25 First, the value of the triplex was fraudulently

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1 inflated in the SFCs from 2012 to 2016 -- this is at page 22
 2 of the summary judgment motion -- by inflating the square
 3 footage by nearly three times it's actual size. All right,
 4 I don't want to focus on that.
 5 Two, the value of Seven Springs was fraudulently
 6 inflated in the 2014 Statement of Financial Condition by
 7 disregarding and concealing the appraisals within its
 8 possession and reporting the value of Seven Springs to be
 9 more than 400 percent of its highest appraised value at the
 10 time.
 11 Three, the value of the rent stabilized apartments
 12 as Trump Park Avenue was fraudulently inflated in the
 13 Statements of Financial Condition -- from now on I'll say
 14 SFCs -- from 2014 to 2021 by wholly disregarding the rent
 15 stabilized status of certain units and valuing them as if
 16 they were unrestricted. You can't get a fair statement of
 17 value by pretending that rent regulated apartments are
 18 vacant. The value is completely different.
 19 Four, the value of 40 Wall Street was fraudulently
 20 inflated in the 2011, 2012 and 2015 SFCs by disregarding and
 21 concealing appraisals within defendant's possession and
 22 reporting its value as nearly \$200 million more than it's
 23 highest appraised value at the time.
 24 Five, the value of Mar-a-Lago was fraudulently
 25 inflated in the SFCs from 2014 to 2021 by wholly

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1 disregarding the land use restrictions which severely
 2 limited the ability to develop the property, and were
 3 granted in perpetuity by Donald J. Trump in exchange for tax
 4 benefits.
 5 Six, the value of Aberdeen was fraudulently
 6 inflated in the SFCs from 2014 to 2019 by falsely indicating
 7 that defendants had legal approval to develop 2,035 private
 8 residential homes instead of the 500 for which it had
 9 actually obtained legal approval.
 10 Seven, the value of certain golf courses was
 11 fraudulently inflated in the SFCs in 2014 to 2020 by
 12 including a brand premium and ignoring appraisals by
 13 claiming the SFCs did not include his brand value -- that
 14 was pretty black and white -- while also incorporating a
 15 brand value into its valuations.
 16 Eight, the value of cash was fraudulently inflated
 17 on the SFCs from 2013 to 2021 by falsely claiming that
 18 Donald Trump's interest in Vornado was liquid, when, in
 19 fact, he had no right to use or withdraw any of these funds
 20 as a minority owner to.
 21 Nine, the value of the Vornado Partnership
 22 properties was fraudulently inflated in the SFCs from 2014
 23 to 2016, and 2021, by disregarding and concealing appraisals
 24 within its possession and reporting its interest in the
 25 property to have a value of more than \$170 million more than

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1 the highest appraised value at the time.
 2 And finally, ten, the value of licensing deals was
 3 fraudulently included in the SFCs from 2014 to 2018, and
 4 2020, by improperly reporting valuations of
 5 intra-organization deals in an asset category that purported
 6 to include only values of deals with outside third-party
 7 organizations, resulting in overvaluations each year of
 8 between 97 and \$224 million.
 9 So, first of all, again, sorry to repeat myself,
 10 this is common sense. You can't have a correct valid
 11 financial statement with these kinds of errors.
 12 And secondly, if the experts try to testify
 13 otherwise, I'm going to shut them down at my discretion.
 14 And something that's bedeviled me this whole trial is the
 15 word "materiality", because as Mr. Kise was pointing out,
 16 the statutes say, well, there can't be a material
 17 misrepresentation. Well, I think I've said before, to me,
 18 if something is immaterial, it basically means de minimis.
 19 Okay, you could argue whether something is worth 200 million
 20 or 220 million, maybe arguably that's not material, but 200
 21 million and 375 million are fraudulent. And 25 million or
 22 500 million, that is clearly material, and I don't need an
 23 expert to tell me that.
 24 If you want to take me up on appeal on the grounds
 25 that Judge Engoron doesn't understand material because it's

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1 all about how somebody views it, no, at a certain point -- I
 2 think these are the words I used in the summary judgment
 3 motion, at a certain point it's not material; it's not
 4 immaterial. It's fraud.
 5 So bottom line, I'll let all the defendants'
 6 proposed experts testify, but in light of what I said about
 7 Mr. Amer's comment, I'm not going to take the path of least
 8 resistance. If it's clearly irrelevant, I'm just not going
 9 to allow it.
 10 So Mr. Kise, or anyone on the defense side.
 11 MR. KISE: No, your Honor. I think we understand
 12 the Court's position. I would say, without going through
 13 each category, you are going to take it on a
 14 category-by-category basis. I do think you will find from
 15 the experts that there is some intersection of issues here,
 16 maybe broader than you realized, but we'll take that up, as
 17 you say, as we go forward.
 18 THE COURT: You won the battle, we'll see if you
 19 win the war, on the experts.
 20 MR. AMER: I would also assume that at least on the
 21 rebuttal experts, one basis for objecting on relevance
 22 grounds is their opinion isn't addressing anything that has
 23 been put into evidence on our case.
 24 THE COURT: I think that's logical and fair, and
 25 we'll save the all important taxpayers' money.

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1 MR. WALLACE: Thank you.
 2 (The case on trial was adjourned to Monday,
 3 November 13, 2023 at 10:00 a.m.)
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1 Changing subjects, I think I mentioned this before,
 2 and Mr. Kise and Mr. Robert, you know, newcomers let's keep
 3 things moving along. If somebody is -- if you have an
 4 expert or another witness who is not going to be all day,
 5 let's make sure you've got someone behind up.
 6 MR. KISE: Well --
 7 THE COURT: I'll be very harsh about that, too.
 8 MR. KISE: -- as I've said, there's no one here
 9 that wants to be done sooner than me.
 10 THE COURT: And there's nothing you said more often
 11 than that, and I totally believe you, of course.
 12 MR. AMER: Some people may disagree that there's
 13 nobody who wants it to end sooner.
 14 THE COURT: I'm sure we all have our own personal
 15 stories.
 16 MR. KISE: That's true.
 17 THE COURT: All right. So have a great weekend.
 18 We are resuming 10:00 Monday morning; right?
 19 MR. ROBERT: Yes, sir. Thank you.
 20 THE COURT: The first witness will be?
 21 MR. KISE: Donald Trump, Jr.
 22 THE COURT: I know him.
 23 MR. KISE: Yeah.
 24 MR. ROBERT: Thank you.
 25 THE COURT: Thanks a lot, everyone.

NYSCEF DOC. NO. 1637
NYS Attorney General v.
Donald Trump

RECEIVED NYSCEF: 11/15/2023

November 9, 2023

	3855:15;3931:6; 3948:24	3891:17;3897:22; 3901:23;3907:22; 3919:4;3920:6,14; 3937:18,21;3938:7,7, 15;3957:23;3967:9	adverse (4) 3860:12,13,14,22	3886:16;3887:8; 3888:13,23;3889:2; 3890:1
\$	according (1)		advisement (1) 3934:4	agreements (3) 3888:21;3895:14; 3937:13
\$1,000 (1) 3906:22	3857:9		advocate (1) 3964:1	3888:21;3895:14; 3937:13
\$1.7 (1) 3878:3	3913:18	ad (6)	affable (1) 3964:9	agrees (1) 3958:24
\$10 (1) 3892:22	account (1) 3942:12	3904:19;3907:19; 3949:19,24;3950:3; 3963:24	affect (2) 3894:14;3958:5	AG's (1) 3894:7
\$100 (1) 3862:2	accountant (9) 3904:20;3924:15,21, 22,23;3925:15,17,20; 3955:10	AD2d (7) 3862:20,21;3868:6; 3880:3;3896:2,3; 3922:12	affected (2) 3873:8;3887:19	ahead (2) 3875:16;3956:7
\$170 (1) 3967:25	accountants (7) 3868:11;3904:4; 3925:1,1,10;3928:22, 22	AD3d (7) 3852:8;3880:2; 3885:17;3886:1; 3896:11,13;3922:18	affects (1) 3958:20	aid (2) 3881:24;3927:20
\$2 (4) 3874:7;3877:22; 3893:13;3932:3	accounting (15) 3867:22,24;3868:4; 3902:24;3909:21,22; 3913:11;3930:2; 3936:3;3939:14; 3940:6;3942:5,8,13; 3961:3	add (7) 3921:1,17;3939:7; 3942:10,16;3952:24; 3960:22	affidavit (1) 3937:25	Alamo (1) 3922:7
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